

1 **DIVERSITY LAW GROUP, P.C.**  
Larry W. Lee, Esq. (SBN 228175)  
2 Simon L. Yang, Esq. (SBN 260286)  
515 South Figueroa Street, Suite 1250  
3 Los Angeles, California 90071  
Telephone: (213) 488-6555  
4 Facsimile: (213) 488-6554

5 **POLARIS LAW GROUP LLP**  
William L. Marder, Esq. (SBN 170131)  
6 501 San Benito Street, Suite 200  
Hollister, California 95023  
7 Telephone: (831) 531-4214  
Facsimile: (831) 634-0333

8 Attorneys for Plaintiff,  
9 HOLLY MCCARTHY, on behalf  
of herself and all others similarly situated

10 [Additional Counsel Listed On The Next Page]

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF SAN BERNARDINO

14 HOLLY MCCARTHY, LETICIA  
15 RODARTE, and RACHEL MENDOZA on  
behalf of themselves and all others similarly  
16 situated and as a private attorney general,

17 Plaintiffs,

18 vs.

19 THE VONS COMPANIES, INC., a  
Michigan corporation; and DOES 1 through  
20 100, Inclusive,

21 Defendants.

Case No.: CIVDS2021085

FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION COMPLAINT  
FOR:

- (1) FAILURE TO PAY SICK PAY WAGES;
- (2) FAILURE TO PAY OVERTIME WAGES;
- (3) FAILURE TO PROVIDE ACCURATE  
WAGE STATEMENTS;
- (4) VIOLATION OF BUS. & PROF. CODE §§  
17200 *ET SEQ.*;
- (5) FAILURE TO PROVIDE REST PERIODS;
- (6) FAILURE TO PAY ALL WAGES UPON  
TERMINATION;
- (7) FAILURE TO PAY MINIMUM WAGES;
- (8) FAILURE TO PROVIDE MEAL PERIODS;  
AND
- (9) VIOLATION OF LABOR CODE §§ 2698  
*ET SEQ.*

DEMAND FOR JURY TRIAL

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO CIVIL DIVISION

MAR 06 2023

  
BY: ASHLEE BAYLESS CHAPA, DEPUTY

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1 Michael Nourmand, Esq. (SBN 198439)  
James A. De Sario, Esq. (SBN 262552)  
2 **THE NOURMAND LAW FIRM, APC**  
3 8822 West Olympic Boulevard  
Beverly Hills, California 90211  
4 Telephone: (310) 553-3600  
Facsimile: (310) 553-3603

5  
6 Attorneys for Plaintiff,  
LETICIA RODARTE,  
7 individually and on behalf of all others similarly situated

8  
9 Carolyn H. Cottrell, Esq. (SBN 166977)  
Esther L. Bylsma, Esq. (SBN 264208)  
10 **SCHNEIDER WALLACE**  
**COTTRELL KONECKY LLP**  
11 200 Powell Street, Suite 1400  
Emeryville, California 94608  
12 Telephone: (415) 421-7100  
Facsimile: (415) 421-7105

13  
14 Attorneys for Plaintiff,  
RACHEL MENDOZA,  
15 individually and on behalf of all others similarly situated

1 COME NOW plaintiffs HOLLY McCARTHY (“McCarthy”), LETICIA RODARTE  
2 (“Rodarte”), and RACHEL MENDOZA (“Mendoza”) (collectively referred to as “Plaintiffs”),  
3 who submit this Class and Representative Action Complaint against Defendant, THE VONS  
4 COMPANIES, INC. (“Vons”) and DOES 1 through 50 (collectively, “Defendants”).

5 **GENERAL ALLEGATIONS**

6 **INTRODUCTION**

7 1. This is a Class Action, pursuant to California Code of Civil Procedure §382, on  
8 behalf of Plaintiffs and all other current and former similarly situated employees employed by or  
9 formerly employed by Defendants within the State of California.

10 2. For at least four (4) years prior to the filing of this action and through to the  
11 present, Defendants have had a pattern and practice of failing to pay wages, including overtime  
12 wages, on multiple occasions to Plaintiffs and other non-exempt employees in the State of  
13 California, such that in the aggregate employees are underpaid wages as a result of Defendants’  
14 pattern and practice of unevenly rounding time worked by its employees.

