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Superior Court of California

County of Sacramento

02/26/2024

By: T. Crowther Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

JESSICA LOPEZ and CHARONE
DESHAZIER, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

v.

ETHOS-CALIFORNIA VETERINARY
GROUP, INC., a California corporation;
ETHOS VETERINARY HEALTH LLC; a
Delaware limited liability company; and DOES
1-50, Inclusive,

Defendants.

Case No: 34-2022-00327993

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802;
- 9) FAILURE TO PAY SICK WAGES IN VIOLATION OF CAL. LAB CODE §§201-204, 233, 246;
- 10) VIOLATION OF CONSTITUTIONAL

RIGHT TO PRIVACY;
11) RETALIATION IN VIOLATION OF
CAL. LAB. CODE § 1102.5;
12) VIOLATION OF CAL. GOV. CODE §
12940 – SEXUAL HARASSMENT;
13) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY; and
14) CIVIL PENALTIES PURSUANT TO
LABOR CODE SECTION § 2688, *et. seq.*
FOR VIOLATIONS OF LABOR CODE §§
201, 201.3, 202, 203, 204, 210, 218.5,
218.6, 221, 226, 226.2, 226.3, 226.7,
510, 512, 558, 1174(d), 1174.5, 1194,
1197, 1197.1, 1197.14, 1198, 1198.5,
1199, 2802, 2804, AND THE
APPLICABLE WAGE ORDER(S).

DEMAND FOR A JURY TRIAL

Plaintiffs Jessica Lopez and Charone DeShazier (“PLAINTIFFS”) individuals, on behalf of themselves and all other similarly situated current and former employees, allege on information and belief, except for their own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant ETHOS-CALIFORNIA VETERINARY GROUP, INC. dba VISTA VETERINARY SPECIALISTS (“Defendant Ethos-California Veterinary Group”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. Defendant ETHOS VETERINARY HEALTH LLC (“Defendant Ethos Veterinary”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

3. Defendant Ethos-California Veterinary Group and Defendant Ethos Veterinary Health were the joint employers of PLAINTIFFS as evidenced by the contracts signed and by the company PLAINTIFFS performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

1 4. DEFENDANTS own, operate and/or manage a twenty-four-hour emergency and
2 critical care and specialty veterinary hospital in the state of California, including in Sacramento
3 County where PLAINTIFFS worked.

4 5. The true names and capacities, whether individual, corporate, subsidiary,
5 partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are
6 presently unknown to PLAINTIFFS who therefore sue these DEFENDANTS by such fictitious
7 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
8 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
9 ascertained. PLAINTIFFS are informed and believe, and based upon that information and belief
10 allege, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
11 inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible
12 in some manner for one or more of the events and happenings that proximately caused the injuries
and damages hereinafter alleged.

13 6. The agents, servants, and/or employees of the DEFENDANTS and each of them
14 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its
15 authority as the agent, servant and/or employee of the Defendant, and personally participated in
16 the conduct alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged
17 herein. Consequently, the acts of each Defendant are legally attributable to the other
18 DEFENDANTS and all DEFENDANTS are jointly and severally liable to PLAINTIFFS and the
19 other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the
20 conduct of the DEFENDANTS’ agents, servants and/or employees.

21 7. DEFENDANTS were PLAINTIFFS’ employers or persons acting on behalf of
22 PLAINTIFFS’ employer, within the meaning of California Labor Code § 558, who violated or
23 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
24 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
25 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
26 at all relevant times.

27 8. DEFENDANTS were PLAINTIFFS’ employers or persons acting on behalf of
28 PLAINTIFFS’ employer either individually or as an officer, agent, or employee of another person,
within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any

1 employee a wage less than the minimum fixed by California state law, and as such, are subject to
2 civil penalties for each underpaid employee.

3 9. Plaintiff Lopez was employed by DEFENDANTS in California from September
4 of 2020 to March of 2022 and at all times was classified by DEFENDANTS as a non-exempt
5 employee, paid in part an hourly wage, non-discretionary bonuses, and entitled to the legally
6 required meal and rest periods and payment of minimum and overtime wages due for all time
7 worked.

8 10. Plaintiff DeShazier was employed by DEFENDANTS in California from March
9 of 2021 to August of 2022 and at all times was classified by DEFENDANTS as a non-exempt
10 employee, paid in part an hourly wage, non-discretionary bonuses, and entitled to the legally
11 required meal and rest periods and payment of minimum and overtime wages due for all time
12 worked.

13 11. PLAINTIFFS bring this Class Action on behalf of themselves and a California
14 class, defined as all individuals who are or previously were employed by DEFENDANTS, Ethos-
15 California Veterinary Group, Inc. and/or Ethos Veterinary Health LLC in the State of California,
16 who were classified as non-exempt (the "CALIFORNIA CLASS") at any time from October 6,
17 2018 to the earlier of preliminary approval or February 15, 2024 (the "CLASS PERIOD"). The
18 amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under
19 five million dollars (\$5,000,000.00).

20 12. PLAINTIFFS bring this Class Action on behalf of themselves and a
21 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
22 incurred during the CLASS PERIOD caused by DEFENDANTS' policy and practice which
23 failed to lawfully compensate these employees. DEFENDANTS' policy and practice alleged
24 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS
25 retained and continue to retain wages due PLAINTIFFS and the other members of the
26 CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA CLASS
27 seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
28 PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically
injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal
and equitable relief.

13. DEFENDANTS' policies and practices alleged herein were unlawful, unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS.

14. PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees of DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

16. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ the CALIFORNIA CLASS across California, including in this County, and committed the wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

THE CONDUCT

17. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally and knowingly failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time worked, failed to compensate PLAINTIFFS for off-the-clock work, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFFS and other members of the CALIFORNIA CLASS meal rest premiums

1 at the regular rate, failed to reimburse PLAINTIFFS and other CALIFORNIA CLASS Members
2 for business expenses, and failed to issue to PLAINTIFFS and the members of the CALIFORNIA
3 CLASS with accurate itemized wage statements showing, among other things, all applicable
4 hourly rates in effect during the pay periods and the corresponding amount of time worked at each
5 hourly rate. DEFENDANTS' policies and practices are intended to purposefully avoid the
6 accurate and full payment for all time worked as required by California law which allows
7 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply
8 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
9 against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

10 **A. Meal Period Violations**

11 18. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
12 were required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time
13 worked, meaning the time during which an employee is subject to the control of an employer,
14 including all the time the employee is suffered or permitted to work. From time-to-time during
15 the CLASS PERIOD, DEFENDANTS required PLAINTIFFS and CALIFORNIA CLASS
16 Members to work without paying them for all the time they were under DEFENDANTS' control.
17 Specifically, as a result of PLAINTIFFS' demanding work requirements and DEFENDANTS'
18 understaffing, DEFENDANTS required PLAINTIFFS to work during what was supposed to be
19 PLAINTIFFS's off-duty meal break. Indeed, there were many days where PLAINTIFFS did not
20 even receive a partial lunch. As a result, the PLAINTIFFS and other CALIFORNIA CLASS
21 Members forfeited minimum wage and overtime wages by regularly working without their time
22 being accurately recorded and without compensation at the applicable minimum wage and
23 overtime rates. DEFENDANTS' policy and practice not to pay PLAINTIFFS and other
24 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
25 records.

