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Clerk of the Superior Court
By Regina Chanez, Deputy Clerk

Brian R. Short (SBN 236140)
Email: Brian@ShortLegal.com
Dorota A. James (SBN 309933)
Email: Dorota@ShortLegal.com
SHORTLEGAL, APC
350 10th Ave., Suite 1000
San Diego, California 92101
Telephone: 619.272.0720
Facsimile: 619.839.3129

Attorneys for Plaintiff ROSE SMITH

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ROSE SMITH, Individually and on behalf
of all similarly-situated employees of
Defendants in the State of California,

Plaintiffs,

v.

MCALISTER INSTITUTE FOR
TREATMENT & EDUCATION, INC.
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2020-00014055

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

IMAGED FILE

FIRST AMENDED COMPLAINT

1. PAGA Claim for Civil Penalties

DEMAND FOR JURY TRIAL

Date Complaint Filed: March 13, 2020

Judge: Gregory W. Pollack

Dept.: C-71

Plaintiff ROSE SMITH on behalf of herself and all current and former aggrieved employees
alleges and states follows:

I.

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff ROSE SMITH (hereinafter "SMITH") brings this PAGA representative suit
against Defendant MCALISTER INSTITUTE FOR TREATMENT & EDUCATION INC. ("McAlister")
and DOES 1 through 50, inclusive (collectively referred to herein as "Defendants"), on behalf of herself

1 and all other current and former aggrieved employees for engaging in a systemic pattern of wage and hour
2 violations under California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

3 2. MCALISTER INSTITUTE FOR TREATMENT & EDUCATION INC. is an alcohol and
4 drug treatment provider of programs for patients with substance abuse problems. Its main business office
5 is located in El Cajon, San Diego County, California.

6 3. SMITH, at times relevant, was employed by Defendants as a Substance Use Disorder
7 counselor in their Lemon Grove facility, San Diego County, California.

8 4. Plaintiff is informed and believes, and thereon alleges, that Defendants decreased their
9 employment-related costs in order to increase their level of productivity and profits by systematically
10 violating both state wage and hour laws and the relevant IWC Wage Order including, but not limited to,
11 PAGA representative action claims for:

- 12 a. Failing to pay for minimum, regular and overtime wages for all hours worked;
- 13 b. Failing to provide compliant meal and rest breaks;
- 14 c. Failing to provide and maintain accurate records and itemized wage statements;
- 15 and
- 16 d. Failing to timely pay wages due during and upon termination of employment.

17 5. Plaintiff brings this lawsuit seeking only PAGA remedies which are not subject to any
18 arbitration agreement pursuant to California law, including any civil penalties, injunctive, restitution and
19 monetary relief against Defendants, and each of them, on behalf of all current and former employees
20 pursuant to Private Attorney General Act, California Labor Code §§ 2698 et seq. (“PAGA”) to recover ,
21 among other things, unpaid civil penalties and unpaid wages, , interest, penalties, liquidated damages,
22 attorney’s fees and costs pursuant to California Labor Code §§ 201, 202, 203, 204, 210, 218, 218.5, 218.6,
23 223, 226, 226.7, 247, 248.5, 510, 511, 512, , 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2810.5, and
24 California Code of Civil Procedure 1021.5, and provisions of the relevant IWC Wage Order. Plaintiff
25 reserves the right to name additional representatives throughout the State of California.

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6. Plaintiff seeks to represent all current and former aggrieved employees who suffered one or more of the violations of the California Labor Code as set forth herein. Plaintiff reserves the right to name additional representatives throughout the State of California.

II.

PARTIES, JURISDICTION AND VENUE

7. Plaintiff SMITH is and at all relevant times was a resident of the State of California and was employed by Defendants in their Lemon Grove center, San Diego County, California.

8. Defendant MCALISTER INSTITUTE FOR TREATMENT & EDUCATION INC. (“McAlister”), is a California Corporation with a principal place of business in El Cajon, San Diego County, California. According to its website, McAlister’s regional recovery centers provide inpatient and outpatient programs for adults struggling with substance abuse and other drug-related problems, including co-occurring mental problems.

9. Plaintiff is informed and believes, and thereon alleges, that at times relevant MCALISTER INSTITUTE FOR TREATMENT & EDUCATION INC. and Does 1 through 50 are the alter egos of each other and directly or indirectly, or through agents or other persons, employed Plaintiff and other similarly-aggrieved employees, and exercised control over their wages, hours, and/or working conditions. Plaintiff is informed and believes, and thereon alleges, that each Defendants directly or indirectly, or through agents or other persons, acted and/or ratified in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

10. Plaintiff was employed by Defendants in Lemon Grove, San Diego County, California as a Substance Use Disorder counselor and was subject to the employment policies, procedures and practices implemented by Defendants which applied to all of their employees throughout the State of California, including in San Diego County.