15 3. For at least four (4) years prior to the filing of this action and continuing to the  
16 present, Defendants have jointly and severally acted intentionally and with deliberate  
17 indifference and conscious disregard to the rights of non-exempt employees in the State of  
18 California by routinely failing to pay sick pay at the regular rate of pay. Specifically, Plaintiffs  
19 and other non-exempt employees regularly earn non-discretionary incentives, shift differentials,  
20 or premium payments that Defendants purportedly include when calculating the regular rate of  
21 pay for purposes of paying overtime wages. Even though Defendants purportedly include such  
22 earnings when calculating the regular rate of pay for purposes of paying overtime wages, they do  
23 not consider such earnings for purposes of paying sick pay to Plaintiffs and other employees.  
24 Instead, Defendants pay sick pay at employees’ lowest rate.

25 4. As a result of the above, for at least four (4) years prior to the filing of this action  
26 and continuing to the present, Defendants have routinely underpaid Plaintiffs and other non-  
27 exempt employees sick pay wages, which are neither paid by the payday for the next regular  
28 payroll period after sick leave is taken nor timely paid upon termination of employment, and

1 routinely underpay overtime wages, which are neither timely paid during employment nor timely  
2 paid upon termination of employment as required by Labor Code §§ 201 or 202. Similarly,  
3 Defendants routinely fail to provide itemized wage statements that show accurate hourly rates of  
4 pay, gross wages earned, and net wages earned.

5         5. For at least four (4) years prior to the filing of this action and continuing to the  
6 present, Defendants have had a pattern and practice of failing on multiple occasions to provide  
7 Plaintiffs and similarly situated employees or former employees within the State of California  
8 rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and  
9 failing to provide compensation for such unprovided rest periods as required by California wage  
10 and hour laws.

11         6. For at least four (4) years prior to the filing of this action and continuing to the  
12 present, Defendants have had a pattern and practice of failing on multiple occasions to provide  
13 Plaintiffs and other similarly situated employees or former employees within the State of  
14 California a thirty (30) minute uninterrupted meal period for days on which the employees  
15 worked more than five (5) hours in a workday and a second thirty (30) minute uninterrupted  
16 meal periods for days on which the employees worked in excess of ten (10) hours in a work day,  
17 and failing to provide compensation for such unprovided meal periods as required by California  
18 wage and hour laws.

19         7. Plaintiffs, on behalf of themselves and other similarly situated employees, seek  
20 penalties, damages, and other relief for Defendants' violations pursuant to, but not limited to,  
21 California Labor Code sections 200-204, 210, 225.5, 226, 226.3, 226.7, 245, 246, 248, 248.1,  
22 248.2, 248.5, 248.6, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1199,  
23 2698 et. seq.,<sup>1</sup> as well as California Code of Regulations, Title 8, §11070, seeking overtime and  
24 minimum wages, premium wages for missed rest periods, penalties, and reasonable attorney's  
25 fees and costs.

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27  
28  

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<sup>1</sup> Except as otherwise noted, all "Section" references are to the Labor Code.





1 wages to Plaintiffs, they did not consider such earnings for purposes of calculating or paying sick  
2 pay to Plaintiffs. Instead, Defendants paid sick pay at Plaintiffs' lowest rate of pay.

3 19. Moreover, even though Defendants purportedly include non-discretionary  
4 incentives, shift differentials, or premium payments when calculating the regular rate of pay for  
5 overtime purposes, Defendants do not then actually pay one and one-half times the calculated  
6 regular rate of pay when paying overtime wages. Rather, Defendants pay less than one and one-  
7 half times the regular rate of pay for overtime by adding only one-half of the calculated regular  
8 rate of pay to employees' lowest rate of pay to determine the overtime rate of pay. In fact, as a  
9 result of how Defendants calculate the overtime rate of pay, Plaintiffs and other employees are  
10 not only paid less than one and one-half times the regular rate of pay for overtime work but also  
11 may be paid at a rate of less than one and one-half times the lowest rate of pay for any work time  
12 during the workweek. For example, Plaintiff McCarthy worked a total of 56.25 hours during the  
13 workweek of June 8 through 14, 2020, and earned no less than \$16.20 per hour for any work  
14 time that week. But for the 17.00 hours of overtime that McCarthy worked that week,  
15 Defendants paid her \$22.341 per hour, which is less than \$24.30 per hour.