26 19. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
27 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFFS and other
28 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-

1 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and
2 other CALIFORNIA CLASS Members were required from time to time to perform work as
3 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
4 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFFS and
5 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
6 these employees were required by DEFENDANTS to work ten (10) hours of work from time to
7 time. The nature of the work performed by PLAINTIFFS and other CALIFORNIA CLASS
8 Members does not qualify for limited and narrowly construed “on-duty” meal period exception.
9 When they were provided with meal periods, PLAINTIFFS and other CALIFORNIA CLASS
10 Members were, from time to time, required to remain on duty and on call. Further, PLAINTIFFS
11 and other CALIFORNIA CLASS Members were from time to time required to carry cordless
12 communication devices in order to receive and respond to work-related communications during
13 their meal periods. DEFENDANT also engaged in the practice of rounding the meal period times
14 to avoid paying penalties to PLAINTIFFS and other CALIFORNIA CLASS Members.
15 PLAINTIFFS and other CALIFORNIA CLASS Members therefore forfeited meal breaks without
16 additional compensation and in accordance with DEFENDANTS’ strict corporate policy and
17 practice.

18 **B. Rest Period Violations**

19 20. From time-to-time during the CLASS PERIOD, PLAINTIFFS and other
20 CALIFORNIA CLASS members were also required from time to time to work in excess of four
21 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
22 requirements and DEFENDANTS’ inadequate staffing. Further, for the same reasons these
23 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
24 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
25 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
26 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
27 hours or more from time to time. When they were provided with rest breaks, PLAINTIFFS and
28 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or

1 on call. Further, PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time
2 required to carry cordless communication devices in order to receive and respond to work-related
3 communications during their meal periods. PLAINTIFFS and other CALIFORNIA CLASS
4 Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous
5 work schedules and DEFENDANTS' inadequate staffing, PLAINTIFFS and other
6 CALIFORNIA CLASS Members were from time to time denied their proper rest periods by
7 DEFENDANTS and DEFENDANTS' managers.

8
9 **C. Unreimbursed Business Expenses**

10 21. DEFENDANTS as a matter of corporate policy, practice, and procedure,
11 intentionally and knowingly failed to reimburse and indemnify the PLAINTIFFS and the
12 CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFFS and other
13 CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of
14 DEFENDANTS. Under California Labor Code Section 2802, employers are required to
15 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
16 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
17 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
18 of his or her duties, or of his or her obedience to the directions of the employer, even though
19 unlawful, unless the employee, at the time of obeying the directions, believed them to be
20 unlawful."

21 22. In the course of their employment, DEFENDANTS required PLAINTIFFS and
22 other CALIFORNIA CLASS Members to use their personal cell phones and personal vehicles as
23 a result of and in furtherance of their job duties as employees for DEFENDANTS. But for the
24 use of their own personal cell phones and personal vehicles, PLAINTIFFS and the CALIFORNIA
25 CLASS Members could not complete their essential job duties. However, DEFENDANTS
26 unlawfully failed to reimburse PLAINTIFFS and other CALIFORNIA CLASS Members for their
27 use of their personal cell phones and personal vehicles. As a result, in the course of their
28 employment with DEFENDANTS, the PLAINTIFFS and other CALIFORNIA CLASS Members

1 incurred unreimbursed business expenses, but were not limited to, costs related to the use of their
2 personal cell phones and personal vehicles, all on behalf of and for the benefit of DEFENDANTS.

3 **D. Wage Statement Violations**

4 23. California Labor Code Section 226 requires an employer to furnish its employees
5 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
6 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
7 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
8 of the employee and only the last four digits of the employee's social security number or an
9 employee identification number other than a social security number, (8) the name and address of
10 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
11 period and the corresponding number of hours worked at each hourly rate by the employee.

12 24. From time to time during the CLASS PERIOD, when PLAINTIFFS and other
13 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
14 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
15 to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate
16 wage statements which failed to show, among other things, the total hours worked and all
17 applicable hourly rates in effect during the pay period and the corresponding amount of time
18 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
19 periods.

20 25. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
21 PLAINTIFFS and the CALIFORNIA CLASS Members with wage statements that comply with
22 Cal. Lab. Code § 226.

23 26. As a result, DEFENDANTS issued PLAINTIFFS and the other members of the
24 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
25 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an
26 unintentional payroll error due to clerical or inadvertent mistake.

27 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**
28

1 27. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
2 continue to fail to accurately pay PLAINTIFFS and the other members of the CALIFORNIA
3 CLASS for all hours worked.

4 28. During the CLASS PERIOD, from time-to-time DEFENDANTS required
5 PLAINTIFFS and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
6 work, including but not limited to, answering telephone calls and responding to emails all while
7 off-the-clock. This resulted in PLAINTIFFS and other members of the CALIFORNIA CLASS to
8 have to work while off-the-clock. Additionally, DEFENDANTS, as a matter of established
9 company policy and procedure, administered a uniform practice of rounding the actual time
10 worked and recorded by PLAINTIFFS and CALIFORNIA CLASS Members, always to the
11 benefit of DEFENDANTS, so that during the course of their employment, PLAINTIFFS and
12 CALIFORNIA CLASS Members were paid less than they would have been paid had they been
13 paid for actual recorded time rather than “rounded” time.

14 29. DEFENDANTS directed and directly benefited from the uncompensated off-the-
15 clock work performed by PLAINTIFFS and the other members of the CALIFORNIA CLASS.

16 30. DEFENDANTS controlled the work schedules, duties, protocols, applications,
17 assignments, and employment conditions of PLAINTIFFS and the other members of the
18 CALIFORNIA CLASS.

19 31. DEFENDANTS were able to track the amount of time PLAINTIFFS and the other
20 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
21 document, track, or pay PLAINTIFFS and the other members of the CALIFORNIA CLASS all
22 wages earned and owed for all the work they performed.

23 32. PLAINTIFFS and the other members of the CALIFORNIA CLASS were non-
24 exempt employees, subject to the requirements of the California Labor Code.

25 33. DEFENDANTS’ policies and practices deprived PLAINTIFFS and the other
26 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
27 owed for the off-the-clock work activities. Because PLAINTIFFS and the other members of the
28

1 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
2 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

3 34. DEFENDANTS knew or should have known that PLAINTIFFS and the other
4 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

5 35. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
6 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
7 for the time spent working while off-the-clock. DEFENDANTS' policy and practice to not pay
8 PLAINTIFFS and the members of the CALIFORNIA CLASS wages for all hours worked in
9 accordance with applicable law is evidenced by DEFENDANTS' business records.

10 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
11 **Sick Pay**

12 36. DEFENDANTS underpaid sick pay wages to PLAINTIFFS and the other
13 CALIFORNIA CLASS members by failing to pay such wages at the regular rate of pay in
14 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
15 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate of
16 pay, DEFENDANTS underpaid sick pay to PLAINTIFFS and other CALIFORNIA CLASS
17 members at their base rates of pay.

18 37. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
19 employees be calculated by dividing the employee's total wages, not including overtime premium
20 pay, by the employee's total hours worked in the full pay periods of the prior 90 days of
21 employment.

