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FILED
 Superior Court of California
 County of Los Angeles

JUL 10 2020

Sherri R. Carter, Executive Officer/Clerk of Court
 By S. DREW Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES

BY FAX

JANETH ESPARZA, individually, and on
 behalf of other members of the general
 public similarly situated,

Plaintiff,

vs.

STIX HOLDINGS, LLC, a Delaware
 limited liability company; STIX SFO, LLC,
 a California limited liability company; and
 DOES 1 through 10, inclusive,

Defendants.

Case No.: 20STCV08456

**FIRST AMENDED CLASS ACTION
 COMPLAINT & ENFORCEMENT
 ACTION UNDER THE PRIVATE
 ATTORNEYS GENERAL ACT,
 CALIFORNIA LABOR CODE §§ 2698, ET
 SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business &

RECEIVED
 LOS ANGELES SUPERIOR COURT

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Professions Code §§ 17200, *et seq.*
(Unlawful Business Practices); and
(11) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

1 Plaintiff Janeth Esparza, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court because Defendants employ persons in this county,
5 and employed Plaintiff this county, and thus a substantial portion of the transactions and
6 occurrences related to this action occurred in this county.

7 **THE PARTIES**

8 4. Plaintiff Janeth Esparza is a resident of Long Beach, in Los Angeles County,
9 California. Defendants employed Plaintiff as an hourly paid, non-exempt Shift Leader from
10 approximately July 2019 to December 2019. Plaintiff worked for Defendants at their
11 restaurant at 970 West Park Western Drive in San Pedro, California. During her employment,
12 Plaintiff typically worked eight (8) hours or more per day and five (5) days per week.
13 Plaintiff's primary job duties included, without limitation, preparing the restaurant for
14 opening; attending to customers; packaging food; setting up for third-party deliveries;
15 stocking and re-stocking items, including picking up restaurant supplies at nearby grocery
16 stores; and closing shift duties such as cleaning the restaurant, locking up, and setting the store
17 alarm.

18 5. STIX HOLDINGS, LLC was and is, upon information and belief, a Delaware
19 limited liability company, and at all times hereinafter mentioned, an employer whose
20 employees are engaged throughout this county, the State of California, or the various states of
21 the United States of America.

22 6. STIX SFO, LLC was and is, upon information and belief, a California limited
23 liability company, and at all times hereinafter mentioned, an employer whose employees are
24 engaged throughout this county, the State of California, or the various states of the United
25 States of America.

26 7. Plaintiff is unaware of the true names or capacities of the Defendants sued
27 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
28 amend the complaint and serve such fictitiously named Defendants once their names and

capacities become known.

8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of STIX HOLDINGS, LLC and/or STIX SFO, LLC, at all relevant times.

9. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, STIX HOLDINGS, LLC; STIX SFO, LLC; and/or DOES 1 through 10 (collectively, “Defendants” or “STIX”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

10. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

11. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

12. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiff and class members. Each Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiff and class members to work and/or “engaged” Plaintiff and class members so as to create a common-law employment relationship. As joint employers of Plaintiff and class members, Defendants are jointly and severally liable for the civil penalties and all other relief available

1 to Plaintiff and class members under the law.

2 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
3 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
4 members because Defendants have:

- 5 (a) jointly exercised meaningful control over the work performed by
6 Plaintiff and class members;
- 7 (b) jointly exercised meaningful control over Plaintiff's and class members'
8 wages, hours, and working conditions, including the quantity, quality
9 standards, speed, scheduling, and operative details of the tasks
10 performed by Plaintiff and class members;
- 11 (c) jointly required that Plaintiff and class members perform work which is
12 an integral part of Defendants' businesses; and
- 13 (d) jointly exercised control over Plaintiff and class members as a matter of
14 economic reality in that Plaintiff and class members were dependent on
15 Defendants, who shared the power to set the wages of Plaintiff and class
16 members and determined their working conditions, and who jointly
17 reaped the benefits from the underpayment of their wages and
18 noncompliance with other statutory provisions governing their
19 employment.

20 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
21 there has existed a unity of interest and ownership between Defendants such that any
22 individuality and separateness between the entities has ceased.

23 15. STIX HOLDINGS, LLC; STIX SFO, LLC; and DOES 1 through 10 are
24 therefore alter egos of each other.

25 16. Adherence to the fiction of the separate existence of Defendants would permit
26 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
27 from liability for the wrongful acts committed by them under the name STIX.

28 17. Plaintiff further alleges, upon information and belief, that Defendants STIX

1 HOLDINGS, LLC and STIX SFO, LLC are alter egos of each other for the following reasons:

- 2 (a) On the California Secretary of State's website
3 (<https://businesssearch.sos.ca.gov/>), STIX HOLDINGS, LLC and STIX
4 SFO, LLC share the same entity and mailing address, "3600
5 AMERICAN BLVD W STE 165, BLOOMINGTON, MN 55431;"
- 6 (b) According to their most recent "Statement of Information" forms filed
7 with the California Secretary of State, STIX HOLDINGS, LLC and
8 STIX SFO, LLC share the same managers and/or members, including
9 "LG Express, LLC;"
- 10 (c) On information and belief, STIX HOLDINGS, LLC and STIX SFO,
11 LLC share the same agent for service of process, "C T CORPORATION
12 SYSTEM (CO168406);" and
- 13 (d) On information and belief, STIX HOLDINGS, LLC and STIX SFO,
14 LLC utilize the same standardized employment forms and issue the
15 same employment policies.

16 **GENERAL ALLEGATIONS**

17 18. Defendants are a restaurant chain serving Asian and Chinese-American cuisine
18 throughout Southern California. Upon information and belief, Defendants maintain a single,
19 centralized Human Resources ("HR") department at their company headquarters in Laguna
20 Hills, California, which is responsible for the recruiting and hiring of new employees, and
21 communicating and implementing Defendants' company-wide policies, including timekeeping
22 policies and meal and rest period policies, to employees throughout California.

23 19. In particular, Plaintiff and class members, on information and belief, received
24 the same standardized documents and/or written policies. Upon information and belief, the
25 usage of standardized documents and/or written policies, including new-hire documents,
26 indicate that Defendants dictated policies at the corporate level and implemented them
27 company-wide, regardless of their employees' assigned locations or positions. Upon
28 information and belief, Defendants set forth uniform policies and procedures in several

documents provided at an employee's time of hire.

20. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Laguna Hills, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

21. Defendants continue to employ non-exempt or hourly paid employees in California.

22. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class members were not paid for all hours worked because all hours worked were not recorded.

