

MESSRELIAN LAW INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HELENE SCHUBERT,

Plaintiff,

vs.

MOREHART MERCANTILE
CORPORATION and DOES 1 to 25,
inclusive,

Defendants.

) CASE NO.: 20STCV24900

) COMPLAINT FOR DAMAGES FOR:

) 1) FAILURE TO COMPENSATE FOR
ALL HOURS WORKED;) 2) FAILURE TO PAY MINIMUM
WAGES;

) 3) FAILURE TO PAY OVERTIME;

) 4) FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS;) 5) FAILURE TO PAY WAGES WHEN
EMPLOYMENT ENDS;) 6) FAILURE TO PAY WAGES OWED
EVERY PAY PERIOD;) 7) VIOLATION OF LABOR CODE
SECTION 558;) 8) FAILURE TO MAINTAIN
ACCURATE RECORDS;

) 9) FAILURE TO GIVE REST BREAKS;

) 10) FAILURE TO GIVE MEAL
BREAKS;) 11) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA");) 12) FAILURE TO REIMBURSE FOR
BUSINESS EXPENSES;) 13) RETALIATION IN VIOLATION OF
LABOR CODE SECTION 98.6;) 14) RETALIATION IN VIOLATION OF
LABOR CODE SECTION 1102.5;) 15) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;

) 16) VIOLATION OF CALIFORNIA

**BUSINESS AND PROFESSIONS
CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, HELENE SCHUBERT (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants MOREHART MERCANTILE CORPORATION and DOES 1 to 25, inclusive (hereinafter collectively known as “Defendants”), do business in the County of Los Angeles and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant MOREHART MERCANTILE CORPORATION (“MOREHART”) is and was a California corporation, doing business in Los Angeles County, California, and which employed Plaintiff.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner

1 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
2 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
3 and capacities of these fictitiously named defendants.

4 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
5 that information and belief, alleges that at all times herein mentioned, each of the remaining
6 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
7 under the authority of their agency, employment, or representative capacity, with the consent
8 of his/her codefendants.
9

10 **GENERAL ALLEGATIONS**

11 6. Plaintiff started working for MOREHART on or around July 2005. Plaintiff's job title
12 was that of a "Clerk" and her job duties included ordering, inventory, putting stock away,
13 answering phone calls, and general customer service. Plaintiff was classified as an hourly,
14 non-exempt employee and her latest rate of pay was \$21 per hour. Plaintiff's schedule starting
15 in or around 2017 was Monday through Thursday and the general hours were 9am to 6pm but
16 did vary based on holidays. Plaintiff generally worked at the "The Malibu Feed Bin" store in
17 Malibu, California. Plaintiff's employment at MOREHART ended on or around February 4,
18 2020.

19 7. It is our position that MOREHART has violated numerous Labor Code Sections against
20 Plaintiff and other similarly situated aggrieved employees, who are defined as all hourly, non-
21 exempt employees who worked for MOREHART during the relevant PAGA period.

22 8. MOREHART did not provide Plaintiff and other similarly situated aggrieved
23 employees with the minimum wages to which they were entitled for work performed and as
24 such did compensate Plaintiff and others for all hours worked at the minimum wage rate
25 pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because Plaintiff
26 and others would have to run errands for MOREHART during her days off, including picking
27 up product from the store and buying office supplies for the store in her personal vehicle.
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Moreover, Plaintiff would consistently get phone calls on her personal cell phone from the store every single weekend (which were Plaintiff's days off). MOREHART was unequivocally aware of the latter. Plaintiff was not compensated for any of her "off the clock" work, including the time she spent running errands for the store or the time she spent speaking to store personnel, including management, about work-related matters on her personal cell phone.

9. MOREHART also violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day and/or 40 hours per week throughout their employment. Plaintiff's and others' actual work hours entitled them to overtime compensation, however, MOREHART did not compensate Plaintiff and others with the correct amount of overtime. In light of the "off the clock" work as described above, Plaintiff and others generally worked over 8 hours per day and/or over 40 hours per week but was not properly and accurately compensated for her overtime hours worked.