16 20. Defendants have had a pattern and practice of on multiple occasions failing to  
17 provide Plaintiffs and other similarly situated employees or former employees within the State of  
18 California a thirty (30) minute uninterrupted meal period for days on which the employees  
19 worked more than five (5) hours in a workday and a second thirty (30) minute uninterrupted  
20 meal periods for days on which the employees worked in excess of ten (10) hours in a work day,  
21 and on multiple occasions failing to provide compensation for such unprovided meal periods.

22 21. Defendants have had a pattern and practice of on multiple occasions failing to  
23 provide Plaintiffs and similarly situated employees or former employees within the State of  
24 California rest periods, of at least ten (10) minutes per four (4) hours worked or major fraction  
25 thereof and on multiple occasions failing to provide compensation for such unprovided rest  
26 periods as required by California wage and hour laws.

27 22. Defendants have failed to comply with Section 226(a) by not providing itemized  
28 wage statements accurately showing, including but not limited to, total hours worked during the

1 pay period and pay due and owing for failure on multiple occasions to pay all earned wages as a  
2 result of uneven rounding, failure to pay overtime wages as a result of not including all forms of  
3 remuneration in determining the regular rate of pay for overtime purposes, failure to pay sick pay  
4 wages, and failure on multiple occasions to provide rest breaks and meal breaks.

5 23. Plaintiffs and other similarly situated employees or former employees at all times  
6 pertinent hereto were not exempt from the overtime, meal break, sick pay, and rest break  
7 provisions of California law, and implementing rules and regulations of the IWC California  
8 Wage Orders. Plaintiffs, thus, are victims of the policies, practices, and customs of Defendants  
9 complained of in this action in ways that have deprived them of the rights guaranteed by the  
10 Labor Code and the UCL.

### 11 **CLASS ACTION ALLEGATIONS**

#### 12 **A. Definition**

13 24. Plaintiffs bring this action on behalf of themselves, and all others similarly  
14 situated, as a class action pursuant to California Code of Civil Procedure §382.

15 25. Plaintiffs seek class certification of the following: All current and former hourly  
16 non-exempt employees of Defendants in the State of California from February 13, 2016 through  
17 April 30, 2022, excluding employees who worked at distribution centers and plants, drivers,  
18 pharmacists and, through August 7, 2020, non-union employees (the “Class”).

19 26. Employees covered by the following settled actions are also excluded from the  
20 class definition: *Fimbres v. The Vons Companies, Inc.*, Case No. RIC1904892, filed on  
21 September 24, 2019 in Riverside County Superior Court (class settlement period ending  
22 September 7, 2020); *Monica Luna, et al. v. Albertsons Companies, Inc. et al.*, Case No.  
23 BC605621, filed on December 31, 2015 in Los Angeles County Superior Court (class settlement  
24 period ending January 11, 2018).

25 27. Plaintiffs reserve the right under California Rules of Court Rule 3.765(b), to  
26 amend or modify the class description with greater specificity or further division into subclasses  
27 or limitation to particular issues.

#### 28 **B. Numerosity and Ascertainability**



1           28.     The members of the Class are so numerous that joinder of all members would be  
2 impractical, if not impossible. Plaintiffs are informed or believe that there are thousands of Class  
3 Members employed by Defendants within the State of California. The identities of the members  
4 of the Class, moreover, are readily ascertainable by review of Defendants' records, including  
5 payroll records.