24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and class members were not paid at least minimum wages for work done off-the-clock.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to meal periods in
2 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
3 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
4 periods and that Plaintiff and class members were not provided with all meal periods or
5 payment of one (1) additional hour of pay at their regular rates of pay when they did not
6 receive a timely, uninterrupted, thirty (30) minute meal period.

7 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to rest periods in
9 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
10 additional hour of pay at their regular rates of pay when they were not authorized and
11 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
12 and class members were not authorized and permitted to take compliant rest periods, nor did
13 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
14 pay at their regular rates of pay when they were not authorized and permitted to take a
15 compliant rest period.

16 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to receive complete and
18 accurate wage statements in accordance with California law. In violation of the California
19 Labor Code, Plaintiff and class members were not provided complete and accurate wage
20 statements.

21 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that they had a duty to maintain accurate and complete payroll records in
23 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
24 and intentionally failed to do so.

25 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to timely payment of all
27 wages earned upon termination of employment. In violation of the California Labor Code,
28 Plaintiff and class members did not receive payment of all wages due, including, but not

1 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
2 permissible time periods.

3 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to timely payment of wages
5 during their employment. In violation of the California Labor Code, Plaintiff and class
6 members did not receive payment of all wages, including, but not limited to, overtime wages,
7 minimum wages, and/or meal and rest period premiums, within permissible time periods.

8 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to receive full
10 reimbursement for all business-related expenses and costs they incurred during the course and
11 scope of their employment and that they did not receive full reimbursement of applicable
12 business-related expenses and costs incurred.

13 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew or should have known that Defendants had a duty to provide
15 Plaintiff and class members with written notice of the material terms of their employment with
16 Defendants as required by the California Wage Theft Prevention Act, but willfully,
17 knowingly, and intentionally failed to do so.

18 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants knew or should have known that they had a duty to compensate
20 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
21 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
22 falsely represented to Plaintiff and class members that they were properly denied wages, all in
23 order to increase Defendants' profits.

24 **PAGA REPRESENTATIVE ALLEGATIONS**

25 35. At all times herein set forth, PAGA provides that any provision of law under
26 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
27 assessed and collected by the LWDA for violations of the California Labor Code and
28 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a

1 civil action brought on behalf of themselves and other current or former employees pursuant
2 to procedures outlined in California Labor Code section 2699.3.

3 36. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
4 person who was employed by the alleged violator and against whom one or more of the
5 alleged violations was committed.”

6 37. Plaintiff and other current and former employees of Defendants are “aggrieved
7 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
8 or former employees and one or more of the alleged violations were committed against them.

9 38. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
10 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
11 following requirements have been met:

12 (a) The aggrieved employee or representative shall give written notice by
13 online filing with the LWDA and by certified mail to the employer of
14 the specific provisions of the California Labor Code alleged to have
15 been violated, including the facts and theories to support the alleged
16 violation.

17 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
18 2699.3(a) and any employer response to that notice shall be
19 accompanied by a filing fee of seventy-five dollars (\$75).

20 (c) The LWDA shall notify the employer and the aggrieved employee or
21 representative by certified mail that it does not intend to investigate the
22 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
23 the postmark date of the aggrieved employee’s notice. Upon receipt of
24 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
25 (65) calendar days of the postmark date of the aggrieved employee’s
26 notice, the aggrieved employee may commence a civil action pursuant
27 to California Labor Code section 2699 to recover civil penalties.

28 39. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,

1 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
2 provision other than those listed in Section 2699.5 after the following requirements have been
3 met:

- 4 (a) The aggrieved employee or representative shall give written notice by
5 online filing with the LWDA and by certified mail to the employer of
6 the specific provisions of the California Labor Code alleged to have
7 been violated (other than those listed in Section 2699.5), including the
8 facts and theories to support the alleged violation.
- 9 (b) An aggrieved employee's notice filed with the LWDA pursuant to
10 2699.3(c) and any employer response to that notice shall be
11 accompanied by a filing fee of seventy-five dollars (\$75).
- 12 (c) The employer may cure the alleged violation within thirty-three (33)
13 calendar days of the postmark date of the notice sent by the aggrieved
14 employee or representative. The employer shall give written notice
15 within that period of time by certified mail to the aggrieved employee or
16 representative and by online filing with the LWDA if the alleged
17 violation is cured, including a description of actions taken, and no civil
18 action pursuant to Section 2699 may commence. If the alleged violation
19 is not cured within the 33-day period, the aggrieved employee may
20 commence a civil action pursuant to Section 2699.

21 40. On March 3, 2020, Plaintiff provided written notice by online filing to the
22 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
23 Code alleged to have been violated, including facts and theories to support the alleged
24 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
25 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
26 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
27 Plaintiff PAGA Case Number LWDA-CM-776098-20. A true and correct copy of Plaintiff's
28 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

1 41. As of the filing date of this complaint, over 65 days have passed since Plaintiff
2 sent the notice described above to the LWDA, and the LWDA has not responded that it
3 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

4 42. Thus, Plaintiff has satisfied the administrative prerequisites under California
5 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
6 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
7 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

8 43. Labor Code section 558(a) provides "[a]ny employer or other person acting on
9 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 provision regulating hours and days of work in any order of the Industrial Welfare
11 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
12 dollars (\$50) for each underpaid employee for each pay period for which the employee was
13 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was underpaid" Labor
15 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
16 to any other civil or criminal penalty provided by law."

17 44. Defendants, at all times relevant to this complaint, were employers or persons
18 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
19 rights by violating various sections of the California Labor Code as set forth above.

20 45. As set forth below, Defendants have violated numerous provisions of both the
21 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
22 Order.

23 46. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
24 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
25 private attorney general, seeks assessment and collection of civil penalties for herself, all other
26 aggrieved employees, and the State of California against Defendants for violations of
27 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
28 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

48. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

49. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

50. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

51. Members of the Class and Subclass are referred to herein as "class members."

52. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

53. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (c) Whether Defendants failed to provide Plaintiff and class members with meal periods;
- (d) Whether Defendants failed to authorize and permit Plaintiff and class

members to take rest periods;

- (e) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (g) Whether Defendants failed to pay earned overtime wages, minimum wages, and meal and rest period premiums due to Plaintiff and class members upon their discharge;
- (h) Whether Defendants failed timely to pay overtime wages, minimum wages, and meal and rest period premiums to Plaintiff and class members during their employment;
- (i) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (j) Whether Defendants failed to provide written notice of information material to Plaintiff's and class members' employment with Defendants;
- (k) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (l) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

54. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the

identity of such membership is readily ascertainable by inspection of Defendants' employment records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future

endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime

(Against all Defendants)

55. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

56. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

57. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

58. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

59. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

1 60. California Labor Code section 510 codifies the right to overtime compensation
2 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
3 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
4 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
5 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
6 in a day on the seventh (7th) day of work.