10. MOREHART also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 7 because it failed to provide Plaintiff and others with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. MOREHART did not completely relieve Plaintiff and others of all duty during said rest periods. MOREHART did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not company policy and not part of the company culture for employees such as Plaintiff and others to take rest breaks. As such, the culture at MOREHART did not lend itself to the employees receiving statutory breaks wherein they were relieved of all work duties. It was the normal practice and custom of MOREHART not to authorize, permit, and enforce statutory rest periods. This is especially true because Plaintiff would at times be the only employee in the store and would not be able to leave the store or take an uninterrupted ten-minute rest break simply due to staffing issues. Even if there were other employees present in the store, the store got so busy at times that Plaintiff was not able to take a rest break and would not even have time to go to the restroom. As such, the environment and culture at MOREHART was not conducive to receiving statutory rest breaks under California law.

1 11. MOREHART violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
2 Commission Wage Order no. 7 because it failed to provide Plaintiff and others the requisite 30-
3 minute, uninterrupted meal periods for every five (5) hours of work throughout their
4 employment. MOREHART did not completely relieve Plaintiff and others of all duty during
5 said meal periods. MOREHART did not pay to Plaintiff and others one additional hour of pay
6 at Plaintiff's regular rate of compensation for each workday that one or more statutory meal
7 periods was not provided. Plaintiff and other aggrieved employees would not receive meal
8 periods whatsoever and would certainly not get a second meal period if they worked over a 10-
9 hour shift. Plaintiff would often bring lunch with her and would almost always eat the counter
10 while working. There was no such thing as an uninterrupted, thirty-minute meal period. The
11 policy at MOREHART was to eat and work at the same time. Additionally, Plaintiff did not sign
12 an "On Duty Meal Period Agreement" allowing her to work through her meal period. Even if
13 she did, it would not be valid and enforceable since the nature of Plaintiff's work as a clerk did
14 not prevent her from being relieved of all duty. Like the rest breaks, receiving a thirty-minute
15 uninterrupted meal break was not part of the company culture and was not enforced by
16 MOREHART. It was the normal practice and custom of MOREHART not to authorize, permit,
17 and enforce statutory meal periods.

18 12. Furthermore, during the relevant time period, MOREHART failed to pay Plaintiff and
19 others all wages due to them within any time period specified by California Labor Code section
20 204. MOREHART was also in violation of California Labor Code section 226(a), by failing to
21 include pertinent information on the wage statements, including but not limited to, all hours
22 worked (minimum wage and overtime), the correct applicable hourly rates, gross wages earned,
23 net wages earned, the correct pay periods, the correct name and address of the legal employer,
24 and premium pay for the missed meal and rest breaks, among others. As such, MOREHART did
25 not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
26 itemized wage statements.

27 13. During the relevant time period, MOREHART also failed to keep accurate and complete
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1 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
2 others pursuant to California Labor Code sections 1174(d).

3 14. MOREHART also violated Labor Code § 203 because it willfully failed to pay Plaintiff
4 and other similarly situated aggrieved employees earned and due wages upon separation of
5 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
6 These earned but unpaid wages include minimum wages, overtime compensation, and premium
7 pay for missed meal and rest breaks.

8 15. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
9 business-related expenses and costs that were not reimbursed by MOREHART. These costs
10 include, but are not limited to, use of personal cell phones for work purposes as well as
11 gas/mileage reimbursement. Plaintiff used her personal cell phone to speak to reps and also used
12 her personal cell phone to do ordering for the store via the internet since there was no internet
13 access at the store. Accordingly, MOREHART was in violation of California Labor Code
14 sections 2800 and 2802. Moreover, MOREHART failed to provide sick pay pursuant to Labor
15 Code section 246 and also failed to provide Worker's Compensation coverage for Plaintiff and
16 other aggrieved employees in violation of Labor Code Section 3700.5.

17 16. Moreover, it is important to note that Plaintiff complained to Defendant regarding the
18 fact that Plaintiff would consistently get work-related phone calls during Plaintiff's off days and
19 would have to spend time responding to work inquiries while she was "off the clock". The last
20 time Plaintiff complained to Kasey Perry about the latter was on January 24, 2020. In addition,
21 on or around February 3, 2020, Plaintiff handed supervisor Kasey Perry a handwritten note which
22 stated that Plaintiff was leaving work and needed to take stress leave. Not coincidentally,
23 Plaintiff was given a disciplinary write-up on February 3, 2020 and then was subsequently
24 terminated on February 3, 2020. Plaintiff's termination came after Plaintiff had complained
25 about illegal conduct at the workplace in the form of wage and hour violations and after Plaintiff
26 had requested stress leave due to the hostile work environment.