22 38. DEFENDANTS violated Cal. Lab. Code Section 246 by failing to pay sick pay at
23 the regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely earned non-
24 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
25 was paid, it was paid at the base rate of pay for PLAINTIFFS and members of the CALIFORNIA
26 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
27 Section 246.
28

1 39. As a pattern and practice, DEFENDANTS regularly failed to pay PLAINTIFFS and
2 other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting
3 time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and
4 believe and based thereon alleges that such failure to pay sick pay at regular rate was willful, such
5 that PLAINTIFFS and members of the CALIFORNIA CLASS whose employment has separated
6 are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

7 40. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and
8 continue to fail to accurately calculate and pay PLAINTIFFS and the other CALIFORNIA
9 CLASS members for their overtime and double time hours worked, meal and rest period
10 premiums, and sick pay. As a result, PLAINTIFFS and the other CALIFORNIA CLASS
11 members forfeited wages due them for working overtime without compensation at the correct
12 overtime and double time rates, meal and rest period premiums, and sick pay rates.
13 DEFENDANTS' policy and practice to not pay the CALIFORNIA CLASS members the correct
14 rate for all overtime and double time worked, meal and rest period premiums, and sick pay in
15 accordance with applicable law is evidenced by DEFENDANTS' business records.

16 41. State law provides that employees must be paid overtime and meal and rest break
17 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other
18 CALIFORNIA CLASS members were compensated at an hourly rate plus incentive pay that was
19 tied to specific elements of an employee's performance.

20 42. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
21 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
22 PLAINTIFFS and other CLASS MEMBERS incentive wages based on their performance for
23 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
24 basis with bonus compensation when the employees met the various performance goals set by
25 DEFENDANTS.

26 43. However, from-time-to-time, when calculating the regular rate of pay, in those pay
27 periods where PLAINTIFFS and other CALIFORNIA CLASS members worked overtime, double
28 time, paid meal and rest period premium payments, and/or paid sick pay, and earned this non-

1 discretionary bonus, incentive, or shift differential DEFENDANTS failed to accurately include
2 the non-discretionary bonus compensation and/or incentive and/or shift differential paid as part
3 of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-
4 overtime hours worked. Management and supervisors described the incentive/bonus program to
5 potential and new employees as part of the compensation package. As a matter of law, the
6 incentive compensation and/or shift differentials received by PLAINTIFFS and other
7 CALIFORNIA CLASS members must be included in the "regular rate of pay." The failure to do
8 so has resulted in an underpayment of overtime and double time compensation, meal and rest
9 period premiums, and sick pay to PLAINTIFFS and other CALIFORNIA CLASS members by
10 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
11 for non-employees shall be calculated in the same manner as the regular rate of pay for the
12 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
13 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
14 failing to include the incentive compensation and/or shift differentials as part of the "regular rate
15 of pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
16 underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

17 44. In violation of the applicable sections of the California Labor Code and the
18 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
19 matter of company policy, practice, and procedure, intentionally and knowingly failed to
20 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS at the correct
21 rate of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
22 This policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the
23 correct overtime and double time compensation, meal and rest period premiums, and sick pay as
24 required by California law which allowed DEFENDANTS to illegally profit and gain an unfair
25 advantage over competitors who complied with the law. To the extent equitable tolling operates
26 to toll claims by the CALIFORNIA CLASS members against DEFENDANTS, the CLASS
27 PERIOD should be adjusted accordingly.

28 **G. Unlawful Deductions**

1 45. DEFENDANTS, from time-to-time unlawfully deducted wages from
2 PLAINTIFFS and CALIFORNIA CLASS Members' pay without explanations and without
3 authorization to do so or notice to PLAINTIFFS and the CALIFORNIA CLASS Members. As a
4 result, DEFENDANTS violated Labor Code § 221.

5 **H. Violations for Untimely Payment of Wages**

6 46. Pursuant to California Labor Code section 204, PLAINTIFFS and the
7 CALIFORNIA CLASS members were entitled to timely payment of wages during their
8 employment. PLAINTIFFS and the CALIFORNIA CLASS members, from time to time, did not
9 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
10 meal period premium wages, and rest period premium wages within permissible time period.

11 **I. Suitable Seating Violations**

12 47. PLAINTIFFS further allege that the workstations in DEFENDANTS' emergency
13 room provide ample space to allow for the presence and use of a stool or seat by DEFENDANTS'
14 employees' during the performance of their work duties. DEFENDANTS' employees working
15 at DEFENDANTS' veterinary hospital spend a very substantial portion, and, in many workdays,
16 the vast majority of their working time in the emergency room. The nature of the position can
17 reasonably be accomplished while using a seat/stool.

18 48. In violation of the applicable sections of the California Labor Code and the
19 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
20 DEFENDANTS as a matter of company policy, practice, and procedure, intentionally, and
21 knowingly failed to provide PLAINTIFFS and the other CALIFORNIA CLASS Members
22 suitable seating when the nature of these employees' work reasonably permitted sitting.

23 49. DEFENDANTS knew or should have known that PLAINTIFFS and other
24 CALIFORNIA CLASS Members were entitled to suitable seating and/or were entitled to sit when
25 it did not interfere with the performance of their duties, and that DEFENDANTS did not provide
26 suitable seating and/or did not allow them to sit when it did not interfere with the performance of
27 their duties. By reason of this conduct applicable to PLAINTIFFS and all CALIFORNIA CLASS
28 Members, DEFENDANTS violated California Labor Code Section 1198 and Wage Order 4-2001,
Section 14 by failing to provide suitable seats.

1 **J. Plaintiff Lopez's Individual Claims**

2 50. Article I, § 1 of the California Constitution, in pertinent part, states: "All people
3 are by nature free and independent and have inalienable rights. Among these are enjoying and
4 defending [] privacy." Employees are "persons" who are entitled to the protection provided by
5 constitutional rights. Hence, Plaintiff Lopez is among the class of persons Cal. Const. Art I, § 1
6 is intended to protect. Article I, § 1 of the California Constitution, guaranteeing the right to
7 privacy, creates a right of action against private entities [Kraslawsky v. Upper Deck Co. (1997)
8 56 Cal.App. 4th 179.

9 51. During her employment with DEFENDANTS, Plaintiff Lopez had tested positive
10 for COVID-19. DEFENDANTS' hospital service manager, Alexandra Moore, informed
11 DEFENDANTS' other employees that Plaintiff Lopez had tested positive for COVID-19. In
12 committing the actions alleged herein, DEFENDANTS violated Plaintiff Lopez's constitutional
13 right to privacy.

14 52. Further, specifically, as to Plaintiff Lopez, Plaintiff Lopez is informed and
15 believes, and based upon such information and belief, alleges that during her employment with
16 DEFENDANTS in or around December 2021, Plaintiff Lopez was sexually harassed by one of
17 DEFENDANTS' employees. In January 2022, Plaintiff Lopez reported the co-worker's conduct
18 to DEFENDANTS' manager, Erin Shaw, while another of DEFENDANTS' employees, Courtney
19 Wheaton, was present. DEFENDANTS, its agents, and its managers failed to investigate Plaintiff
20 Lopez's report of sexual harassment.

21 53. On or around March 9, 2022, due to DEFENDANTS' failure to investigate
22 Plaintiff Lopez's initial report of sexual harassment, Plaintiff Lopez reported the incident to
23 DEFENDANTS' hospital services manager, Myrna Perez. Shortly thereafter, on March 16, 2022,
24 Plaintiff Lopez's employment with DEFENDANTS was terminated.