7 61. During the relevant time period, Defendants willfully failed to pay all overtime
8 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
9 class members were not paid overtime premiums for all of the hours they worked in excess of
10 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
11 hours in a week, because all hours worked were not recorded.

12 62. During the relevant period, Defendants had, and continue to have, a company-
13 wide policy and/or practice of strictly staffing their restaurant locations based on the labor
14 hours allocated by corporate for each location. Defendants' uniform use of labor budgets
15 resulted in chronic understaffing and a failure to provide Plaintiff and class members with
16 adequate meal period coverage, because there were too few employees on duty to handle the
17 workload and attend to customers. Defendants also had a company-wide policy that
18 prohibited managerial employees or supervisors from leaving the premises unless another
19 managerial employee or supervisor is on the premises, resulting in a lack of meal period
20 coverage for managerial employees. At the same time, the labor budgets Defendants
21 implemented did not always allow for more than one managerial employee or supervisor to be
22 on the schedule. As a result, Plaintiff and other managerial employees were sometimes the
23 only managers/supervisors on duty and were the only employees authorized to grant or access
24 certain permissions in Defendants' point-of-sale system. Because managerial employees were
25 effectively prohibited from leaving Defendants' restaurant premises for meal periods without
26 coverage, and because there were too few employees and other managers/supervisors on duty
27 to handle the workload and/or attend to customers, Plaintiff and class members were denied
28 uninterrupted 30-minute meal periods.

63. Further, Defendants had, and continue to have, a company-wide policy and/or practice of requiring Plaintiff and class members to perform tasks off-the-clock, such as disarming the store alarm before clocking in for the start of their shifts. For example, Plaintiff was required to open the restaurant and disarm the store alarm upon arrival; each time, she spent several minutes disarming the alarm before she was able to clock into Defendants' timekeeping system for the start of her shift.

64. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiff and class members were performing assigned duties during their meal periods and performing work off-the-clock before their shifts, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and class members worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages for all of the overtime hours they actually worked.

65. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages (Against all Defendants)

66. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time

1 during which an employee is subject to the control of an employer, and includes all the time
2 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
3 Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

4 68. As stated, due to Defendants’ company-wide policies, including labor
5 budgeting and resultant lack of meal period coverage, Plaintiff and class members were forced
6 to forego meal periods, have their meal periods interrupted by work, and/or were otherwise
7 not relieved of all duties during meal periods. Additionally, as stated above, Plaintiff and
8 class members were required to work off-the-clock before their scheduled shift start times to
9 complete assigned job duties, such as disarming store alarms.

10 69. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff
11 and class members worked through that qualified for overtime premium payment. To the
12 extent that these off-the-clock hours did not qualify for overtime premium payment,
13 Defendants did not pay at least minimum wages for those hours worked off-the-clock in
14 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

15 70. Defendants’ failure to pay Plaintiff and class members minimum wages violates
16 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
17 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
18 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

19 **THIRD CAUSE OF ACTION**

20 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

21 **Violations**

22 **(Against all Defendants)**

23 71. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 72. At all relevant times herein set forth, California Labor Code section 512(a)
26 provides that an employer may not require, cause, or permit an employee to work for a period
27 of more than five (5) hours per day without providing the employee with a meal period of not
28 less than thirty (30) minutes, except that if the total work period per day of the employee is

1 not more than six (6) hours, the meal period may be waived by mutual consent of both the
2 employer and the employee. Under California law, first meal periods must start after no more
3 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
4 2012).

5 73. At all relevant times herein set forth, California Labor Code sections 226.7,
6 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
7 meal period mandated by an applicable order of the IWC.

8 74. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
9 the applicable IWC Wage Order also require employers to provide a second meal period of
10 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
11 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
12 hours worked is no more than twelve (12) hours, the second meal period may be waived by
13 mutual consent of the employer and the employee only if the first meal period was not waived.

14 75. During the relevant time period, Defendants had, and continue to have, a
15 company-wide policy and/or practice of understaffing locations due to labor budgeting, which
16 resulted in a lack of meal period coverage and prevented Plaintiff and class members from
17 taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with
18 understaffing their restaurants, Defendants had a requirement that a managerial employee or
19 supervisor be present on restaurant premises at all times, which exacerbated the lack of meal
20 period coverage. Additionally, as stated, Defendants had a company-wide practice of failing
21 to schedule meal periods, which further caused Plaintiff and class members to not be relieved
22 of their duties for compliant meal periods.

23 76. Defendants' practice of labor budgeting, resultant understaffing, and lack of
24 adequate meal period coverage prevented Plaintiff and class members from taking all
25 compliant meal periods to which they were entitled. As a result, Plaintiff and class members
26 would be forced to work in excess of five (5) hours before taking a meal period and, at times,
27 had their meal periods interrupted and/or had to forgo their meal periods altogether. For
28 example, Plaintiff often had to wait five (5) to six (6) hours into her shift to take a meal

1 period, due to a lack of coverage resulting from being the only managerial employee
2 scheduled to work or because there was no cashiers scheduled or available to cover the front
3 of the house. As a further example, when Plaintiff was able to take meal periods, she was
4 unable to leave the premises and other employees interrupted her meal periods to ask
5 questions regarding work-related issues.

6 77. Additionally, Defendants did not provide Plaintiff and class members with
7 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
8 day. During her employment, Plaintiff worked shifts in excess of ten (10) or more hours per
9 day, but was not provided a second 30-minute meal period. Plaintiff and class members did
10 not sign valid meal period waivers on days that they were entitled to meal periods and were
11 not relieved of all duties.

12 78. At all times herein mentioned, Defendants knew or should have known that, as
13 a result of these policies, Plaintiff and class members were prevented from being relieved of
14 all duties and required to perform some of their assigned duties during meal periods.
15 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
16 members meal period premium wages when meal periods were late, interrupted, shortened, or
17 missed.

18 79. Moreover, Defendants engaged in a company-wide practice and/or policy of
19 not paying all meal period premiums owed when compliant meal periods are not provided.
20 Because of Defendants' practices and/or policies, Plaintiff and class members have not
21 received premium pay for all missed, late, and interrupted meal periods. As a result,
22 Defendants failed to provide Plaintiff and class members compliant meal periods in violation
23 of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period
24 premiums due.