6           **C.     Commonality**

7           29.     There are questions of law and fact common to Class Members. These common  
8 questions include, but are not limited to:

- 9           (1)     Did Defendants violate Section 1194 by not compensating Class Members  
10           overtime wages?
- 11          (2)     Did Defendants violate Sections 200-204 and 246 by not paying Class  
12           Members sick pay wages?
- 13          (3)     Did Defendants violate Sections 1194 and 1197 by not paying Class  
14           Members minimum wages for all hours worked?
- 15          (4)     Did Defendants violate Section 226.7 by not providing Class Members  
16           additional wages for missed rest periods and meal periods?
- 17          (5)     Are Defendants liable to Class Members for penalty wages under Section  
18                    203?
- 19          (6)     Did Defendants violate Section 226(a) by not furnishing Class Members  
20           with accurate wage statements?
- 21          (7)     Did Defendants violate the Unfair Competition Law, Business and  
22           Professions Code §17200, et seq., by its unlawful practices as alleged  
23           herein?
- 24          (8)     Are Class Members entitled to restitution of penalty wages under Business  
25           and Professions Code §17203?
- 26          (9)     Are Class Members entitled to attorney fees?
- 27          (10)    Are Class Members entitled to interest?

28          **D.     Typicality**



**(By Plaintiffs and the Class Against All Defendants)**

34. The preceding paragraphs are re-alleged and incorporated by this reference.

35. Section 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave. An employer must calculate paid sick leave by using one of two calculations: (i) “Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek,” or (ii) “Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

36. Defendants paid Plaintiffs and the Class for sick leave at the incorrect rate of pay. Defendants paid Plaintiffs and the Class at the lowest hourly rate of pay, as opposed to the regular rate of pay, which would take into account all non-discretionary incentives, shift differentials, or premiums, or by dividing the employees’ total wages, not including overtime premium pay, by the employees’ total hours worked in the full pay periods of the prior ninety (90) days of employment, as required by Section 246. This resulted in underpayments of sick pay to Plaintiffs and the Class.

37. Moreover, Section 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than seventy-two (72) hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days. Section 204 generally provides that wages are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Consistent with Section 204, Section 246 also provides that an employer

1 shall provide payment for sick leave taken by an employee no later than the payday for the next  
2 regular payroll period after the sick leave was taken.

3 38. Because Defendants did not pay, or timely pay, Plaintiffs and the Class all owing  
4 and underpaid sick pay wages, Defendants violated Sections 200-204, 245, 246, 248, and other  
5 Labor Code sections. Defendants willfully failed to timely pay Plaintiffs and the Class all their  
6 wages due during employment and failed to timely pay all their wages due upon the termination  
7 of their employment within the times prescribed by the Labor Code and are therefore subject to  
8 applicable penalties, including a waiting time penalty, for each day, up to a thirty (30) day  
9 maximum, pursuant to Section 203. On information and belief, Defendants were advised by  
10 skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates  
11 to Plaintiffs' allegations, especially since the California Supreme Court has explained that  
12 "[c]ourts have recognized that 'wages' also include those benefits to which an employee is  
13 entitled as a part of his or her compensation, including money, room, board, clothing, vacation  
14 pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)  
15 (emphasis added).

16 39. Such a pattern, practice, and uniform administration of corporate policy regarding  
17 illegal employee compensation as described herein is unlawful and creates an entitlement to  
18 recovery by Plaintiffs and the Class to underpaid wages, including interest thereon, applicable  
19 penalties, attorneys' fees, and costs of suit.

## 20 SECOND CAUSE OF ACTION

### 21 FAILURE TO PAY OVERTIME WAGES

#### 22 (By Plaintiffs and the Class Against All Defendants)

23 40. The preceding paragraphs are re-alleged and incorporated by this reference.

24 41. Section 510 requires an employer to pay employees overtime at a rate of one and  
25 one-half the employee's regular rate of pay for any work exceeding eight (8) hours in a workday  
26 or forty (40) hours in a workweek.

27 42. As a matter of policy and practice, Defendants permit Plaintiffs and the Class to  
28 work more than eight (8) hours in a workday or forty (40) hours in a workweek without proper

1 overtime pay. Even though Defendants purportedly include non-discretionary incentives, shift  
2 differentials, or premium payments when calculating the regular rate of pay for overtime  
3 purposes, Defendants paid Plaintiffs and the Class their overtime wages at less than one and one-  
4 half times the regular rate of pay. Defendants do not then actually pay one and one-half times the  
5 calculated regular rate of pay when paying overtime wages.