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FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of Regulations Title 8 Section 11040/11070, and California Labor Code Section 1198)

(Plaintiff against all named defendants and all DOE defendants)

17. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 16, inclusive, of this Complaint as though fully set forth herein.

18. At all times relevant herein, Defendants were required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations, Title 8, Section 11040 and/or Industrial Welfare Commission Order 7-2001, California Code of Regulations, Title 8, Section 11070.

19. For the three (3) years preceding filing of this action, Defendants failed to compensate Plaintiff for all hours worked, including the "off the clock" work as described above.

20. Under the aforementioned wage order and regulations, Plaintiff is to recover compensation for all hours worked but not paid by Defendants for the three (3) years preceding the filing of this Complaint.

21. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

22. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

23. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs which will equal an amount known to Plaintiff once she has obtained all of her payroll records from

Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiff against all named defendants and all DOE defendants)

24. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 23, inclusive, of this Complaint as though fully set forth herein.

25. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage rate for all hours worked as required by the applicable Industrial Welfare Commission (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of Regulations, Title 8, Section 11040, subdivision 4 and/or Wage Order No. 7-2001, codified at California Code of Regulations, Title 8, Section 11070, subdivision 4.

26. Pursuant to IWC Wage Order no. 4-2001 and/or 7-2001, subdivision 2(K), at all relevant times, "hours worked" included "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so..."

27. During her employment, Plaintiff was regularly required as a matter of uniform policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid less than the minimum wage rate by Defendants for hours worked in violation of California Labor Code Section 1197 and the applicable California Industrial Wage Commission wage order(s).

28. Plaintiff was, at all relevant times, under the control of Defendants and suffered or permitted to work by Defendants. Defendants' acts or omissions in failing to adequately compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants to believe that their acts or omissions were not contrary to California law.

29. For all hours worked by Plaintiff for which she was paid less than the minimum wage

1 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
2 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
3 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
4 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

5 30. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
7 trial.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME**

10 **(California Industrial Welfare Commission Order 4 2001/7 2001, California Code of**
11 **Regulations Title 8 Section 11040/11070)**

12 **(Plaintiff against all named defendants and all DOE defendants)**

13 31. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 30, inclusive, of this Complaint as though fully set forth herein.

15 32. Pursuant to Industrial Welfare Commission Order No. 4-2001, California Code of
16 Regulations, Title 8, Section 11040 and/or Industrial Welfare Commission Order No. 7-2001,
17 California Code of Regulations, Title 8, Section 11070, for the period of Plaintiff's
18 employment, Defendants were required to compensate Plaintiff for all overtime, which is
19 calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of
20 eight (8) in a day or forty (40) hours in a week, and two (2) times the regular rate of pay for
21 hours worked in excess of twelve (12) hours in a day or hours worked in excess of eight (8) on
22 the seventh consecutive work day in a week.

23 33. Plaintiff was a non-exempt employee entitled to the protections of the California
24 Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8,
25 Section 11040 and/or California Industrial Welfare Commission Order No. 7-2001, California
26 Code of Regulations, Title 8, Section 11070.

27 34. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
28

single workweek on numerous occasions

35. Plaintiff worked more than twelve (12) hours in a single workday.

36. Plaintiff was entitled to the above overtime premiums.

37. Defendants did not pay Plaintiff premium wages of at least one and one-half times Plaintiff's regular rate of pay for hours worked past eight (8) in a day.

38. Defendants did not pay Plaintiff premium wages of at least one and one-half times Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

39. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's regular rate of pay for hours worked past twelve (12) in a day.

40. Plaintiff worked at least one pay period in which she was not properly paid overtime within the three (3) years prior to the initiation of this lawsuit.

41. Defendants know or should know the actual dates of overtime worked, the amount of overtime worked, and the amount of unpaid overtime due.

42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of Regulations, Title 8, Sections 11040 and/or 11070, Plaintiff is entitled to recover damages for the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable attorney's fees and costs of suit.

44. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiff against all named defendants and all DOE defendants)

1 45. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

3 46. Pursuant to California Labor Code Section 226, every employer must furnish each
4 employee an itemized statement of wages and deductions at the time of payment of wages.