25 80. Defendants' conduct violates the applicable IWC Wage Order, and California
26 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
27 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
28 rate of compensation for each work day that the meal period was not provided.

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FOURTH CAUSE OF ACTION
Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations
(Against all Defendants)

81. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

82. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class members’ employment by Defendants.

83. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

84. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

85. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ company-wide

1 practices, including assigning heavy workloads and understaffing, prevented Plaintiff and
2 class members from being relieved of all duty to take their rest periods. Additionally,
3 Defendants failed to schedule rest periods, which, coupled with Defendants' failure to provide
4 adequate rest period coverage, further led to Plaintiff and class members not being authorized
5 and permitted to take compliant rest periods.

6 86. Furthermore, upon information and belief, as stated, Defendants prohibited
7 Plaintiff and class members from leaving the premises during their rest periods if they were
8 the only managers/supervisors on schedule. Because Plaintiff and class members were
9 restricted from leaving the premises during rest periods, they were denied the ability to use
10 their rest periods freely for their own purposes. Thus, Defendants effectively maintained
11 control over Plaintiff and class members during rest periods.

12 87. As a result of Defendants' practices and policies, Plaintiff and class members
13 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
14 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
15 during her employment, Plaintiff missed her rest periods due to understaffing and the lack of
16 coverage for rest periods.

17 88. Defendants have also engaged in a systematic, company-wide practice and/or
18 policy of not paying rest period premiums owed when rest periods are not authorized and
19 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
20 to pay them rest period premium wages due, in violation of Labor Code section 226.7, 516,
21 and the applicable IWC Wage Order.

22 89. Defendants' conduct violates the applicable IWC Wage Order and California
23 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
24 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
25 compensation for each work day that a compliant rest period was not authorized and
26 permitted.

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
3 **Statements and Failure to Maintain Accurate Payroll Records**
4 **(Against all Defendants)**

5 90. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 91. At all relevant times herein set forth, California Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate and
9 complete itemized wage statement in writing, including, but not limited to, the name and
10 address of the legal entity that is the employer, the inclusive dates of the pay period, total
11 hours worked, and all applicable rates of pay.

12 92. At all relevant times, Defendants have knowingly and intentionally provided
13 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
14 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
15 that fail to correctly list: gross wages earned; total hours worked; net wages earned; correct
16 address of the legal entity that is the employer; and all applicable hourly rates in effect during
17 the pay period, including overtime rates of pay, and the corresponding number of hours
18 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
19 226(a)(5), 226(a)(8), and 226(a)(9).

20 93. Because Defendants did not record the time Plaintiff and Subclass members
21 spent working off the clock, Defendants did not list the correct amount of gross wages and net
22 wages earned by Plaintiff and Subclass members in compliance with section 226(a)(1) and
23 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours
24 worked by Plaintiff and Subclass members in violation of section 226(a)(2), and failed to list
25 the applicable hourly rates of pay in effect during the pay period and corresponding accurate
26 number of work hours worked at each hourly rate in violation of section 226(a)(9).

27 94. Furthermore, separate from these violations, Defendants issued uniform wage
28 statements to Plaintiff and Subclass members that failed to correctly list the name of the legal

1 entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to
2 provide California employees with transparency as to the true identity of their employer, to
3 allow the employee to contact their employer during employment in the future for various
4 reasons, including, filing an administrative claim, judicial claim, or other action to seek relief
5 against their employer, to obtain unemployment benefits, etc.

6 95. Defendants systematically, and on a company-wide basis, issued wage
7 statements to Plaintiff and Subclass members that incorrectly list the employing entity's
8 address. Plaintiff's wage statement for the pay period ending December 18, 2019, lists the
9 address "2442 Ave De La Carlota, Ste. 360, Laguna Hills, CA 92653," but, according to the
10 California Secretary of State's website, Defendants' address is "3600 AMERICAN BLVD W
11 STE 165, BLOOMINGTON, MN 55431."

12 96. The wage statement deficiencies also include, without limitation, failing to list
13 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
14 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
15 only the last four digits of his or her social security number or an employee identification
16 number other than a social security number; failing to list the name of the legal entity that is
17 the employer; failing to list the inclusive dates of the period for which class members were
18 paid; and/or failing to state all hours worked as a result of not recording or stating hours
19 worked off-the-clock.

20 97. California Labor Code section 1198 provides that the maximum hours of work
21 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
22 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
23 employment of any employees for longer hours than those fixed by the order or under
24 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
25 Wage Order, employers are required to keep accurate time records showing when the
26 employee begins and ends each work period and meal period. During the relevant time
27 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
28 and meal period start and stop times for Plaintiff and Subclass members, in violation of

1 section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass
2 members with second 30-minute meal periods to which they were entitled, Defendants kept no
3 records of meal start and end times for second meal periods.

4 98. California Labor Code section 1174(d) provides that “[e]very person employing
5 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
6 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
7 plants or establishments at which employees are employed, payroll records showing the hours
8 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
9 applicable piece rate paid to, employees employed at the respective plants or establishments . .
10 . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants
11 willfully failed to maintain accurate payroll records for Plaintiff and Subclass members
12 showing the daily hours they worked and the wages paid thereto as a result of failing to record
13 the off-the-clock hours that they worked.

14 99. Plaintiff and Subclass members are entitled to recover from Defendants the
15 greater of their actual damages caused by Defendants’ failure to comply with California Labor
16 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
17 employee.

18 **SIXTH CAUSE OF ACTION**

19 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

20 **Upon Termination**

21 **(Against all Defendants)**

22 100. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 101. This cause of action is dependent upon, and wholly derivative of, the overtime
25 wages, minimum wages, and/or meal and rest period premium wages that were not timely paid
26 to Plaintiff and those class members no longer employed by Defendants upon their
27 termination.

28 102. At all times relevant herein set forth, Labor Code sections 201 and 202 provide

1 that if an employer discharges an employee, the wages earned and unpaid at the time of
2 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
3 her employment, his or her wages shall become due and payable not later than seventy-two
4 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
5 his or her intention to quit, in which case the employee is entitled to his or her wages at the
6 time of quitting.

7 103. Defendants willfully failed to pay Plaintiff and class members who are no
8 longer employed by Defendants the earned and unpaid wages set forth above, including but
9 not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages,
10 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
11 employ.

12 104. Defendants' failure to pay Plaintiff and class members who are no longer
13 employed by Defendants their wages earned and unpaid at the time of discharge, or within
14 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
15 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
16 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
17 thirty (30) day maximum pursuant to California Labor Code section 203.