25 54. Plaintiff Lopez is informed and believes, and based upon such information and
26 belief alleges, that, during Plaintiff Lopez's employment with DEFENDANTS and at the time of
27 her termination, Plaintiff Lopez was sexually harassed by DEFENDANTS and was treated
28 differently and unfairly by DEFENDANTS and its agents, all in retaliation against Plaintiff Lopez
because of report of sexual harassment.

1 55. Plaintiff Lopez filed a complaint with the California Department of Fair
2 Employment and Housing and received a “right to sue” letter on September 22, 2022, thereby
3 exhausting her administrative remedies.

4 **K. CLASS ACTION ALLEGATIONS**

5
6 56. PLAINTIFFS bring this Class Action on behalf of themselves and a California
7 class, defined as all individuals who are or previously were employed by DEFENDANTS, Ethos-
8 California Veterinary Group, Inc. and/or Ethos Veterinary Health LLC in the State of California,
9 who were classified as non-exempt (the “CALIFORNIA CLASS”) at any time from October 6,
10 2018 to the earlier of preliminary approval or February 15, 2024 (the “CLASS PERIOD”).
11 PLAINTIFFS and the other CALIFORNIA CLASS Members have been deprived of wages and
12 penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages,
13 unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest
14 period policies, failed to reimburse for business expenses, failed compensate for off-the-clock
15 work, failure to provide accurate itemized wage statements, failure to maintain required records,
16 and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

17
18
19 57. The members of the class are so numerous that joinder of all class members is
20 impractical.

21 58. Common questions of law and fact regarding DEFENDANTS’ conduct, including
22 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
23 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
24 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
25 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
26 to provide accurate itemized wage statements accurate, failure to ensure they are paid at least
27 minimum wage and overtime, and failure to provide adequate seating exist as to all members of
28

1 the class and predominate over any questions affecting solely any individual members of the class.

2 Among the questions of law and fact common to the class are:

- 3 a. Whether DEFENDANTS maintained legally compliant meal period policies and
4 practices;
- 5 b. Whether DEFENDANTS maintained legally compliant rest period policies and
6 practices;
- 7 c. Whether DEFENDANTS failed to pay PLAINTIFFS and the CALIFORNIA
8 CLASS Members accurate premium payments for missed meal and rest periods;
- 9 d. Whether DEFENDANTS failed to pay PLAINTIFFS and the CALIFORNIA
10 CLASS Members accurate overtime wages;
- 11 e. Whether DEFENDANTS failed to pay PLAINTIFFS and the CALIFORNIA
12 CLASS Members at least minimum wage for all hours worked;
- 13 f. Whether DEFENDANTS failed to compensate PLAINTIFFS and the
14 CALIFORNIA CLASS Members for required business expenses;
- 15 g. Whether DEFENDANTS issued legally compliant wage statements;
- 16 h. Whether DEFENDANTS provided adequate seating;
- 17 i. Whether DEFENDANTS committed an act of unfair competition by failing to
18 record and pay PLAINTIFFS and the other members of the CALIFORNIA CLASS
19 for all time worked;
- 20 j. Whether DEFENDANTS committed an act of unfair competition by failing to
21 record all meal and rest breaks missed by PLAINTIFFS and other CALIFORNIA
22 CLASS Members, even though DEFENDANTS enjoyed the benefit of this work,
23 required employees to perform this work and permits or suffers to permit this
24 work;
- 25 k. Whether DEFENDANTS committed an act of unfair competition in violation of
26 the UCL, by failing to provide the PLAINTIFFS and the other members of the
27 CALIFORNIA CLASS with the legally required meal and rest periods.
28

1 59. PLAINTIFFS is a member of the CALIFORNIA CLASS and suffered damages as
2 a result of DEFENDANTS' conduct and actions alleged herein.

3 60. PLAINTIFFS' claims are typical of the claims of the class, and PLAINTIFFS have
4 the same interests as the other members of the class.

5 61. PLAINTIFFS will fairly and adequately represent and protect the interests of the
6 CALIFORNIA CLASS Members.

7 62. PLAINTIFFS retained able class counsel with extensive experience in class action
8 litigation.

9 63. Further, PLAINTIFFS' interests are coincident with, and not antagonistic to, the
10 interests of the other CALIFORNIA CLASS Members.

11 64. There is a strong community of interest among PLAINTIFFS and the members of
12 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
13 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
14 sustained.

15 65. The questions of law and fact common to the CALIFORNIA CLASS Members
16 predominate over any questions affecting only individual members, including legal and factual
17 issues relating to liability and damages.

18 66. A class action is superior to other available methods for the fair and efficient
19 adjudication of this controversy because joinder of all class members is impractical. Moreover,
20 since the damages suffered by individual members of the class may be relatively small, the
21 expense and burden of individual litigation makes it practically impossible for the members of the
22 class individually to redress the wrongs done to them. Without class certification and
23 determination of declaratory, injunctive, statutory, and other legal questions within the class
24 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
25 create the risk of:

- 26 a. Inconsistent or varying adjudications with respect to individual members of the
27 CALIFORNIA CLASS which would establish incompatible standards of conduct
28 for the parties opposing the CALIFORNIA CLASS; and/or,

1 including Sections 204 *et seq.*, 210, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the
2 Fair Labor Standards Act and federal regulations promulgated thereunder, for which this Court
3 should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as
4 may be necessary to prevent and remedy the conduct held to constitute unfair competition,
5 including restitution of wages wrongfully withheld.

6 71. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
7 unfair in that these practices violated public policy, were immoral, unethical, oppressive
8 unscrupulous or substantially injurious to employees, and were without valid justification or
9 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
10 of the California Business & Professions Code, including restitution of wages wrongfully
11 withheld.

12 72. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
13 fraudulent in that DEFENDANTS’ policy and practice failed to provide the legally mandated
14 meal and rest periods and the required amount of compensation for missed meal and rest periods
15 and failed to provide Fair Labor Standards Act overtime wages due for overtime worked as a
16 result of failing to include non-discretionary incentive compensation into their regular rates of
17 pay for purposes of computing the proper overtime pay, due to a business practice that cannot be
18 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
19 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
20 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
21 restitution of wages wrongfully withheld.

22 73. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful,
23 unfair, and deceptive in that DEFENDANTS’ employment practices caused PLAINTIFFS and
24 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
25 DEFENDANTS.

26 74. By the conduct alleged herein, DEFENDANTS’ practices were also unfair and
27 deceptive in that DEFENDANTS’ policies, practices and procedures failed to provide legally
28

1 required meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members as
2 required by Cal. Lab. Code §§ 226.7 and 512.

3 75. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
5 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
6 each workday in which a second off-duty meal period was not timely provided for each ten (10)
7 hours of work.

8 76. PLAINTIFFS further demand on behalf of themselves and on behalf of each
9 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
10 not timely provided as required by law.

11 77. By and through the unlawful and unfair business practices described herein,
12 DEFENDANTS have obtained valuable property, money and services from PLAINTIFFS and
13 the other members of the CALIFORNIA CLASS, including earned wages for all time worked,
14 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
15 detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS
16 to unfairly compete against competitors who comply with the law.