6 43. As a matter of policy and practice, Defendants pay less than one and one-half  
7 times the regular rate of pay for overtime by adding only one half of the calculated regular rate of  
8 pay to employees' lowest rate of pay to determine the overtime rate of pay. In fact, as a result of  
9 how Defendants calculate the overtime rate of pay, Plaintiffs and the Class were not only paid  
10 less than one and one-half times the regular rate of pay for overtime work but actually paid less  
11 than one and one-half times the lowest rate of pay earned for any work time during a workweek.  
12 For example, Plaintiff McCarthy worked a total of 56.25 hours during the workweek of June 8  
13 through 14, 2020, and earned no less than \$16.20 per hour for any work time that week. But for  
14 the 17.00 hours of overtime that McCarthy worked that week, Defendants paid \$22.341 per hour,  
15 which is less than \$24.30 per hour.

16 44. Such a pattern, practice, and uniform administration of corporate policy is  
17 unlawful under Section 510 and the applicable IWC Wage Order, and entitles Plaintiffs and the  
18 Class to recover the unpaid overtime, including interest thereon, liquidated damages or penalties,  
19 attorneys' fees, and costs of suit.

20 45. Because Defendants did not pay, or timely pay, Plaintiffs and the Non-Exempt  
21 Employee Class all owing and underpaid overtime wages, Defendants willfully violated Sections  
22 201-204 and the provisions of Section 1194. Defendants, moreover, willfully failed to timely pay  
23 Plaintiffs and the Class all their wages due during employment and failed to timely pay all their  
24 wages due upon the termination of their employment within the times prescribed by the Labor  
25 Code and, consequently, are subject to applicable penalties, including a waiting time penalty, for  
26 each day, up to a thirty (30) day maximum, pursuant to Section 203.

27 46. Such a pattern, practice, and uniform administration of corporate policy regarding  
28 illegal employee compensation as described herein is unlawful and creates an entitlement to

1 recovery by Plaintiffs and the Class to underpaid wages, including interest thereon, applicable  
2 penalties, attorneys' fees, and costs of suit, pursuant to Sections 1194 and 1199; Code of Civil  
3 Procedure §1021.5; and Civil Code §3287.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PROVIDE AND MAINTAIN ACCURATE WAGE STATEMENTS**

6 **(By Plaintiffs and the Class Against All Defendants)**

7 47. The preceding paragraphs are re-alleged and incorporated by this reference.

8 48. Section 226(a) requires an employer to furnish to its employees itemized wage  
9 statements that show accurate information, including without limitation, all applicable hourly  
10 rates in effect during the pay period, gross wages earned, and net wages earned.

11 49. Section 1174 additionally requires employers to save all employee payroll records  
12 for at least three years and to keep a record of the names and addresses of all current employees.  
13 Pursuant to Section 1174.5, an employer who willfully fails to maintain records is subject to a  
14 civil penalty of \$500.

15 50. As a matter of policy and practice, Defendants routinely issue itemized wage  
16 statements to Plaintiffs and the Class that show inaccurate hourly rates of pay in violation of  
17 Section 226(a). For example, Plaintiff McCarthy worked a total of 56.25 hours during the  
18 workweek of June 8 through 14, 2020, and earned no less than \$16.20 per hour for any work  
19 time that week. McCarthy's wage statement, however, inaccurately shows an hourly rate of as  
20 little as \$14.20 per hour. The inaccurate hourly rates shown on the wage statements injured  
21 Plaintiffs and the Class, as Defendants subsequently relied on the inaccurate hourly rates in  
22 calculating other earnings that the law requires to be paid at a multiple of the regular rate of pay.  
23 As a result, and as a matter of policy and practice, Plaintiffs and the Class are provided  
24 inaccurate itemized wage statements, which fail to show accurate hourly rates of pay.

25 51. In addition, as a matter of policy and practice, whenever Plaintiffs and the Class  
26 are paid overtime and sick pay wages, Defendants also fail to provide accurate itemized wage  
27 statements in violation of Section 226(a). As alleged herein, Defendants routinely underpay  
28 overtime and sick pay to Plaintiffs and the Class. As a result, and as a matter of policy and

1 practice, Plaintiffs and the Class are not provided wage statements listing accurate overtime  
2 wage rates, sick pay wage rates, gross wages earned, or net wages earned.

3 52. Such a pattern, practice, and uniform administration of corporate policy is  
4 unlawful under Sections 226, 226.3 and 1174 and, therefore, entitles Plaintiffs and the Class to  
5 recover applicable penalties, attorneys' fees, and costs of suit.