18 SEVENTH CAUSE OF ACTION

19 Violation of California Labor Code § 204—Failure to Timely Pay Wages During

20 Employment

21 (Against all Defendants)

22 105. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 106. This cause of action is dependent upon, and wholly derivative of, the overtime
25 wages, minimum wages, and/or meal and rest period premium wages, that were not timely
26 paid to Plaintiff and those class members by Defendants during their employment.

27 107. At all times relevant herein set forth, Labor Code section 204 provides that all
28 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)

1 days, inclusive, of any calendar month, other than those wages due upon termination of an
2 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
3 the month during which the labor was performed.

4 108. At all times relevant herein, Labor Code section 204 provides that all wages
5 earned by any person in any employment between the sixteenth (16th) and the last day,
6 inclusive, of any calendar month, other than those wages due upon termination of an
7 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
8 month.

9 109. At all times relevant herein, Labor Code section 204 provides that all wages
10 earned for labor in excess of the normal work period shall be paid no later than the payday for
11 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
12 204 provides that the requirements of this section are deemed satisfied by the payment of
13 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
14 seven (7) calendar days following the close of the payroll period.

15 110. During the relevant time period, Defendants willfully failed to pay Plaintiff and
16 class members all wages due including, but not limited to, overtime wages, minimum wages,
17 and meal and rest period premium wages, within the time periods specified by California
18 Labor Code section 204.

19 111. Defendants' failure to pay Plaintiff and class members all wages due violates
20 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
21 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

22 **EIGHTH CAUSE OF ACTION**

23 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

24 **(Against all Defendants)**

25 112. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 113. At all times herein set forth, California Labor Code section 2802 provides that
28 an employer must reimburse employees for all necessary expenditures and losses incurred by

1 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
2 to prevent employers from passing off their cost of doing business and operating expenses on
3 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
4 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen tools or
5 equipment are required by the employer or are necessary to the performance of a job, such
6 tools and equipment shall be provided and maintained by the employer, except that an
7 employee whose wages are at least two (2) times the minimum wage provided herein may be
8 required to provide and maintain hand tools and equipment customarily required by the trade
9 or craft."

10 114. First, during the relevant time period, Defendants had a company-wide policy
11 of requiring Plaintiff and class members to utilize their own personal cellular phones and
12 cellular data to carry out their job duties, but Defendants failed to reimburse them for the costs
13 of their work-related cellular phone expenses. Plaintiff and class members were required to
14 use their personal cellular phones to complete their work-related tasks, such as discussing
15 scheduling or work assignments. Plaintiff would spend 60 minutes per week texting or
16 speaking with her supervisors. Although Defendants required Plaintiff and class members to
17 utilize their personal cellular phones to carry out their work-related responsibilities,
18 Defendants failed to fully reimburse them for this cost.

19 115. Second, Defendants, on a company-wide basis, expected Plaintiff and class
20 members to report to work in clean and presentable uniforms, including a uniform black
21 button-up shirt emblazoned with Defendants' logo, which forced Plaintiff and class members
22 to wash their uniforms more frequently than they would otherwise do laundry, and incur
23 expenses for doing so. For example, Plaintiff was only provided three (3) uniform shirts, but
24 was scheduled to work five (5) or more days in a week, and thus incurred laundry expenses
25 for the upkeep of her uniforms.

26 116. Defendants could have provided Plaintiff and class members with the actual
27 tools for use on the job, such as company phones to be used for fulfilling work-related tasks,
28 and with an adequate number of uniform shirts or access to a cleaning service. Or,

1 Defendants could have reimbursed employees for the costs of their cellular phone and laundry
2 or dry-cleaning expenses. Instead, Defendants passed these operating costs off onto Plaintiff
3 and class members. At all relevant times, Plaintiff did not earn at least two (2) times the
4 minimum wage.

5 117. Defendants' company-wide policy and/or practice of passing on their operating
6 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
7 have intentionally and willfully failed to reimburse Plaintiff and other class members for
8 necessary business-related expenses and costs.

9 118. Plaintiff and class members are entitled to recover from Defendants their
10 business-related expenses incurred during the course and scope of their employment, plus
11 interest.

12 **NINTH CAUSE OF ACTION**

13 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

14 **(Against all Defendants)**

15 119. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 120. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
18 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
19 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
20 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
21 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
22 violations of those Labor Code sections not found in section 2699.5, including sections 516,
23 1182.12, and 2810.5.

24 121. Defendants' conduct, as alleged herein, violates numerous sections of the
25 California Labor Code, including, but not limited to, the following:

- 26 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
27 wage order for Defendants' failure to compensate Plaintiff and other
28 aggrieved employees with all required overtime pay and failure to

properly calculate the overtime rates paid to Plaintiff and other aggrieved employees, as alleged herein;

(b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;

(c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC wage order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;

(d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;

(e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;

(f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as alleged herein;

(g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as alleged herein;

(h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;

(i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and

(j) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other

1 non-party Aggrieved Employees' employment with Defendants, as set
2 forth below.

3 122. California's Wage Theft Prevention Act was enacted to ensure that employers
4 provide employees with basic information material to their employment relationship at the
5 time of hiring, and to ensure that employees are given written and timely notice of any
6 changes to basic information material to their employment. Codified at California Labor
7 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
8 employer must provide written notice to employees containing basic and material payroll
9 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
10 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
11 overtime, the regular payday designated by the employer, and any allowances claims as part
12 of the minimum wage, including meal or lodging allowances. Labor Code section
13 2810.5(a)(1)(A)-(C).

14 123. During the relevant time period, Defendants failed to provide Plaintiff and
15 other aggrieved employees with written notice that lists all the requisite information set forth
16 in Labor Code section 2810.5(a)(1)(A)-(C). Plaintiff and other aggrieved employees are
17 therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
18 (g).

19 **TENTH CAUSE OF ACTION**

20 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

21 **Unlawful Business Practices**

22 **(Against all Defendants)**

23 124. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 125. Defendants are "persons" as defined by California Business & Professions
26 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
27 and/or associations.

28 126. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,

1 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
2 suffered injury in fact and has lost money as a result of Defendants' unlawful business
3 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
4 meaning of Code of Civil Procedure section 1021.5.