17 78. All the acts described herein as violations of, among other things, the Industrial
18 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
19 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
20 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
21 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

22 79. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
23 to, and do, seek such relief as may be necessary to restore to them the money and property which
24 DEFENDANTS have acquired, or of which PLAINTIFFS and the other members of the
25 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
26 business practices, including earned but unpaid wages for all time worked.

27 80. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
2 engaging in any unlawful and unfair business practices in the future.

3 81. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
4 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
5 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
6 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
7 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
8 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
9 unlawful and unfair business practices.

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

12 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)**

13 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

14 82. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
15 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
16 Complaint.

17 83. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
18 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
19 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
20 and pay minimum wages to PLAINTIFFS and the CALIFORNIA CLASS Members.

21 84. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
22 policy, an employer must timely pay its employees for all hours worked.

23 85. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
25 the minimum so fixed is unlawful.

26 86. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage compensation and interest thereon, together with the costs of suit.
28

1 87. DEFENDANTS maintained a wage practice of paying PLAINTIFFS and the other
2 members of the CALIFORNIA CLASS without regard to the correct amount of time they worked.
3 As set forth herein, DEFENDANTS' policy and practice was to unlawfully and intentionally deny
4 timely payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA
5 CLASS.

6 88. DEFENDANTS' unlawful wage and hour practices manifested, without
7 limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
8 policy and practice that denied accurate compensation to PLAINTIFFS and the other members of
9 the CALIFORNIA CLASS in regard to minimum wage pay.

10 89. In committing these violations of the California Labor Code, DEFENDANTS
11 inaccurately calculated the amount of time worked and consequently underpaid the actual time
12 worked by PLAINTIFFS and other members of the CALIFORNIA CLASS. DEFENDANTS
13 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
14 of the California Labor Code, the Industrial Welfare Commission requirements and other
15 applicable laws and regulations.

16 90. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
17 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive the correct
18 minimum wage compensation for their time worked for DEFENDANTS.

19 91. During the CLASS PERIOD, DEFENDANTS required, permitted or suffered
20 PLAINTIFFS and the other members of the CALIFORNIA CLASS to work without paying them
21 for all the time they were under DEFENDANTS' control. During the CLASS PERIOD,
22 PLAINTIFFS and the other members of the CALIFORNIA CLASS were paid less for time
23 worked than they were entitled to, constituting a failure to pay all earned wages.

24 92. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
25 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true
26 time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS have
27 suffered and will continue to suffer an economic injury in amounts which are presently unknown
28 to them, and which will be ascertained according to proof at trial.

1 93. DEFENDANTS knew or should have known that PLAINTIFFS and the other
2 members of the CALIFORNIA CLASS are under-compensated for their time worked.
3 DEFENDANTS elected, either through intentional malfeasance or gross nonfeasance, to not pay
4 employees for their labor as a matter of corporate policy, practice and procedure, and
5 DEFENDANTS perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
6 of the CALIFORNIA CLASS the correct minimum wages for their time worked.

7 94. In performing the acts and practices herein alleged in violation of California labor
8 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
9 and provide them with the requisite compensation, DEFENDANTS acted and continues to act
10 intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the
11 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
12 consequences to them, and with the despicable intent of depriving them of their property and legal
13 rights, and otherwise causing them injury in order to increase company profits at the expense of
14 these employees.

15 95. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
16 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
17 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
18 California Labor Code and/or other applicable statutes. To the extent minimum wage
19 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
20 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
21 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
22 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
23 Members. DEFENDANTS' conduct as alleged herein was willful, intentional, and not in good
24 faith. Further, PLAINTIFFS and other CALIFORNIA CLASS Members are entitled to seek and
25 recover statutory costs.

26 **THIRD CAUSE OF ACTION**

27 **Failure To Pay Overtime Compensation**

28 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

96. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

97. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

98. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

99. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

100. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage and overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

101. During the CLASS PERIOD, PLAINTIFFS and CALIFORNIA CLASS Members were required, permitted or suffered by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked, including overtime work.

102. DEFENDANTS' unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a policy and practice that failed to accurately record overtime worked by PLAINTIFFS and other CALIFORNIA CLASS Members and denied accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for overtime worked, including, the overtime work

1 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or
2 forty (40) hours in any workweek.

3 103. In committing these violations of the California Labor Code, DEFENDANTS
4 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
5 PLAINTIFFS and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
6 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
7 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
8 regulations.

9 104. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
10 the PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
11 compensation for overtime worked.

12 105. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
13 from the overtime requirements of the law. None of these exemptions are applicable to the
14 PLAINTIFFS and the other members of the CALIFORNIA CLASS. Further, PLAINTIFFS and
15 the other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
16 agreement that would preclude the causes of action contained herein this Complaint. Rather,
17 PLAINTIFFS bring this Action on behalf of themselves and the CALIFORNIA CLASS based on
18 DEFENDANTS' violations of non- negotiable, non-waivable rights provided by the State of
19 California.

20 106. During the CLASS PERIOD, PLAINTIFFS and the other members of the
21 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
22 constituting a failure to pay all earned wages.

23 107. DEFENDANTS failed to accurately pay the PLAINTIFFS and the other members
24 of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of
25 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
26 though PLAINTIFFS and the other members of the CALIFORNIA CLASS were required to
27 work, and did in fact work, overtime as to which DEFENDANTS failed to accurately record and
28 pay as evidenced by DEFENDANTS' business records and witnessed by employees.

1 108. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
2 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
3 overtime worked by these employees, PLAINTIFFS and the other members of the CALIFORNIA
4 CLASS have suffered and will continue to suffer an economic injury in amounts which are
5 presently unknown to them, and which will be ascertained according to proof at trial.

6 109. DEFENDANTS knew or should have known that PLAINTIFFS and the other
7 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
8 DEFENDANTS elected, either through intentional malfeasance or gross nonfeasance, to not pay
9 employees for their labor as a matter of company policy, practice and procedure, and
10 DEFENDANTS perpetrated this scheme by refusing to pay PLAINTIFFS and the other members
11 of the CALIFORNIA CLASS for overtime worked.

12 110. In performing the acts and practices herein alleged in violation of California labor
13 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
14 worked and provide them with the requisite overtime compensation, DEFENDANTS acted and
15 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights,
17 or the consequences to them, and with the despicable intent of depriving them of their property
18 and legal rights, and otherwise causing them injury in order to increase company profits at the
19 expense of these employees.

20 111. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
21 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
22 statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a
23 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
24 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS
25 Members who have terminated their employment, DEFENDANTS' conduct also violates Labor
26 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time
27 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
28 CALIFORNIA CLASS Members. DEFENDANTS' conduct as alleged herein was willful,

1 intentional, and not in good faith. Further, PLAINTIFFS and other CALIFORNIA CLASS
2 Members are entitled to seek and recover statutory costs.