5 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
6 accurately reflected all information required by Labor Code Section 226, including but not
7 limited to, accurate figures for gross wages earned, net wages earned, total hours worked by
8 the employee (regular and overtime), all deductions, premium pay for missed rest breaks
9 and meal breaks, business expense reimbursement, and the accurate legal name and address of
10 the employer. Therefore, Defendants failed to maintain and provide accurate itemized wage
11 statements to Plaintiff in accordance with California Labor Code Section 226(a).

12 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
13 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
14 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
15 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
16 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
17 the 3-year period immediately preceding the date this lawsuit was filed.

18 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
19 sustained damages, including loss of earnings, in an amount to be established at trial. As a
20 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
21 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
22 and attorney's fees pursuant to statute.

23 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
24 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
25 trial.

26 **FIFTH CAUSE OF ACTION**

27 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

(California Labor Code Sections 201, 203)

(Plaintiff against all named defendants and all DOE defendants)

51. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

52. Pursuant to California Labor Code Section 201(a), an employer who discharges an employee must immediately pay for all compensation due and owing.

53. Pursuant to California Labor Code Section 202, when an employee resigns, the employer must pay all compensation due and owing within 72 hours of resignation, or on the employee's last day of work, if the employee gives more than 72 hours notice of resignation.

54. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay, without abatement or reduction, any wages of an employee whose employment ends, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; however, the wages shall not continue for more than 30 days for failure to pay an employee owed wages.

55. After Plaintiff's employment with Defendants ended, Defendants willfully refused and continue to refuse to pay him unpaid wages as required by Labor Code Section 203.

56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding the filing of this lawsuit.

57. Under this cause of action, Plaintiff also prays for attorney's fees and costs under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

58. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

SIXTH CAUSE OF ACTION

1 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

2 **(California Labor Code Section 204)**

3 **(Plaintiff against all named defendants and all DOE defendants)**

4 59. Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 58, inclusive, of this Complaint as though fully set forth herein.

6 60. California Labor Code Section 204 establishes the fundamental right of all employees
7 in the State of California to be paid wages in a timely fashion for their work.

8 61. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
9 full amount of all owed wages when due as required by California Labor Code Section 204.

10 62. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
11 informed, believes, and thereon alleges, that all times relevant during the liability period,
12 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
13 including overtime hours and the minimum wage as well as premiums for missed rest breaks
14 and meal breaks.

15 63. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
16 amount, subject to proof, to the extent she was not paid all wages each pay period. The precise
17 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
18 from Defendants' records or indirectly based on information from Defendants' records.

19 64. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
21 trial.

22 **SEVENTH CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE SECTION 558**

24 **(California Labor Code Section 558)**

25 **(Plaintiff against all named defendants and all DOE defendants)**

26 65. Plaintiff re-alleges and incorporates by reference each and every allegation in
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1 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.

2 66. California Labor Code Section 558 states that any person acting on behalf of an
3 employer who violates, or causes to be violated, a section of this chapter or any provision
4 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
5 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
6 employee for each pay period for which the employee was underpaid in addition to an amount
7 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
8 hundred dollars (\$100) for each underpaid employee for each pay period for which the
9 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
10 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
11 filed.

12 67. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558. Thus,
13 Defendants are subject to civil penalties under the following laws:

- 14 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular and
15 overtime wages for overtime hours worked. As such, Defendants violated Section
16 558 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00
17 for the first pay period and \$100.00 for each subsequent violation for each pay
18 period for which Plaintiff was underpaid in addition to an amount sufficient to
19 recover underpaid wages.
20
21 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
22 relief associated with Plaintiff's prosecution of this cause of action under California
23 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
24 paying Plaintiff for her overtime hours worked and for all hours worked.
25
26 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
27 fees for relief associated with Plaintiff's prosecution of this cause of action under
28 California Labor Code Sections 200, et seq.

1 68. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
2 the statutes, regulations, and wage orders alleged in this cause of action along with any
3 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

4 69. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs and
5 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO MAINTAIN ACCURATE RECORDS**

8 **(California Labor Code Section 1174(d))**

9 **(Plaintiff against all named defendants and all DOE defendants)**

10 70. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 69, inclusive, of this Complaint as though fully set forth herein.

12 71. Labor Code section 1174(d) requires that employers, including Defendants, maintain
13 accurate records showing the hours worked daily by its employees and to whom wages were
14 paid.
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16 72. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
17 employer, including Defendants, to keep accurate information with respect to each one of their
18 employees including, but not limited to, the total wages paid each payroll period, and time
19 records showing when the employee begins and ends each work period, meal periods, split
20 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
21 the applicable rates of pay.