5 127. Defendants' activities, as alleged herein, are violations of California law, and
6 constitute unlawful business acts and practices in violation of California Business &
7 Professions Code sections 17200, *et seq.*

8 128. A violation of California Business & Professions Code sections 17200, *et seq.*
9 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
10 policies and practices have violated state law in at least the following respects:

- 11 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
12 class members, to work overtime without paying them proper
13 compensation in violation of California Labor Code sections 510 and
14 1198 and the applicable IWC Order, as alleged herein;
- 15 (b) Failing to pay at least minimum wage to Plaintiff and class members in
16 violation of California Labor Code sections 1182.12, 1194, 1197,
17 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 18 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
19 members in violation of California Labor Code sections 226.7, 512(a),
20 516, 1198, and the applicable IWC Order, as alleged herein;
- 21 (d) Failing to authorize and permit Plaintiff and class members to take
22 uninterrupted rest periods in violation of California Labor Code sections
23 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 24 (e) Failing to provide Plaintiff and class members with accurate wage
25 statements and failing to maintain accurate payroll records in violation
26 of California Labor Code sections 226(a), 1174(d), 1198, and the
27 applicable IWC Order, as alleged herein;
- 28 (f) Failing timely to pay all earned wages to Plaintiff and class members in

violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;

(g) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein; and

(h) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

129. At all relevant times herein, California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

130. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and class members that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and class members with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5.

131. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

132. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, et seq. –

Unfair Business Practices

(Against all Defendants)

133. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

134. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

135. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

136. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premium wages due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and

1 thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
2 unfair business practice in violation of California Business & Professions Code sections
3 17200, *et seq.* (Id.)

4 137. A violation of California Business & Professions Code sections 17200, *et seq.*
5 may be predicated on any unfair business practice. In the instant case, Defendants' policies
6 and practices have violated the spirit of California's meal and rest break laws and constitute
7 acts against the public policy behind these laws.

8 138. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
9 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
10 benefits implemented by section 226.7 withheld and retained by Defendants during a period
11 that commences four years prior to the filing of this complaint; a permanent injunction
12 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
13 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
14 Procedure section 1021.5 and other applicable laws; and an award of costs.

15 **REQUEST FOR JURY TRIAL**

16 Plaintiff requests a trial by jury.

17 **PRAYER FOR RELIEF**

18 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
19 against Defendants, jointly and severally, as follows:

20 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
21 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
22 reserves the right to amend her prayer for relief to seek a different amount.

23 **Class Certification**

- 24 2. That this case be certified as a class action;
25 3. That Plaintiff be appointed as the representative of the Class and Subclass;
26 4. That counsel for Plaintiff be appointed as class counsel.

27 **As to the First Cause of Action**

- 28 5. That the Court declare, adjudge, and decree that Defendants violated California

1 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
2 pay all overtime wages due to Plaintiff and class members;

3 6. For general unpaid wages at overtime wage rates and such general and special
4 damages as may be appropriate;

5 7. For pre-judgment interest on any unpaid overtime compensation commencing
6 from the date such amounts were due, or as otherwise provided by law;

7 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
8 California Labor Code section 1194(a); and

9 9. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Second Cause of Action**

12 10. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
14 minimum wages to Plaintiff and class members;

15 11. For general unpaid wages and such general and special damages as may be
16 appropriate;

17 12. For pre-judgment interest on any unpaid compensation from the date such
18 amounts were due, or as otherwise provided by law;

19 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
20 California Labor Code section 1194(a);

21 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

22 15. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Third Cause of Action**

25 16. That the Court declare, adjudge, and decree that Defendants violated California
26 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
27 willfully failing to provide all meal periods to Plaintiff and class members;

28 17. That the Court make an award to the Plaintiff and class members of one (1)

hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(b);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(b);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

1 30. That the Court declare, adjudge and decree that Defendants violated the
2 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
3 Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized
4 wage statements thereto;

5 31. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 32. For injunctive relief pursuant to California Labor Code section 226(h);

8 33. For statutory penalties pursuant to California Labor Code section 226(e);

9 34. For attorneys' fees and costs pursuant to California Labor Code section
10 226(e)(1); and

11 35. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Sixth Cause of Action**

14 36. That the Court declare, adjudge and decree that Defendants violated California
15 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
16 and/or meal and rest period premiums owed at the time of termination of the employment of
17 Plaintiff and other terminated class members;

18 37. For all actual, consequential and incidental losses and damages, according to
19 proof;

20 38. For waiting time penalties according to proof pursuant to California Labor
21 Code section 203 for all employees who have left Defendants' employ;

22 39. For pre-judgment interest on any unpaid wages from the date such amounts
23 were due, or as otherwise provided by law;

24 40. For attorneys' fees pursuant to California Code of Civil Procedure section
25 1021.5, or as otherwise provided by law; and

26 41. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 **As to the Seventh Cause of Action**

1 42. That the Court declare, adjudge and decree that Defendants violated California
2 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
3 overtime wages, minimum wages, and/or meal and rest period premiums during their
4 employment;

5 43. For all actual, consequential and incidental losses and damages, according to
6 proof;

7 44. For statutory penalties according to proof pursuant to California Labor Code
8 section 210;

9 45. For pre-judgment interest on any unpaid wages from the date such amounts
10 were due, or as otherwise provided by law;

11 46. For attorneys' fees pursuant to California Code of Civil Procedure section
12 1021.5, or as otherwise provided by law; and

13 47. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Eighth Cause of Action**

16 48. That the Court declare, adjudge and decree that Defendants violated California
17 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
18 related expenses and costs incurred by Plaintiff and class members;

19 49. For unpaid business-related expenses and such general and special damages as
20 may be appropriate;

21 50. For pre-judgment interest on any unpaid business-related expenses from the
22 date such amounts were due, or as otherwise provided by law;

23 51. For all actual, consequential, and incidental losses and damages, according to
24 proof;

25 52. For attorneys' fees and costs pursuant to California Labor Code
26 section 2802(c), or as otherwise provided by law; and

27 53. For such other and further relief as the Court may deem equitable and
28 appropriate.