#### 6 **FOURTH CAUSE OF ACTION**

##### 7 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200 *Et Seq.***

##### 8 **(By Plaintiffs and the Class Against All Defendants)**

9 53. The preceding paragraphs are re-alleged and incorporated by this reference.

10 54. Plaintiffs are informed and believe that Defendants have engaged and continue to  
11 engage in unfair and unlawful business practices by utilizing the employment policies and  
12 practices alleged herein, including the failure to pay sick pay at the regular rate of pay and the  
13 failure to pay overtime wages at the rate of no less than one and one-half times the regular rate of  
14 pay.

15 55. Defendants' utilization of such unfair and unlawful business practices constitutes  
16 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors,  
17 as proscribed by the UCL. Defendants have deprived Plaintiffs and the Class the minimum  
18 working condition standards and conditions due to them under the Labor Code and applicable  
19 IWC Wage Orders.

20 56. Such a pattern, practice, and uniform administration of corporate policy regarding  
21 illegal employee compensation as described herein is unlawful and creates an entitlement to  
22 recovery by Plaintiffs and the Class to full restitution of all monies withheld, acquired, or  
23 converted by Defendants by means of the unfair practices complained of herein, including  
24 interest thereon, attorneys' fees, and costs of suit.

#### 25 **FIFTH CAUSE OF ACTION**

##### 26 **FAILURE TO PROVIDE MEAL PERIODS**

##### 27 **(By Plaintiffs and the Class Against All Defendants)**

28 57. The preceding paragraphs are re-alleged and incorporated by this reference.

1           58. Pursuant to Section 512, no employer shall employ an employee for a work period  
2 of more than five (5) hours without a meal break of not less than thirty (30) minutes in which the  
3 employee is relieved of all of his or her duties. No employer, moreover, shall employ an  
4 employee for a work period of more than ten (10) hours per day without providing the employee  
5 with a second meal period of not less than thirty (30) minutes in which the employee is relieved  
6 of all of his or her duties. Plaintiffs and other members of the Class were on multiple occasions  
7 not provided with the requisite meal periods as contemplated under the law.

8           59. Pursuant to Section 226.7, if an employer fails to provide an employee with a  
9 meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare  
10 Commission, the employer shall pay the employee one additional hour of pay at the employee's  
11 regular rate of compensation for each workday that the meal period or rest period is not  
12 provided.

13           60. By their failure to provide Plaintiffs and members of the Class with the meal  
14 periods contemplated by California law, and failing to provide compensation for such  
15 unprovided meal periods, as alleged above, Defendants willfully violated the provisions of  
16 Section 512 and applicable Wage Orders.

17           61. As a result of Defendants' unlawful conduct, Plaintiffs and the other members of  
18 the Class have suffered damages in an amount, subject to proof, to the extent they were not paid  
19 additional pay owed for missed meal periods.

20           62. Plaintiffs and the other members of the Class are entitled to recover the full  
21 amount of their unpaid additional pay for missed meal periods. Pursuant to Code of Civil  
22 Procedure §1021.5, Plaintiffs and the other members of the Class are entitled to recover  
23 reasonable attorney's fees and costs of suit. Pursuant to Civil Code § 3287(a), Plaintiffs and  
24 other members of the Class are entitled to recover prejudgment interest on the additional pay  
25 owed for missed meal periods.



1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

3 **(By Plaintiffs and the Class Against All Defendants)**

4 63. The preceding paragraphs are re-alleged and incorporated by this reference.

5 64. At all relevant times, Plaintiffs and other members of the Class were employees of  
6 Defendants covered by Sections 201 and 202.

7 65. Pursuant to Sections 201 or 202, Plaintiffs and other members of the Class were  
8 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.  
9 Discharged employers were entitled to payment of all wages earned and unpaid prior to  
10 discharge immediately upon termination. Employees who resigned were entitled to payment of  
11 all wages earned and unpaid prior to resignation within seventy-two (72) hours after giving  
12 notice of resignation or, if they gave seventy-two (72) hours previous notice, they were entitled  
13 to payment of all wages earned and unpaid at the time of resignation.