22 73. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
23 to maintain accurate and complete records required by Labor Code section 1174(d) is subject
24 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
25 records of Plaintiff's total daily hours, the total hours worked in the payroll period, the
26 applicable rates of pay, and total wages earned for the payroll period.

27 74. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
28 continues to suffer substantial losses related to Defendants' failure to record and maintain

1 records of meal and rest periods as well as time records.

2 75. Plaintiff seeks all available remedies for Defendants' violations including, but not
3 limited penalties, and costs to the extent permitted by law and according to proof at trial.

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5 **NINTH CAUSE OF ACTION**

6 **FAILURE TO GIVE REST BREAKS**

7 **(Plaintiff against all named defendants and all DOE defendants)**

8 76. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 75, inclusive, of this Complaint as though fully set forth herein.

10 77. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 11 a. Title 8 of the California Code of Regulations Sections 11040(12)(A) and/or
12 11070(12)(A), which provide that every employer shall authorize and permit all
13 employees to take rest periods, which insofar as practicable shall be in the middle of
14 each work period. The authorized rest period time shall be based on the total hours
15 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
16 fraction thereof;
- 17 b. Title 8 of the California Code of Regulations Sections 11040(12)(B) and/or
18 11070(12)(B), which provides that if an employer fails to provide an employee a
19 rest period in accordance with the applicable provisions of this order, the employer
20 shall pay the employee one (1) hour of pay at employee's regular rate of
21 compensation for each workday that the rest period is not provided;
- 22 c. Title 8 of the California Code of Regulations sections 11040(20)(A) and/or
23 11070(20)(A), which penalizes the employer \$50.00 for each initial violation, per
24 employee, of any provision of the Wage Order, and \$100.00 for each additional
25 violation thereafter per employee; and
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1 d. California Labor Code section 226.7, which states that (a) no employer shall require
2 any employee to work during any rest period mandated by an applicable order of
3 the Industrial Welfare Commission, and (b) if an employer fails to provide an
4 employee a rest period in accordance with an applicable order of the Industrial
5 Welfare Commission, the employer shall pay the employee one (1) additional hour
6 of pay at employee's regular rate of compensation for each work day that the rest
7 period is not provided.
8

9 78. Plaintiff alleges that she was not authorized and permitted to take a ten (10) minute rest
10 break after every four (4) hours of work or major fraction thereof, as required by California
11 law.

12 79. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
13 regulations, and wage orders alleged in this cause of action along with any allowable interest,
14 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
15 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
16

17 80. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
18 fees as well as interest under Labor Code section 218.6.

19 81. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
21 trial.

22 **TENTH CAUSE OF ACTION**

23 **FAILURE TO GIVE MEAL BREAKS**

24 **(Plaintiff against all named defendants and all DOE defendants)**

25 82. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 81, inclusive, of this Complaint as though fully set forth herein.
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1 83. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 2 a. California Labor Code section 512(a), which requires that employees be given a 30-
- 3 minute uninterrupted meal break after five (5) hours of work, and a second
- 4 uninterrupted meal break after ten (10) hours of work;
- 5 b. California Labor Code section 226.7, which states that (a) no employer shall require
- 6 any employee to work during any meal period mandated by an applicable order of
- 7 the Industrial Welfare Commission, and (b) if any employer fails to provide an
- 8 employee a meal period in accordance with an applicable order of the Industrial
- 9 Welfare Commission, the employer shall pay the employee one (1) additional hour
- 10 of pay at the employee's regular rate of compensation for each workday that the
- 11 meal period is not provided;
- 12 c. California Industrial Welfare Commission Order No. 4 and/or 7 section 11(B), as
- 13 codified under Title 8 of the California Code of Regulations Section 11040 and/or
- 14 11070, which state that if an employer fails to provide an employee a meal period in
- 15 accordance with the applicable provisions of the Wage Order, the employer shall
- 16 pay the employee one (1) hour of pay at the employee's regular rate of
- 17 compensation for each workday that the meal period is not provided;
- 18 d. California Industrial Welfare Commission Wage Order No. 4 and/or 7 Section
- 19 7(A)(3), as codified under Title 8 of the California Code of Regulations Section
- 20 11040 and/or 11070, which require an employer to maintain records documenting
- 21 its employees' meal periods;
- 22 e. California Industrial Welfare Commission wage order No. 4 and/or 7 Section
- 23 20(A), as codified under California Code of Regulations Section 11040 and/or
- 24 11070, which penalizes the employer \$50.00 for each initial violation, per
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1 employee, of any provision of the Wage Order, and \$100.00 for each additional
2 violation thereafter per employee; and

3 f. California Labor Code section 1171 and 1173, which have given the California
4 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4
5 and/or 7) as enforceable law.