1 **As to the Ninth Cause of Action**

2 54. That the Court declare, adjudge and decree that Defendants violated the
3 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
4 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
5 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
6 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
7 permit all rest periods); 226(a), 1174(d) and 1198 (by failing to provide accurate wage
8 statements and maintain accurate payroll records); 201, 202, 203 (by failing timely to pay all
9 earned wages upon termination); 204 (by failing timely to pay all earned wages during
10 employment); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to
11 provide written notice of information material to employment);

12 55. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
13 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
14 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
15 1197.1, 1198, 2802, and 2810.5;

16 56. For attorneys' fees and costs pursuant to California Labor Code section
17 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
18 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
19 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

20 57. For pre-judgment and post-judgment interest as provided by law; and

21 58. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Tenth Cause of Action**

24 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
25 to provide Plaintiff and class members all overtime wages due to them, failing to provide
26 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
27 class members all meal periods, failing to authorize and permit Plaintiff and class members to
28 take all rest periods, failing to provide Plaintiff and class members accurate and complete

1 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
2 failing timely to pay Plaintiff and class members all earned wages during employment, failing
3 to reimburse Plaintiff and class members for business-related expenses, and failing to provide
4 written notice of information material to employment, constitutes an unlawful business
5 practice in violation of California Business and Professions Code sections 17200, *et seq.*;

6 60. For restitution of unpaid wages to Plaintiff and all class members and
7 prejudgment interest from the day such amounts were due and payable;

8 61. For the appointment of a receiver to receive, manage and distribute any and all
9 funds disgorged from Defendants and determined to have been wrongfully acquired by
10 Defendants as a result of violations of California Business & Professions Code sections 17200
11 *et seq.*;

12 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
13 California Code of Civil Procedure section 1021.5; and

14 63. For such other and further relief as the Court may deem equitable and
15 appropriate.

16 **As to the Eleventh Cause of Action**

17 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
18 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
19 an unfair business practice in violation of California Business and Professions Code sections
20 17200, *et seq.*;

21 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
22 from Plaintiff and class members and prejudgment interest from the day such amounts were
23 due and payable;

24 66. For the appointment of a receiver to receive, manage and distribute any and all
25 funds disgorged from Defendants and determined to have been wrongfully acquired by
26 Defendants as a result of violations of California Business & Professions Code sections 17200
27 *et seq.*;

28 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to

1 California Code of Civil Procedure section 1021.5;

2 68. For pre-judgment and post-judgment interest as provided by law; and

3 69. For such other and further relief as the Court may deem equitable and
4 appropriate.

5

6 Dated: July 10, 2020

Respectfully submitted,

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Capstone Law APC

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By: 

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Bevin Allen Pike

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Orlando Villalba

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Joseph Hakakian

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Attorneys for Plaintiff Janeth Esparza

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EXHIBIT “1”

JAMIE R. GREENE
310.556.4165 Direct
Jamie.Greene@capstonelawyers.com

March 3, 2020

VIA U.S. CERTIFIED MAIL

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

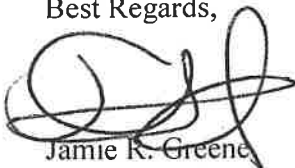
Subject: LWDA-CM-776098-20 - Filing Fee for 3.03.20 Notice
Janeth Esparza v. Stix Holdings, LLC, et al.

To Whom It May Concern:

On March 3, 2020, our office submitted a written PAGA Claim Notice via online submission to the Labor and Workforce Development Agency's PAGA Filing portal located at <https://dir.tfaforms.net/266>. Enclosed please find the filing fee, Check No. 7272, for the LWDA Notice with the subject line "Janeth Esparza v. Stix Holdings, LLC, et al."

Also enclosed is a copy of the LWDA Notice for reference. Please contact me if you have any questions. You can reach me on my direct line at (310) 556-4165.

Best Regards,



Jamie R. Greene

Enclosures (2)

BANK OF AMERICA, NA
11-035/1210

7272

Capstone Law
1875 Century Park East, Suite 1000
Los Angeles, CA 90067

03/02/2020

PAY TO THE
ORDER OF **LWDA**

\$ **75.00

Seventy-five and 00/100***** DOLLARS

PROTECTED AGAINST FRAUD



LWDA
Dept. of Industrial Relations, Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102



[Signature]



MEMO

Esparza v. Stix Holdings, LLC, et al.

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Capstone Law APC

03/02/2020

LWDA

Esparza v. Stix Holdings, LLC, et al.

7272

75.00

Operating Account

Esparza v. Stix Holdings, LLC, et al.

75.00

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

March 3, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Janeth Esparza v. Stix Holdings, LLC, et al.*

Dear PAGA Administrator:

This office represents Janeth Esparza in connection with her claims under the California Labor Code. Ms. Esparza was an employee of STIX HOLDINGS, LLC and/or STIX SFO, LLC. For the purpose of this letter, Ms. Esparza collectively refers to these entities as "STIX."

The employers may be contacted directly at the addresses below:

STIX HOLDINGS, LLC
3600 AMERICAN BLVD W STE 165
BLOOMINGTON MN 55431

STIX SFO, LLC
3600 AMERICAN BLVD W STE 165
BLOOMINGTON MN 55431

Ms. Esparza intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Esparza seeks relief on behalf of herself, the State of California, and other persons who are or were employed by STIX in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

STIX employed Ms. Esparza as a non-exempt, hourly paid Shift Leader from approximately July 2019 to December 2019. Ms. Esparza worked for STIX at its restaurant at 970 West Park Western Drive in San Pedro, California. She typically worked eight (8) hours or more per day and five (5) days per week. At the time her employment ended, Ms. Esparza was compensated approximately \$14.50 per hour. Her job duties included preparing the restaurant for opening; attending to customers; packaging food; setting up for third-party deliveries; stocking and re-stocking items,

including picking up restaurant supplies at nearby grocery stores; and closing shift duties such as cleaning the restaurant, locking up, and setting the store alarm.

STIX has committed one or more of the following Labor Code violations against Ms. Esparza, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

STIX’s Company-Wide and Uniform Payroll and HR Practices

STIX HOLDINGS, LLC and STIX SFO, LLC are a Delaware corporation and California corporation, respectively, and operate a restaurant chain serving Asian and Chinese-American cuisine throughout Southern California. Upon information and belief, STIX maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Laguna Hills, California, for all non-exempt, hourly paid employees working for STIX in California, including Ms. Esparza and other aggrieved employees. At all relevant times, STIX issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Esparza and other aggrieved employees, regardless of their location or position.

Upon information and belief, STIX maintains a centralized Payroll department at its corporate headquarters in Laguna Hills, California, which processes payroll for all non-exempt, hourly paid employees working for STIX in California, including Ms. Esparza and other aggrieved employees. Further, STIX issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Esparza and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, STIX utilized the same methods and formulas when calculating wages due to Ms. Esparza and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Ms. Esparza’s experience and counsel’s review of those records currently available relating to Ms. Esparza’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Esparza reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

STIX willfully failed to pay all overtime wages owed to Ms. Esparza and other aggrieved employees. During the relevant time period, Ms. Esparza and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

During the relevant period, STIX had, and continues to have, a company-wide policy and/or practice of staffing its restaurant locations strictly based on a labor budget set by the corporate office for each location. STIX's uniform use of labor budgets resulted in chronic understaffing and a failure to provide adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. In conjunction with understaffing its locations, STIX had a company-wide policy that prohibited managerial employees or supervisors from leaving the premises unless another managerial employee or supervisor is on the premises, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets STIX implemented did not always allow for more than one managerial employee or supervisor to be on the schedule at all times. As a result, Ms. Esparza and other managerial employees were sometimes the only managers/supervisors on duty and were the only employees authorized to grant or access certain permissions in STIX's point-of-sale system, but would have their meal periods interrupted and/or would work through them in order to assist their coworkers and customers. Because managerial employees were effectively prohibited from leaving STIX's restaurant premises for meal periods without coverage, and because there were too few employees and other managers/supervisors on duty to handle the workload and/or attend to customers, Ms. Esparza and other aggrieved employees were denied uninterrupted 30-minute meal periods. Consequently, Ms. Esparza and other aggrieved employees performed work during meal periods for which they were not paid.