3 ///

4 ///

5
6 **FOURTH CAUSE OF ACTION**

7 **Failure To Provide Required Meal Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

10 112. PLAINTIFFS and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 113. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
14 required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA CLASS Members as
15 required by the applicable Wage Order and Labor Code. The nature of the work performed by
16 PLAINTIFFS and CALIFORNIA CLASS Members did not prevent these employees from being
17 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
18 rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were often
19 not fully relieved of duty by DEFENDANTS for their meal periods. Additionally,
20 DEFENDANTS' failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members with
21 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
22 DEFENDANTS' business records. Further, DEFENDANTS failed to provide PLAINTIFFS and
23 CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which
24 these employees were required by DEFENDANTS to work ten (10) hours of work. As a result,
25 PLAINTIFFS and other members of the CALIFORNIA CLASS forfeited meal breaks without
26 additional compensation and in accordance with DEFENDANTS' strict corporate policy and
27 practice.
28

1 114. DEFENDANTS further violated California Labor Code §§ 226.7 and the
2 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS
3 Members who were not provided a meal period, in accordance with the applicable Wage Order,
4 one additional hour of compensation at each employee's regular rate of pay for each workday that
5 a meal period was not provided.

6 115. As a proximate result of the aforementioned violations, PLAINTIFFS and
7 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
8 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

9
10 **FIFTH CAUSE OF ACTION**

11 **Failure To Provide Required Rest Periods**

12 **(Cal. Lab. Code §§ 226.7 & 512)**

13 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

14 116. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
15 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
16 Complaint.

17 117. From time to time, PLAINTIFFS and other CALIFORNIA CLASS Members were
18 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
19 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
20 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
21 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
22 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
23 PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with one-hour
24 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other
25 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
26 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
27 compensate PLAINTIFFS and CALIFORNIA CLASS Members for their rest periods as required
28 by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to provide

1 PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid rest
2 periods is evidenced by DEFENDANTS' business records.

3 118. Additionally, the applicable California Wage Order requires employers to provide
4 employees with off-duty rest periods, which the California Supreme Court defined as time during
5 which an employee is relieved from all work related duties and free from employer control. In so
6 doing, the Court held that the requirement under California law that employers authorize and
7 permit all employees to take rest period means that employers must relieve employees of all duties
8 and relinquish control over how employees spend their time which includes control over the
9 locations where employees may take their rest period. Employers cannot impose controls that
10 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
11 DEFENDANTS' policy restricted PLAINTIFFS and other CALIFORNIA CLASS members from
12 unconstrained walks and is unlawful based on DEFENDANTS' rule which states PLAINTIFFS
13 and other CALIFORNIA CLASS members cannot leave the work premises during their rest
14 period.

15 119. DEFENDANTS further violated California Labor Code §§ 226.7 and the
16 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS
17 Members who were not provided a rest period, in accordance with the applicable Wage Order,
18 one additional hour of compensation at each employee's regular rate of pay for each workday that
19 rest period was not provided.

20 120. As a proximate result of the aforementioned violations, PLAINTIFFS and
21 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
22 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

23
24 **SIXTH CAUSE OF ACTION**

25 **Failure To Provide Accurate Itemized Statements**

26 **(Cal. Lab. Code §§ 226)**

27 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**
28

1 21. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

3 22. Cal. Labor Code § 226 provides that an employer must furnish employees with an
4 “accurate itemized” statement in writing showing:

- 5 a. Gross wages earned,
- 6 b. (2) total hours worked by the employee, except for any employee whose
7 compensation is solely based on a salary and who is exempt from payment of
8 overtime under subdivision (a) of Section 515 or any applicable order of the
9 Industrial Welfare Commission,
- 10 c. the number of piece-rate units earned and any applicable piece rate if the employee
11 is paid on a piece-rate basis,
- 12 d. all deductions, provided that all deductions made on written orders of the employee
13 may be aggregated and shown as one item,
- 14 e. net wages earned,
- 15 f. the inclusive dates of the period for which the employee is paid,
- 16 g. the name of the employee and his or her social security number, except that by
17 January 1, 2008, only the last four digits of his or her social security number of an
18 employee identification number other than social security number may be shown
19 on the itemized statement,
- 20 h. the name and address of the legal entity that is the employer, and
- 21 i. all applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate by the employee.

23 23. During the CLASS PERIOD, when PLAINTIFFS and other CALIFORNIA
24 CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest
25 period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
26 PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate wage
27 statements which failed to show, among other things, the accurate gross wages earned, net wages
28 earned, the total hours worked and all applicable hourly rates in effect during the pay period and

1 the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty
2 payments or missed meal and rest periods.

3 124. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
4 statements to PLAINTIFFS and members of the CALIFORNIA CLASS that complied with the
5 requirements of California Labor Code Section 226.

6 125. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
7 § 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA
8 CLASS. These damages include, but are not limited to, costs expended calculating the correct
9 wages for all missed meal and rest breaks and the amount of employment taxes which were not
10 properly paid to state and federal tax authorities. These damages are difficult to estimate.
11 Therefore, PLAINTIFFS and the other members of the CALIFORNIA CLASS may elect to
12 recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
13 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
14 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
15 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective
16 member of the CALIFORNIA CLASS herein).

17
18 **SEVENTH CAUSE OF ACTION**

19 **Failure To Pay Wages When Due**

20 **(Cal. Lab. Code §§ 203)**

21 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

22 126. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
23 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
24 Complaint.

25 127. Cal. Lab. Code § 200 provides that:

26 As used in this article:

- 27 (d) "Wages" includes all amounts for labor performed by employees of every
28 description, whether the amount is fixed or ascertained by the standard of time,
task, piece, Commission basis, or other method of calculation.

1 (e) "Labor" includes labor, work, or service whether rendered or performed under
2 contract, subcontract, partnership, station plan, or other agreement if the to be
3 paid for is performed personally by the person demanding payment.

4 128. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
5 an employee, the wages earned and unpaid at the time of discharge are due and payable
6 immediately."

7 129. Cal. Lab. Code § 202 provides, in relevant part, that:

8 If an employee not having a written contract for a definite period quits his or her
9 employment, his or her wages shall become due and payable not later than 72 hours
10 thereafter, unless the employee has given 72 hours previous notice of his or her intention
11 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
12 Notwithstanding any other provision of law, an employee who quits without providing a
13 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
14 designates a mailing address. The date of the mailing shall constitute the date of payment
15 for purposes of the requirement to provide payment within 72 hours of the notice of
16 quitting.

17 130. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS
18 Members' employment contract.

19 131. Cal. Lab. Code § 203 provides:

20 If an employer willfully fails to pay, without abatement or reduction, in accordance with
21 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
22 quits, the wages of the employee shall continue as a penalty from the due date thereof at
23 the same rate until paid or until an action therefor is commenced; but the wages shall not
24 continue for more than 30 days.

25 132. The employment of PLAINTIFFS and many CALIFORNIA CLASS Members
26 terminated, and DEFENDANTS have not tendered payment of wages to these employees who
27 were underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
28 required by law.

133. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFFS
demand up to thirty (30) days of pay as penalty for not paying all wages due at time of termination
for all employees who terminated employment during the CLASS PERIOD and demand an
accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

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5 **EIGHTH CAUSE OF ACTION**

6 **Failure To Reimburse Employees For Required Expenses**

7 **(Cal. Lab. Code §§ 2802)**

8 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

9 134. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
10 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

12 135. Cal. Lab. Code § 2802 provides, in relevant part, that:

13 An employer shall indemnify his or her employee for all necessary expenditures or losses
14 incurred by the employee in direct consequence of the discharge of his or her duties, or of
15 his or her obedience to the directions of the employer, even though unlawful, unless the
16 employee, at the time of obeying the directions, believed them to be unlawful

17 136. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.
18 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the members of the
19 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
20 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFFS and the members of
21 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
22 using their personal cell phones and personal vehicles all on behalf of and for the benefit of
23 DEFENDANTS. Specifically, PLAINTIFFS and the members of the CALIFORNIA CLASS
24 were required by DEFENDANTS to use their personal cell phones and personal vehicles to
25 execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' policy, practice
26 and procedure was to not reimburse PLAINTIFFS and the members of the CALIFORNIA CLASS
27 for expenses resulting from using their personal cell phones and personal vehicles for
28 DEFENDANTS within the course and scope of their employment for DEFENDANTS. These
expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by

1 DEFENDANTS’ conduct to assert any waiver of their expectation. Although these expenses were
2 necessary expenses incurred by PLAINTIFFS and the members of the CALIFORNIA CLASS,
3 DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the members of the
4 CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and
5 regulations of California.

6 137. PLAINTIFFS therefore demand reimbursement on behalf of the members of the
7 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
8 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANTS, with
9 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

10
11 **NINTH CAUSE OF ACTION**

12 **For Failure to Pay Sick Pay Wages**

13 **[Cal. Lab. Code §§ 201-204, 210, 233, 246]**

14 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

15 138. PLAINTIFFS, and the other members of the CALIFORNIA CLASS,
16 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
17 this Complaint.

18 139. Cal Lab. Code § 233 provides that an employer must permit an employee
19 to use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee’s then current
20 rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages
21 for use of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick
22 leave is used as paid sick time, an employee has a vested right to sick pay wages, which an
23 employer must calculate and compensate based on one of two calculations: (i) “Paid sick time for
24 nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
25 workweek in which the employee uses paid sick time, whether or not the employee actually works
26 overtime in that workweek,” or (ii) “Paid sick time for nonexempt employees shall be calculated
27 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s
28 total hours worked in the full pay periods of the prior 90 days of employment.” Under Cal Lab.
Code §§ 218 and 233, employees may sue to recover underpaid sick pay wages as damages.

1 140. As a matter of policy and practice, DEFENDANTS pay sick pay wages to
2 PLAINTIFFS and the other members of the CALIFORNIA CLASS at the incorrect rate of pay.
3 PLAINTIFFS and the other members of the CALIFORNIA CLASS regularly use accrued sick
4 leave in the workweeks in which they also earn non-hourly remuneration. As a matter of policy
5 and practice, DEFENDANTS pay sick pay wages to PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS at the base hourly pay, as opposed to the regular rate of pay, which would
7 consider all non-hourly remuneration in addition to base hourly wages, or the rate resulting from
8 dividing the employee's total wages, not including overtime premium pay, by the employee's
9 total hours worked in the full pay periods of the prior 90 days of employment. As a result,
10 DEFENDANTS underpaid sick pay wages to PLAINTIFFS and the other members of the
11 CALIFORNIA CLASS.

12 141. Cal. Lab. Code § 204 provides that wages generally are due and payable
13 twice during each calendar month and are to be paid no later than the payday for the next regular
14 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires
15 that, upon use of accrued sick leave, vested sick pay wages are due and to be paid no later than the
16 payday for the next regular payroll period after accrued sick leave is used as paid sick time.
17 Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an employee, wages
18 earned and unpaid at the time of discharge are due and payable immediately. Cal. Lab. Code §
19 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after
20 an employee quits his or her employment, unless the employee has given 72-hour notice of his or
21 her intention to quit, in which case the employee is entitled to his or her wages at the time of
22 quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code § 203
23 provides that if an employer willfully fails to pay wages owed in accordance with Cal. Lab. Code
24 §§ 201-202, then the wages of the employee shall continue as a penalty from the due date, and at
25 the same rate until paid, but the wages shall not continue for more than thirty (30) days. Likewise,
26 Cal. Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
27 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may sue to
28 recover applicable penalties.

 142. As alleged herein and as a matter of policy and practice, DEFENDANTS
routinely underpay sick pay wages and thus did not timely pay PLAINTIFFS and the other
members of the CALIFORNIA CLASS all owing and underpaid sick pay wages. As a result,
DEFENDANTS violate Cal. Lab. Code §§ 201-204, 210, 233, and 246, among other Labor Code

1 provisions. PLAINTIFFS are informed and believe that DEFENDANTS were advised by skilled
2 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to
3 PLAINTIFFS' allegations, especially since the California Supreme Court has explained that
4 "[c]ourts have recognized that 'wages' also include those benefits to which an employee is
5 entitled as a part of his or her compensation, including money, room, board, clothing, vacation
6 pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis
7 added). Because DEFENDANTS willfully fail to timely pay PLAINTIFFS and the other members
8 of the CALIFORNIA CLASS all sick pay wages due, DEFENDANTS are subject to applicable
9 penalties.

10 143. Such a pattern, practice, and uniform administration of corporate policy is
11 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA CLASS to
12 underpaid sick pay wages, including interest thereon, applicable penalties, attorney's fees, and
13 costs of suit.

14 **TENTH CAUSE OF ACTION**

15 **VIOLATION OF CONSTITUTIONAL RIGHT TO PRIVACY**

16 **(Cal. Constitution Art. I, § 1)**

17 **(Alleged by Plaintiff Lopez against all Defendants)**

18 144. Plaintiff Lopez realleges and incorporates by this reference, as though fully set
19 forth herein, the prior paragraphs of this Complaint.

20 145. Article I, § 1 of the California Constitution, in pertinent part, states: "All people
21 are by nature free and independent and have inalienable rights. Among these are enjoying and
22 defending [] privacy."

23 146. Employees are "persons" who are entitled to the protection provided by
24 constitutional rights. Hence, Plaintiff Lopez is among the class of persons Cal. Const. Art. I, § 1
25 is intended to protect.

26 147. Article I, § 1 of the California Constitution, guaranteeing the right to privacy,
27 creates a right of action against private entities. [*Kraslawsky v. Upper Deck Co.* (1997) 56
28 Cal.App. 4th 179.

148. During her employment with DEFENDANTS, Plaintiff Lopez had tested positive for COVID-19. DEFENDANTS' hospital service manager, Alexandra Moore, informed DEFENDANTS' other employees that Plaintiff Lopez had tested positive for COVID-19. In committing the actions alleged herein, DEFENDANTS violated Plaintiff Lopez's constitutional right to privacy.

ELEVENTH CAUSE OF ACTION

(Alleged By Plaintiff Lopez and against all Defendants)

151. At all relevant times, Labor Code section 1102.5 was in effect and was binding on DEFENDANTS. This statute prohibits DEFENDANTS from retaliating against any employee, including Plaintiff Lopez, for raising complaints of illegality and/or belief that the employee may disclose illegality.

153. Plaintiff Lopez raised complaints of illegality while she worked for DEFENDANTS, and DEFENDANTS retaliated against her by taking adverse employment actions, including terminating Plaintiff Lopez's employment.

1 has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain
2 and anguish, all to her damage in a sum according to proof.

3 155. As a result of DEFENDANTS' adverse employment actions against Plaintiff
4 Lopez, Plaintiff Lopez has suffered general and special damages in sums according to proof.

5 156. DEFENDANTS' misconduct was committed intentionally, in a malicious,
6 oppressive manner, and fraudulent manner, entitling Plaintiff Lopez to punitive damages against
7 DEFENDANTS.