11. Defendants, at all relevant times, conducted business in the State of California and were employers who violated, or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare

Commission and, as such, are subject to penalties for each underpaid employee as set forth in the relevant sections of the Labor Code.

12. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint setting forth the true names and capacities of these fictitious defendants when they are ascertained. Plaintiff is informed and believes, and on that basis, alleges that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

13. Jurisdiction and venue are proper for San Diego County Superior Court because Defendants maintain offices, transact business, and/or have an agent in San Diego County and some of the acts and events complained of herein occurred in the judicial district of San Diego County and the State of California.

III.

GENERAL ALLEGATIONS

14. Plaintiff SMITH was initially employed by Defendants as a part-time overnight staff employee since May 3, 2016 until July 14, 2017 when she was transferred to a full-time position of an Out-Patient Substance Use Disorder Counselor. Plaintiff worked for Defendant until February 19, 2019 when she resigned but was subsequently re-hired on June 24, 2019 and continued her employment with McAlister until September 10, 2019. She worked at McAlister's facility located in Lemon Grove, California. During her tenure with McAlister, Plaintiff's primary job duties were to conduct initial interviews with patients and design initial treatment plans in coordination with a multidisciplinary team of specialists.

15. Defendant MCALISTER INSTITUTE FOR TREATMENT & EDUCATION INC. claims to be San Diego County's largest alcohol and other drug treatment providers of programs for patients with substance abuse problems

16. At all relevant times, Plaintiff and other similarly aggrieved employees of Defendants worked, on information and belief, under similar wage and hour policies, practices, and procedures relating to wage statements, recordkeeping, and payment of wages.

1 17. At all relevant times, Defendants failed to pay Plaintiff and other similarly aggrieved
2 employees for all time suffered or permitted to work. Defendants had a common policy and practice of
3 failing to pay all minimum, regular and overtime wages to Plaintiff and other similarly aggrieved
4 employees of Defendants.

5 18. At all relevant times, as a condition of employment, Plaintiff and, on information and
6 belief, other similarly aggrieved employees were required to attend and participate in trainings to meet
7 not only the external but also the internal requirements in public health, cultural competency, emergency
8 preparedness and direct services (working with resistant clients, criminal justice system, etc.) To
9 demonstrate that she completed the mandatory training, Plaintiff had to submit Quarterly Reports to her
10 employer. The reports included the date, location, the course title, instructor's name, and the number of
11 hours of each training Plaintiff participated in during the pertinent quarter. Although the attendance in the
12 trainings was mandatory, work -related, and, on multiple occasions took place outside of regular work
13 hours, Plaintiff and, on information and belief, other similarly aggrieved employees were not compensated
14 for the time spent on training and administrative reporting as required by the California law.

15 19. At all relevant times, Plaintiff and similarly aggrieved employees worked more than 8
16 hours in a workday and/or more than forty hours in a workweek. To meet strict deadlines imposed by the
17 California Health and Human Services Agency and/or Behavioral Health Services, Plaintiff and other
18 current and former employees were forced to complete the Addiction Severity Index reports, Treatment
19 Plan reports, the 30-day update reports, and other administrative paperwork after their scheduled shifts.
20 Although McAlister managers were well-aware, Plaintiff and other current and former employees worked
21 off-the clock, Plaintiff and other current and former employees were never compensated for that time they
22 worked before an/or after they punched in and/or out for the day because the time records would not reflect
23 they actual hours worked.

24 20. Plaintiff and other similarly-aggrieved employees worked overnight shifts that started in
25 one workday – “Day One” (which is any consecutive 24-hour period commencing at the same time each
26 calendar day) and ended after midnight in another workday –“Day Two” and then started another shift
27 later on “Day Two.” Although Plaintiff and other similarly aggrieved employees worked in excess of eight
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1 (8) eight hours in a workday, Defendant counted the whole overnight shifts as “Day One” and then “Day
2 Two” hours instead of calculating the total number of hours worked by Plaintiff and other similarly-
3 aggrieved employees during any consecutive 24-hour period commencing at the same time each calendar
4 day for the purpose of calculating the overtime hours and overtime wages. As result of this practice,
5 Defendant was shorting its employees on their legally-entitled overtime pay.