6 84. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
7 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
8 to take a second relieved meal break after ten (10) hours of work, as required by California
9 law. California Labor Code section 512(a) and California Industrial Welfare Commission
10 Order No. 4 and/or 7, as codified under California Code of Regulations Sections 11040 and/or
11 11070 et. seq., require that employees receive uninterrupted meal periods every five (5) hours
12 of consecutive work, and that the meal period be at least 30 minutes in length, wherein
13 employee is relieved of all work duty. California Labor Code section 226.7 provides that
14 employers may not require their employees to work through their meal periods. California
15 Labor Code section 226.7 and California Code of Regulations section 11040 and/or 11070
16 require that if the employer fails to provide the employee with an uninterrupted meal period,
17 the employer must pay the employee one (1) hour of pay for each workday that the meal period
18 is not given.
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21 85. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
22 regulations, and wage orders alleged in this cause of action along with any allowable interest,
23 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
24 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

25 86. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
26 fees as well as interest under Labor Code section 218.6.

27 87. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
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1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
2 trial.

3 **ELEVENTH CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**

5 **Individual and Representative Claim for PAGA penalties under California Labor Code**
6 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 233, 246, 510, 512,**
7 **558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)**

8 **(Against All Named Defendants and all DOE Defendants)**

9 88. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 87, inclusive, of this Complaint as though fully set forth herein.

11 89. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
12 Defendants of the specific violations of the California Labor Code that Defendants
13 and DOE defendants have violated and continue to violate.

14 90. Pursuant to California Labor code section 2699.3, no response was received from the
15 LWDA within 65 days of the postmark date of the above-alleged letter.

16 91. Plaintiff therefore has exhausted all administrative remedies required of him under
17 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
18 cause of action and pursue penalties in a representative action for Defendants' violations of the
19 Labor Code.

20 92. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that
21 provides for a civil penalty to be assessed and collected by the LWDA or any of its
22 departments, divisions, commissions, boards, agencies, or employees for violation of the code
23 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
24 on behalf of himself or herself and other current or former employees pursuant to the
25 procedures specified in California Labor Code section 2699.3.

26 93. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
27 violator and had one or more of the alleged violations committed against him, and therefore is
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properly suited to represent the interests of other current and former employees, which include all hourly, non-exempt employees who worked for Defendant during the relevant time period.

94. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations of numerous provisions of the California Labor Code as alleged in this Complaint.

95. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

96. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants for violating the Labor Code.

97. California Labor Code section 558 establishes a civil penalty as follows: Any employer or other person action on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission (including the "Hours and Days of Work" section of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid...

98. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not seeking individual/victim specific relief or underpaid wages under this specific cause of action.

99. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by law.

100. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5

1 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage
2 Order Provisions (nos. 4 and/or 7) violated based on the facts alleged in this Complaint.

3 101. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
4 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
5 employees as alleged herein in an amount to be shown according to proof at trial and within the
6 jurisdictional limits of this Court.

7 **TWELFTH CAUSE OF ACTION**

8 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

9 **(Plaintiff against all Named Defendants and DOE Defendants, and each of them)**

10 102. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 101, inclusive, of this Complaint as thought fully set forth herein.

12 103. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
13 employee for all necessary expenditures or losses incurred by the employee in direct
14 consequence of the discharge of his or her duties."

15 104. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
16 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
17 of completing her job duties, which were not reimbursed by Defendant. These costs
18 include, but are not limited to, use of personal cell phones for work purposes as well as
19 gas/mileage reimbursement. Plaintiff used her personal cell phone to speak to reps and also used
20 her personal cell phone to do ordering for the store via the internet since there was no internet
21 access at the store.

22 105. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
23 and attorney's fees and costs, under Labor Code section 2802.