8 **TWELFTH CAUSE OF ACTION**

9 **VIOLATION OF GOVERNMENT CODE §12940 et seq. – SEX DISCRIMINATION**

10 **(By Plaintiff Lopez and against all DEFENDANTS)**

11 157. Plaintiff Lopez realleges and incorporates by this reference, as though fully set
12 forth herein, the prior paragraphs of this Complaint.

13 158. Plaintiff Lopez was employed by DEFENDANTS.

14 159. DEFENDANTS are employers covered by Government Code §12940 et seq.

15 160. Plaintiff Lopez was terminated from her employment and/or suffered other adverse
16 employment actions.

17 161. Plaintiff Lopez's sexual harassment by DEFENDANTS, and reporting of sexual
18 harassment thereof to DEFENDANTS, was a substantial motivating reason(s) for her termination
19 and other adverse employment actions.

20 162. As a result of DEFENDANTS' conduct, Plaintiff Lopez has suffered substantial
21 losses in earnings and employment benefits and emotional distress in an amount to be determined
22 according to proof at trial.

23 163. In doing the acts herein alleged, DEFENDANTS acted with malice and
24 oppression, and with a conscious disregard of Plaintiff Lopez's rights, and Plaintiff Lopez is
25 entitled to exemplary and punitive damages from DEFENDANTS in an amount to be punish
26 DEFENDANTS and to deter such wrongful conduct in the future.
27
28

1
2 **THIRTEENTH CAUSE OF ACTION**

3 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

4 **(By Plaintiff Lopez and against all DEFENDANTS)**

5 164. Plaintiff Lopez realleges and incorporates by this reference, as though fully set
6 forth herein, the prior paragraphs of this Complaint.

7 165. Plaintiff Lopez's wrongful termination on or about March 16, 2022 was for a
8 pretextual reason(s) to disguise DEFENDANTS' unlawful employment practices directed at
9 Plaintiff Lopez.

10 166. Within the State of California there exists a substantial and fundamental public
11 policy, set forth in the California Government Code §12900 et seq., which forbids sexual
12 harassment/discrimination, retaliation, and wrongful termination. Unlawful harassment includes
13 the right to be free from unwanted, offensive harassment, and the right to protest such conduct
14 without fear of retaliation or further harm. This public policy of the state is one that benefits the
15 public at large and guarantees the rights of an employee to perform their work free from sexual
16 harassment/discrimination/retaliation.

17 167. The motivating reason(s) for Plaintiff Lopez's termination was sexual
18 harassment/discrimination and Plaintiff Lopez's protests and/or resistance thereof. Plaintiff
19 Lopez's discharge from her position of employment was in violation of the public policies of the
20 State of California.

21 168. As a result of DEFENDANTS' actions, Plaintiff Lopez has suffered substantial
22 losses in earnings and employment benefits and emotional distress in an amount to be determined
23 according to proof at trial.

24 169. In doing the acts herein alleged, DEFENDANTS acted with malice and
25 oppression, and with a conscious disregard of Plaintiff Lopez's rights, and Plaintiff Lopez is
26 entitled to exemplary and punitive damages from DEFENDANT in an amount to be determined
27 to punish DEFENDANT and to deter such wrongful conduct in the future.
28

1 170. Plaintiff Lopez was harmed by DEFENDANT’S wrongful and illegal termination
2 of her employment.

3 171. The wrongful termination of the employment of Plaintiff Lopez was and is a
4 substantial factor causing harm to Plaintiff Lopez.

5
6 **FOURTEENTH CAUSE OF ACTION**

7 **FOR VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

8 **[Cal. Lab. Code §§ 2698, *et seq.*]**

9 **(By PLAINTIFF and Against All Defendants)**

10
11 173. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
12 herein, the prior paragraphs of this Complaint.

13 174. PAGA is a mechanism by which the State of California itself can enforce state
14 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
15 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
16 fundamentally a law enforcement action designed to protect the public and not to benefit private
17 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
18 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
19 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
20 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
21 ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

22
23 175. PLAINTIFF, and such persons that may be added from time to time who satisfy
24 the requirements and exhaust the administrative procedures under the Private Attorney General
25 Act, brings this Representative Action on behalf of the State of California with respect to herself
26 and all non-exempt employees who worked for DEFENDANTS (“AGGRIEVED
27
28

1 EMPLOYEES”) at any time from May 24, 2021 to the earlier of February 15, 2024 or preliminary
2 settlement approval (the "PAGA PERIOD").

3 176. On September 23, 2021, PLAINTIFF gave written notice by electronic mail to the
4 Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer
5 of the specific provisions of this code alleged to have been violated as required by Labor Code §
6 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
7 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
8 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
9 California with respect to all AGGRIEVED EMPLOYEES as herein defined.
10

11 177. The policies, acts and practices heretofore described were and are an unlawful
12 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
13 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
14 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
15 to pay overtime wages and sick pay wages, and (e) failed to reimburse employees for required
16 expenses, all in violation of the applicable Labor Code sections listed in Labor Code §§ §§ 201,
17 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174(d),
18 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and the applicable Wage
19 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
20 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney
21 General Act of 2004 as the representative of the State of California for the illegal conduct
22 perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.
23
24

25 178. All of the conduct and violations alleged herein occurred during the PAGA
26 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
27

28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).

1 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
2 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 30
3 Cal.App.5th 504 (2018).

4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendant, jointly and
7 severally, as follows:

8 1. On behalf of the CALIFORNIA CLASS:

- 9 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
10 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
11 b. An order temporarily, preliminarily and permanently enjoining and restraining
12 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
13 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
14 unlawfully withheld from compensation due to PLAINTIFFS and the other
15 members of the CALIFORNIA CLASS; and
16 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
17 for restitution of the sums incidental to DEFENDANTS' violations due to
18 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

19 2. On behalf of the CALIFORNIA CLASS:

- 20 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
21 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
22 pursuant to Cal. Code of Civ. Proc. § 382;
23 b. Compensatory damages, according to proof at trial, including compensatory
24 damages for overtime compensation and separately owed rest periods, due to
25 PLAINTIFFS and the other members of the CALIFORNIA CLASS, during the
26 applicable CLASS PERIOD plus interest thereon at the statutory rate;
27 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
28 the applicable IWC Wage Order;

- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
 - e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203; and,
 - f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.
3. On behalf of Plaintiff Lopez for the Tenth through Thirteenth causes of action:
- a. Compensatory damages, according to proof at trial;
 - b. Special and general damages according to proof;
 - c. Statutory damages, penalties, and attorney's fees;
 - d. For punitive damages in an amount necessary to make an example of and to punish DEFENDANTS and deter DEFENDANTS from engaging in future similar conduct;
 - e. For loss of earnings (both past and future); and,
 - f. For interest at the legal rate in an amount according to proof.
4. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004; and
 - b. An award of attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699
5. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and

1 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

2
3 DATED: February 26, 2024

4 **BLUMENTHAL NORDREHAUG BHWOMIK DE BLOUW LLP**

5
6
7 /s/ Nicholas J. De Blouw

8 Norman B. Blumenthal

9 Kyle R. Nordrehaug

10 Nicholas J. De Blouw

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Attorneys for Plaintiffs

DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

DATED: February 26, 2024

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