6 21. At all relevant times, Defendants did not maintain compliant meal period policies for
7 Plaintiff as required by the California Labor Code, nor did they provide off-duty meal periods compliant
8 under California law, to Plaintiff and other employees. Defendants failed to adequately inform Plaintiff
9 and other similarly aggrieved employees of their rights to take 30 minute uninterrupted off-duty meal
10 periods. In addition, the On-Duty Meal Period Agreement that Defendant required Plaintiff and other
11 similarly aggrieved employees to sign was invalid as it did not comply with Section 11 (A) of the
12 applicable Wage Order. The On-Duty Meal Agreement failed to state that the employee may, in writing,
13 revoke the agreement at any time.

14 22. As part of their job duties, Plaintiff and other similarly aggrieved employees were required
15 to stay on the premises to ensure safety of the patients to provide them with immediate assistance, if
16 necessary. As a result, employees were not relieved of all duties and did not receive legally-mandated off-
17 duty rest and meal periods.

18 23. Although Plaintiff and other similarly aggrieved employees were non-exempt employees
19 under California law, Plaintiff and other employees were regularly prevented from taking timely meal
20 periods and/or were required to miss their meal periods completely due to the working conditions and job
21 duties imposed by Defendants. Even when Plaintiff was able to take a meal period, she was not afforded
22 a full, timely 30 minutes of uninterrupted time in which she could leave the premises and was relieved of
23 all duties. In addition, Defendants failed to provide Plaintiff and other similarly aggrieved employees with
24 suitable break room areas. On rare occasions, when Plaintiff and other current and former employees were
25 able to take lunch breaks, they were forced to consume their meals either at their office desks or in the
26 cafeteria designated for patients. As a result of the control exerted by Defendants over Plaintiff and
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1 similarly aggrieved employees, the meal periods were not compliant, and a wage premium is owed to each
2 employee for each non-compliant meal break.

3 24. Defendants failed to pay Plaintiff and other similarly aggrieved employees meal period
4 premium wages for each day in which they did not provide Plaintiff and other similarly aggrieved
5 employees an opportunity to take a compliant meal period.

6 25. At all times relevant, Defendants did not maintain compliant off-duty rest period policies
7 as required by the California Labor Code, nor did they provide rest periods compliant under California
8 law, to Plaintiff and other similarly aggrieved employees. During Plaintiff's employment, Defendants had
9 a common pattern and practice of failing to properly authorize and permit compliant off-duty rest periods
10 to Plaintiff and other similarly aggrieved employees when they worked more than 3.5 hours in a workday.

11 26. Furthermore, during Plaintiff's employment, Defendants did not maintain a compliant rest
12 period policy applicable to Plaintiff and other similarly aggrieved employees. Defendants did not
13 authorize or permit Plaintiff to take 10-minute paid rest periods, nor did they ever inform her or other
14 similarly aggrieved employees of their right to take compliant rest periods.

15 27. Defendants failed to pay Plaintiff and other similarly aggrieved employees rest period
16 premium wages for each day in which they did not authorize or permit them to take compliant rest periods.

17 28. At all times relevant, Defendants failed to provide Plaintiff and other similarly aggrieved
18 employees with wage statements that truly and accurately reflected the number of hours worked by them,
19 or the wages due to them, specifically including but not limited to, failing to reflect the number of actual
20 hours worked, the number of hours worked overtime, the amount of regular time, and overtime wages
21 due, compensation due for missed meal and rest breaks as required by Labor Code § 226(a) and Section
22 7 of the applicable Wage Order.

23 29. As a result of these deficiencies and inaccuracies, Plaintiff and other similarly aggrieved
24 employees were not able to promptly and easily determine from their wage statements alone their total
25 overtime and/or all wages earned.

26 30. Defendants also failed to provide Plaintiff and similarly aggrieved employees with a
27 written notice including employment-related information pursuant to Labor Code Section 2810.5(a).
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1 Plaintiff and similarly aggrieved employees suffered a loss of wages, interest and attorney's fees as a result
2 of Defendants' failure to provide this notice. Defendants' failure to provide this information resulted in
3 the underpayment and late payment of wages. In addition, Plaintiff suffered an actual loss of damages
4 due to her inability to properly determine whether her wages actually reflected the proper work performed
5 based on her rate of pay, her regular payday, and the correct legal entity that was the employer and the
6 correct legal address of that entity in a reasonably efficient manner.