24 **THIRTEENTH CAUSE OF ACTION**

25 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6**

26 **(California Labor Code section 98.6)**

1 **(Plaintiff against all Defendants and DOE Defendants, and each of them)**

2 106. Plaintiff re-alleges and incorporates by reference each and every allegation in
3 paragraphs 1 through 105, inclusive, of this Complaint as though fully set forth herein.

4 107. California Labor Code section 98.6 provides, in pertinent part, as follows:

5 “A person shall not discharge an employee or in any manner discriminate, retaliate, or
6 take any adverse action against any employee or applicant for employment because the
7 employee or applicant engaged in any conduct delineated in this chapter...or because
the employee or applicant...made a written or oral complaint that he or she is owed
unpaid wages...

8 108. In doing the things herein alleged, Defendants violated Labor Code Section 98.6
9 in that they retaliated against Plaintiff for complaining about wage and hour and labor code
10 violations that were being committed by Defendants in the workplace.

11 109. As a direct and proximate result of the aforementioned acts and omissions of
12 Defendants, Plaintiff suffered general and compensatory damages, including but not
13 limited to, loss of income (past and future), loss of employment benefits (past and future),
14 general and compensatory damages (past and future), mental pain and anguish and emotional
15 distress (past and future), and will continue to suffer in the future, in an amount to be proved at
16 trial. Moreover, pursuant to Labor Code section 98.6, an employer who violates this section is
17 liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each
18 violation of this section.

19 110. The foregoing conduct engaged in by Defendants and each of its directors,
20 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
21 ratified, and carried on with a conscious and willful disregard of their workers’ right to work in
22 an environment free of retaliation, so as to justify the imposition of punitive damages to punish
23 and set an example of said Defendants.
24

25 **FOURTEENTH CAUSE OF ACTION**

26 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

27 **(Plaintiff against All Defendants and DOE Defendants, and each of them)**
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1 111. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 110, inclusive, of this Complaint as though fully set forth herein.

3 112. At all times material to this Complaint, California Labor Code § 1102.5(b) was in
4 effect and binding on Defendants. This section requires Defendants to refrain from retaliating
5 against an employee for refusing to participate in an activity that he/she reasonably believes
6 would result in a violation of state or federal statute, or a violation or noncompliance with a
7 state or federal rule or regulation. California Labor Code section 1102.5(b) also requires
8 Defendants to refrain from retaliating against an employee for disclosing information to a
9 person with authority over the employee if the employee has reasonable cause to believe that
10 the information discloses a violation of state or federal statute, or a violation of or
11 noncompliance with a local, state, or federal rule or regulation, regardless of whether
12 disclosing the information is part of the employee's job duties.

13 113. As discussed fully above, Plaintiff complained to Defendants, and specifically Kasey
14 Perry about the company's illegal conduct and the labor code violations being committed
15 against Plaintiff in that Plaintiff was getting work-related phone calls on her days off wherein
16 she was being asked work-related questions and not being compensated for her time.

17 114. Defendants retaliated against Plaintiff for her whistleblowing, as alleged above,
18 all in violation of Labor Code § 1102.5.

19 115. As a direct and proximate result of the aforementioned acts and omissions of
20 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
21 loss of income (past and future), loss of employment benefits (past and future), general and
22 compensatory damages (past and future), mental pain and anguish and emotional distress (past
23 and future), and will continue to suffer in the future, in an amount to be proved at trial.

24 116. Plaintiff requests all available relief under Labor Code § 1102.5 including damages
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1 and the imposition of civil penalties of \$10,000 for each violation.

2 **FIFTEENTH CAUSE OF ACTION**

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

4 **(Against Defendants and all DOE Defendants)**

5 117. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 116, inclusive, of this Complaint as though fully set forth herein.

7 118. At all times during her employment with Defendants, Plaintiff performed her
8 duties with the utmost diligence and competence.

9 119. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and
10 actions to treat her differently and ultimately terminate her were motivated by Plaintiff's
11 whistleblowing and complaints to supervisor Kasey Perry. In fact, Plaintiff complained about
12 wage and hour violations being committed by Defendants against Plaintiff in that Plaintiff was
13 getting "off the clock" work-related phone calls and was spending her off time on work-related
14 tasks without being compensated for it. Furthermore, on February 3, 2020, Plaintiff provided a
15 handwritten note to Ms. Perry wherein Plaintiff requested stress leave due to the work
16 environment. Defendants intentionally created the aforementioned retaliation, thereby not
17 giving Plaintiff an opportunity to work in an environment free of retaliation.