14 66. Defendants failed to pay Plaintiffs and other members of the Class all wages  
15 earned and unpaid prior to termination in accordance with Sections 201 or 202. Plaintiffs and  
16 other members of the Class are informed and believe and thereon allege that within the  
17 applicable limitations period, Defendants had a pattern and practice of not paying upon  
18 termination, the wages owed to them as a consequence of overtime wages, minimum wages, rest  
19 period and meal period violations, as described herein.

20 67. Defendants' failure to pay Plaintiffs and members of the Class all wages earned  
21 prior to termination in accordance with Sections 201 and 202 was willful. Defendants had the  
22 ability to pay all wages earned by Plaintiffs and other members of the Class at the time of  
23 termination in accordance with Sections 201 and 202, but intentionally adopted policies or  
24 practices incompatible with the requirements of Sections 201 and 202.

25 68. Pursuant to Sections 201 and 202, Plaintiffs and other members of the Class are  
26 entitled to all wages earned prior to termination that Defendants failed to pay them.





1 82. As a result of Defendants’ unlawful conduct, Plaintiffs and other members of the  
2 Class have suffered damages in an amount, subject to proof, to the extent they were not paid  
3 additional pay owed for missed rest periods.

4 83. Plaintiffs and the other members of the Class are entitled to recover the full  
5 amount of their unpaid additional pay for missed rest periods. Pursuant to Code of Civil  
6 Procedure §1021.5, Plaintiffs and the other members of the Class are entitled to recover  
7 reasonable attorney’s fees and costs of suit.

8 84. Pursuant to Civil Code § 3287(a), Plaintiffs and other members of the Class are  
9 entitled to recover prejudgment interest on the additional pay owed for missed rest periods.

10 **NINTH CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE §§ 2698 Et Seq.**

12 **(By Plaintiffs and Aggrieved Employees Against All Defendants)**

13 85. The preceding paragraphs are re-alleged and incorporated by this reference.

14 86. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code  
15 §§ 2698 et seq. (“PAGA”), Plaintiffs brings this cause of action as proxies for the State of  
16 California. In this capacity, Plaintiffs seek penalties for Defendants’ violations of Sections 200-  
17 204, 210, 226, 226.7, 245, 246, 248, 248.1, 248.2, 248.5, 248.6, 510, 512, 558, 1194, 1194.2,  
18 1197, 1197.1, 1199, and 2698 et seq., committed during the one-year period preceding the filing  
19 of the original Complaint (or since February 13, 2019) against all aggrieved employees.

20 87. Under Section 2699(c), Plaintiffs constitute “aggrieved employees,” as one or  
21 more of the alleged violations were committed against Plaintiffs as employees of Defendants.

22 88. As stated herein, Defendants failed to pay sick pay at the regular rate of pay and  
23 failed to pay overtime wages at the rate of no less than one and one-half times the regular rate of  
24 pay to Plaintiffs and other aggrieved employees. As a result, Defendants underpaid sick pay  
25 wages, which are neither paid by the payday for the next regular payroll period after sick leave is  
26 taken nor timely paid upon termination of employment, and underpay overtime wages, which are  
27 neither paid by the payday for the next regular payroll period after sick leave is taken nor timely  
28 paid upon termination of employment, and underpay overtime wages, which are neither timely

1 paid during employment nor timely paid upon termination of employment. As an additional  
2 result, Defendants fail to provide itemized wage statements that show accurate hourly rates of  
3 pay, gross wages earned, and net wages earned.

4 89. Plaintiffs have complied with the procedures for bringing suit specified in Section  
5 2699.3. On or about February 11, 2020, Plaintiff Rodarte gave written notice to the Labor and  
6 Workforce Development Agency (“LWDA”) and to Defendants of the specified provisions of  
7 the Labor Code alleged to have been violated. On or about September 25, 2020, Plaintiff  
8 McCarthy gave written notice to the LWDA and to Defendants of the specified provisions of the  
9 Labor Code alleged to have been violated. On or about March 15, 2021, Plaintiff Mendoza gave  
10 written notice to the LWDA and to Defendants of the specified provisions of the Labor Code  
11 alleged to have been violated.