7 31. Defendants failed to maintain accurate records reflecting the beginning and ending time of
8 each shift, including meal periods, and all wages earned as required by law. Defendants instructed Plaintiff
9 and other similarly aggrieved employees to record inaccurate hours worked and not the true and correct
10 time worked despite having specific knowledge that employees worked more hours.

11 32. Defendants failed to pay Plaintiff and other similarly aggrieved employees for all wages
12 due and owing and by the times required by law in the time periods set forth by Labor Code § 204 and
13 Section 4 of the applicable Wage Order in that Defendants failed to properly compensate said employees
14 for all hours worked.

15 33. On information and belief, Defendants failed to pay other similarly aggrieved employees
16 all wages due and owing at the time of termination of employment, including, but not limited to, minimum
17 wages, regular wages, and overtime wages, as required by Labor Code §§ 201(a) and 202(a).

18 34. Defendants have engaged in unfair business practices in California and willingly and
19 knowingly have practiced, employed, and utilized the employment patterns and practices alleged in this
20 complaint in violation of Business & Professions Code §§ 17200, *et seq.*

21 IV.

22 PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION

23 35. The Cause of Action alleged herein is appropriately suited for a Labor Code Private
24 Attorneys General Act of 2004 (hereinafter referred to as "PAGA") representative action because:

- 25 a. This action involves allegations of violations of provisions of the California Labor Code
26 that either do not provide for a civil penalty or provide for a civil penalty to be assessed
27 and collected by the Labor and Workforce Development Agency (hereinafter referred to
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as "LWDA") or any departments, divisions, commissions, boards, agencies or employees;

b. Plaintiff SMITH is an "aggrieved employee" because she was employed by the alleged violators and had one or more of the alleged violations committed against her and, therefore, is properly suited to represent the interests of all other current and former employees of Defendant;

c. Plaintiff SMITH seeks to recover all applicable penalties under PAGA on behalf of herself and all other aggrieved employees.

d. Pursuant to Labor Code § 2698, et seq., Plaintiff SMITH has complied with the administrative notice requirements by serving via certified mail Defendant McAlister Institute for Treatment & Education, Inc. and via online services the LWDA, a notice with her claims for wage and hour violations and penalties. The PAGA claims have been tolled during the pendency of the notice period to the LWDA. The statutory period expired, and the LWDA did not serve Plaintiff SMITH with a notice of intent to assume jurisdiction over the applicable penalty claims. Therefore, Plaintiff SMITH has satisfied and exhausted the procedural notice requirement to pursue penalties against Defendant pursuant to Labor Code § 2698, et seq.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PRIVATE ATTORNEY GENERAL ACT (PAGA)

(Violation of Labor Code § 2699, et seq.)

(Alleged by Plaintiff Individually and On Behalf of all current and former Aggrieved Employees Against All Defendants)

36. Plaintiff SMITH realleges and incorporates by reference the foregoing allegations, as though set forth herein.

37. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a

1 civil action brought by an aggrieved employee on behalf of herself or herself and other current or former
2 employees pursuant to the procedures specified in Labor Code § 2699.3.

3 38. Plaintiff SMITH is an “aggrieved employee” because she was employed by the alleged
4 violator and had one or more of the alleged violations committed against her and therefore is properly
5 suited to represent the interests of other current and former aggrieved employees of Defendant.

6 39. On or about March 16, 2020 pursuant to Labor Code § 2698, *et seq.*, Plaintiff SMITH served
7 via certified mail, return receipt requested DEFENDANT MCALISTER INSTITUTE FOR
8 TREATMENT & EDUCATION, INC, and, on March 12, 2020, via on-line services the LWDA with her
9 claims for wage and hour violations and penalties. The statutory period expired, and the LWDA did not
10 serve Plaintiff with a notice of intent to assume jurisdiction over the applicable penalty claims. Therefore,
11 Plaintiff has satisfied and exhausted the procedural notice requirement to pursue penalties against
12 Defendant pursuant to Labor Code §2698, *et seq.*

13 40. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
14 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
15 for employees. The employment of any employee for longer hours than those fixed by the order or under
16 conditions of labor prohibited by the order is unlawful.”

17 41. Defendants violated Labor Code §§ 226.7, 512, and 1198 by failing to provide Plaintiff and
18 current and former aggrieved employees lawfully complaint meal periods and by failing to pay them
19 wages for each day a meal period was not provided. Under Labor Code § 2699 (f)(2) Defendants are
20 subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and
21 \$200 for each aggrieved employee per pay period for each subsequent violation.