18 120. The employment of Plaintiff was wrongfully terminated in February 2020 in violation
19 of the fundamental public policy of the State of California with respect to retaliating against an
20 employee on account of her whistleblowing and requesting stress leave through Worker's
21 Compensation. Moreover, Plaintiff was forced to hire an attorney to assist her to end these
22 illegal activities. Said conduct violated statutory and constitutional expressions of public policy
23 including, the California Labor Code sections 132(a), 1102.5 and the California Constitution,
24 Article 1 section 8.

25 121. As set forth above, said actions by Defendants were wrongful and in violation of the
26 fundamental principles of the public policy of the State of California as reflected in its laws,
27 objectives and policies. Said statutes and constitutional expressions of public policy include,
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1 but are not limited to, California Labor Code sections 132(a) and 1102.5 and the California
2 Constitution, Article 1 section 8. These laws inure to the benefit of the public at large, and not
3 just the private interests of the employers and employees whom they govern or protect.

4 122. As a direct and proximate result of the aforementioned acts and omissions of
5 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
6 loss of income (past and future), loss of employment benefits (past and future), general and
7 compensatory damages (past and future), mental pain and anguish and emotional distress (past
8 and future), and will continue to suffer in the future, in an amount to be proved at trial.
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10 123. The foregoing conduct engaged in by Defendants and each of their directors, officers
11 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
12 and carried on with a conscious and willful disregard of their workers' right to work in an
13 environment free of retaliation due to whistleblowing, so as to justify the imposition of
14 punitive damages to punish and set an example of said Defendants.
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16 **SIXTEENTH CAUSE OF ACTION**

17 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

18 **(California Business and Professions Code Section 17200)**

19 **(Plaintiff against All Named Defendants and all DOE defendants)**

20 124. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 123, inclusive, of this Complaint as though fully set forth herein.
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23 124. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
24 constitutes unfair and unlawful business practices under California Business and Professions
25 Code Section 17200, et seq.

26 125. Defendant's violations of California labor laws constitutes a business practice because
27 it was done repeatedly over a significant period of time in a systematic manner that was
28 detrimental to Plaintiff and other similarly situated aggrieved employees.

1 126. For the four years preceding the filing of this action, Plaintiff has suffered damages
2 and request damages and/or restitution of all monies and profits to be disgorged from
3 Defendants in an amount according to proof at time of trial, but in excess of the
4 jurisdiction of this Court.

5 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
6 follows:

- 7 1. For damages to Plaintiff in an amount subject to proof at trial;
- 8 2. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
9 at trial;
- 10 3. For general damages in an amount subject to proof at trial;
- 11 4. For special and consequential damages in an amount subject to proof at trial;
- 12 5. For punitive damages against Defendant according to proof;
- 13 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
14 subject to proof at trial;
- 15 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
16 proof at trial;
- 17 8. For restitution and disgorgement for all unfair business practices by Defendants against
18 Plaintiff in an amount subject to proof at trial;
- 19 9. For an order enjoining Defendants from further unfair and unlawful business
20 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 21 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
22 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 23 11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
24 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 25 12. For maximum civil penalties available under the Labor Code and applicable Wage
26 Order against Defendants as described more particularly in the Complaint and
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1 representative PAGA claims;

2 13. For all remedies available to Plaintiff under the applicable Wage Order and the
3 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
4 liquidated damages, damages, penalties, and waiting time penalties according to proof
5 to the extent permitted by law;

6 14. For the imposition of civil penalties and/or statutory penalties;

7 15. For all interest as allowed by law;

8 16. For all costs and disbursements incurred in this suit;

9 17. Reasonable attorney's fees where available by law, including but not limited to,
10 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
11 and/or other applicable laws; and
12

13 18. For such other and further relief as this Court may deem proper.

14
15 DATED: July 1, 2020

MESSRELIAN LAW INC.

16
17 By 
18 Harout Messrelian, Esq.
Attorneys for Plaintiff Helene Schubert

19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
22

23
24 DATED: July 1, 2020

MESSRELIAN LAW INC.

25
26 By 
27 Harout Messrelian, Esq.
Attorneys for Plaintiff Helene Schubert
28