12 90. As of the date of the filing of this Complaint, the LWDA has neither responded  
13 nor indicated that it intends to investigate the allegations in the written notice.

14 91. As such, pursuant to Section 2699(a) and (f), Plaintiffs seek recovery of all  
15 applicable penalties for Defendants’ violations of Sections 200-204, 210, 225.5, 226, 226.3,  
16 226.7, 245, 246, 248, 248.1, 248.2, 248.5, 248.6, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,  
17 1194.2, 1197, 1197.1, and 1199, against all aggrieved employees for the period described above.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, on behalf of themselves and all other similarly situated, Plaintiffs pray  
20 for judgment against Defendants, jointly and severally, as follows:

- 21 1. For an order certifying the proposed Class;
- 22 2. For an order appointing Plaintiffs as the representatives of the Class;
- 23 3. For an order appointing Counsel for Plaintiffs as Class Counsel;
- 24 4. Damages, including interest thereon and penalties, for unpaid sick pay pursuant to  
25 Sections 203, 210, 218, 226, and 248.5;
- 26 5. Damages, including interest thereon and penalties, for unpaid overtime wages  
27 pursuant to Sections 203, 210, 226, and 1194;
- 28




6. Damages for unpaid wages for missed rest periods and meal periods under Section 226.7;
7. Penalties for inaccurate wage statements under Section 226(e), 226.3 and 1174.5;
8. Damages for minimum wages;
9. Damages for premium wages;
10. Liquidated damages for unpaid minimum wages;
11. Restitution for Business and Professions Code § 17203;
12. Pre-judgment interest;
13. Costs;
14. Reasonable attorney's fees and costs as provided by Sections 218.5, 226, 248.5, and 2699, and Code of Civil Procedure section 1021.5;
15. For all penalties provided by Sections 2699(a)-(f); and
16. For such other and further relief that the Court may deem just and proper.

DATED: January 23, 2023

DIVERSITY LAW GROUP, P.C.

By: \_\_\_\_\_  
Larry W. Lee, Esq.  
Simon L. Yang, Esq.  
Attorneys for Plaintiff, Holly McCarthy

THE NOURMAND LAW FIRM, APC

By:  \_\_\_\_\_  
Michael Nourmand, Esq.  
James A. De Sario, Esq.  
Attorneys for Plaintiff, Leticia Rodarte

SCHNEIDER WALLACE  
COTTRELL KONECKY LLP

By: \_\_\_\_\_  
Carolyn H. Cottrell, Esq.  
Esther L. Bylsma, Esq.  
Attorneys for Plaintiff, Rachel Mendoza

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- 1 6. Damages for unpaid wages for missed rest periods and meal periods under
- 2 Section 226.7;
- 3 7. Penalties for inaccurate wage statements under Section 226(e), 226.3 and 1174.5;
- 4 8. Damages for minimum wages;
- 5 9. Damages for premium wages;
- 6 10. Liquidated damages for unpaid minimum wages;
- 7 11. Restitution for Business and Professions Code § 17203;
- 8 12. Pre-judgment interest;
- 9 13. Costs;
- 10 14. Reasonable attorney's fees and costs as provided by Sections 218.5, 226, 248.5,
- 11 and 2699, and Code of Civil Procedure section 1021.5;
- 12 15. For all penalties provided by Sections 2699(a)-(f); and
- 13 16. For such other and further relief that the Court may deem just and proper.
- 14

15 DATED: January 23, 2023

DIVERSITY LAW GROUP, P.C.

16 By: \_\_\_\_\_  
17 Larry W. Lee, Esq.  
18 Simon L. Yang, Esq.  
Attorneys for Plaintiff, Holly McCarthy

19 THE NOURMAND LAW FIRM, APC

20 By: \_\_\_\_\_  
21 Michael Nourmand, Esq.  
22 James A. De Sario, Esq.  
Attorneys for Plaintiff, Leticia Rodarte

23 SCHNEIDER WALLACE  
24 COTTRELL KONECKY LLP

25 By: Esther Lee Bylsma  
26 Carolyn H. Cottrell, Esq.  
27 Esther L. Bylsma, Esq.  
Attorneys for Plaintiff, Rachel Mendoza

28 4858-0662-4315.2 / 001153-1740