22 42. Defendants violated Labor Code §§ 226.7 and 1198 by failing to provide Plaintiff and
23 current and former aggrieved employees duty-free rest periods and by failing to pay them premium wages
24 for each day a rest period was not provided. Under Labor Code § 2699 (f)(2) Defendants are subject to a
25 civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and \$200 for each
26 aggrieved employee per pay period for each subsequent violation.

27 43. Defendants violated Labor Code §§ 1194, 1197, and 1198 by failing to pay Plaintiff and
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1 current and former aggrieved employees at least minimum and regular wages for the time permitted to
2 work, engaged in work, and/or under Defendants' control as alleged herein. Under Labor Code § 2699
3 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an
4 initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

5 44. Defendants violated Labor Code §§ 510 and 1198 by failing to pay Plaintiff and current and
6 former aggrieved employees overtime wages for the time permitted to work, engaged in work, and/or
7 under Defendants' control as alleged herein. On information and belief, at all relevant times, Plaintiff and
8 other current and former aggrieved employees were not paid overtime wages when they worked more than
9 eight (8) hours a day or forty (40) hours within a workweek. Therefore, under Labor Code § 2699 (f)(2)
10 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial
11 violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

12 45. Defendants violated Labor Code §§ 226(a), 1174(d), and 1198 and Section 6 of the
13 applicable IWC Wage Order by failing to maintain records detailing the start and end times of work shifts
14 and meal periods, and knowingly and intentionally failing to maintain and provide Plaintiff and other
15 current and former aggrieved employees of Defendants with accurate wage statements itemizing all
16 information required by Labor Code § 226(a), as alleged herein, including the correct total hours worked,
17 all regular hours worked, overtime hours worked, the correct applicable hourly rate per hour worked, the
18 and the correct total wages earned. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil
19 penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§
20 226(a) and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

21 46. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount of \$250 per
22 violation in an initial citation and \$1,000 for each violation in a subsequent citation for failure to provide
23 accurate itemized wage statements.

24 47. Under Labor Code § 1174.5 an employer who willfully fails to maintain the records by
25 Labor Code § 1174 is a subject to a civil penalty of \$500.

26 48. Defendants violated Labor Code §§ 201, 202, 203, and 1198 by failing to pay Plaintiff and
27 other current and former aggrieved employees all minimum, regular, and overtime wages owed, and all
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meal and rest premiums wages owed by the time set forth by law upon their separation of employment as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 201, 202, 203, and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

49. Defendants violated Labor Code §§ 204 and 1198 by failing to pay Plaintiff and other current and former aggrieved employees all minimum, regular, and overtime wages owed, and all meal and rest premiums wages owed by the time set forth by law upon during their employment as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 204 and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

50. Defendants violated section 11(C) of the applicable Wage Order and Labor Code § 1198 by failing to provide suitable break room areas to Plaintiff and other current and former aggrieved employees. Under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of the relevant provisions of the applicable Wage Order and Labor Code § 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

51. As set forth herein, Defendant violated Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 510, 512, 1174, 1197, 1198, 2810.5 and Labor Code § 2699, *et seq.*, imposes upon Defendants, and each of them, penalties for violating the Labor Code, including those penalties set forth in 210, 226.3, 1174.5, 1197.1, 1194.2 and 2698, *et seq.*

52. Pursuant to Labor Code § 2699, Plaintiff SMITH seeks to recover civil penalties on behalf of herself and other current and former aggrieved employees of Defendant who suffered one or more the labor code violations described herein. The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

53. For bringing this action, Plaintiff SMITH is entitled to attorney's fees and costs incurred herein.

WHEREFORE, Plaintiff SMITH prays for relief as hereinafter requested.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for damages for judgment only as to those remedies which are not subject to being compelled to arbitration against Defendants, jointly and severally, as applicable, as follows:

- a. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission including, including but not limited to, civil penalties recoverable under Cal. Labor Code §§ 2698, *et seq.*
- b. For reasonable attorney's fees and cost of suit and, to the extent permitted by law, including pursuant to Labor Code §§ 218.5, 226, 1194, 1198 and Code of Civil Procedure § 1021.5; and 2698, *et seq.*
- c. An award of such other and further relief as this Court deems proper and just.

Dated: May 29, 2020

ShortLegal, APC



By: _____

BRIAN R. SHORT
DOROTA A. JAMES
Attorneys for Plaintiff ROSE SMITH

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury to the extent authorized by law.

Dated: May 29, 2020

ShortLegal, APC



By: _____

BRIAN R. SHORT
DOROTA A. JAMES
Attorneys for Plaintiff ROSE SMITH