Further, STIX had, and continues to have, a company-wide policy and/or practice of requiring Ms. Esparza and other aggrieved employees to perform tasks off-the-clock, such as disarming the store alarm before clocking in for the start of their shifts. For example, Ms. Esparza was required to open the restaurant and disarm the store alarm upon arrival; each time, she spent several minutes disarming the alarm before she was able to clock into STIX's timekeeping system for the start of her shift. Thus, STIX failed to track this time spent working before clocking in, and Ms. Esparza and other aggrieved employees received no compensation for this time.

STIX knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Esparza and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. STIX also knew, or should have known, that it did not compensate Ms. Esparza and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Ms. Esparza and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Esparza and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. STIX's failure to pay Ms. Esparza and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, STIX did not pay Ms. Esparza and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, STIX paid Ms. Esparza and/or other aggrieved employees incentive pay and/or nondiscretionary bonuses for

selling gift cards to customers. However, in violation of the California Labor Code, STIX failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when Ms. Esparza and/or other aggrieved employees worked overtime and received these other forms of pay, STIX failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Esparza and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "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." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As set forth above, due to STIX's policies, including labor budgeting and resultant lack of meal period coverage, Ms. Esparza and other aggrieved employees were forced to forego meal periods, had their meal periods interrupted by work, and/or were otherwise not relieved of all duties during meal periods. Furthermore, as stated, Ms. Esparza and other aggrieved employees were required to work off-the-clock before their scheduled shift start times to complete assigned job duties, such as disarming store alarms.

Thus, STIX did not pay minimum wages for all hours worked by Ms. Esparza and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, STIX did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, STIX regularly failed to pay at least minimum wages to Ms. Esparza and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Ms. Esparza and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30)

minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, STIX has, and continues to have, a uniform policy and/or practice of understaffing locations due to labor budgeting, which resulted in a lack of meal period coverage and prevented Ms. Esparza and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its restaurants, as stated above, STIX had a requirement that a managerial employee or supervisor be present on restaurant premises at all times, which exacerbated the lack of meal period coverage. Additionally, STIX had a company-wide practice of failing to schedule meal periods, which further caused Ms. Esparza and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result of STIX's practices and/or policies, Ms. Esparza and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, Ms. Esparza often had to wait five (5) to six (6) hours into her shift to take a meal period, due to a lack of coverage resulting from being the only managerial employee scheduled to work or because there were no cashiers scheduled or available to cover the front of the house. As a further example, when Ms. Esparza was able to take meal periods, she was unable to leave the premises and other employees interrupted her meal periods to ask questions regarding work-related issues.

Furthermore, STIX did not provide Ms. Esparza and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Ms. Esparza worked shifts in excess of ten (10) or more hours per day, but was not provided a second 30-minute meal period. Ms. Esparza and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

STIX knew or should have known that as a result of its policies, Ms. Esparza and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. STIX further knew or should have known that it did not pay Ms. Esparza and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

STIX also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Esparza and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that STIX did pay meal period premium wages to Ms. Esparza and/or other aggrieved employees, it did so at the incorrect rates. Because STIX did not properly calculate Ms. Esparza's and/or other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, STIX failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Ms. Esparza and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

As with meal periods, STIX's company-wide policies and practices, including assigning heavy workloads and understaffing, prevented Ms. Esparza and other aggrieved employees from being relieved of all duty to take compliant rest periods. STIX also failed to schedule rest periods, which, coupled with STIX's failure to provide adequate rest period coverage, further led to Ms. Esparza and other aggrieved employees not being authorized and permitted to take rest periods.

Additionally, upon information and belief, as stated, STIX prohibited Ms. Esparza and other aggrieved employees from leaving the premises during their rest periods if they were the only managers/supervisors on the schedule. Because Ms. Esparza and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, STIX effectively maintained control over Ms. Esparza and other aggrieved employees during rest periods.

As a result, Ms. Esparza and other aggrieved employees were prevented from being relieved of all duty in order to take compliant rest periods and instead would be required to continue working. As a result of STIX's practices and policies, Ms. Esparza and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. Throughout her employment, Ms. Esparza missed her rest periods due to understaffing and the lack of coverage for rest periods.

STIX also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Esparza and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that STIX did pay rest period premium wages to Ms. Esparza and/or other aggrieved employees, it did so at the incorrect rates. Because STIX did not properly calculate Ms. Esparza's and/or other aggrieved employees' regular rates of pay by

including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, STIX failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Esparza and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. STIX has not provided Ms. Esparza and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, STIX has knowingly and intentionally provided Ms. Esparza and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, STIX issued uniform wage statements to Ms. Esparza and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, STIX violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because STIX did not record the time Ms. Esparza and other aggrieved employees spent working off-the-clock, STIX did not list the correct amount of gross wages and net wages earned by Ms. Esparza and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, STIX failed to accurately list the total number of the hours worked by Ms. Esparza and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Further, because STIX did not calculate Ms. Esparza's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, STIX did not list the correct amount of gross wages earned by Ms. Esparza and/or other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Ms. Esparza and/or other aggrieved employees in violation of section 226(a)(5). STIX also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Separate from these violations, STIX issued uniform wage statements to Ms. Esparza and other aggrieved employees that fail to list the correct name of the legal entity of the actual employer in violation of Labor Code section 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, obtain unemployment benefits, etc. Ms. Esparza's wage statement for the pay period ending December 18, 2019, lists the entity "STIX HOLDINGS LLC" with the address "2442 Ave De La Carlota, Ste. 360, Laguna Hills, CA 92653," but, according to the California Secretary of State's website, there is no such entity by that name with that address. However, a similarly named entity, "STIX HOLDINGS, LLC," is listed on the California Secretary of State's website with a different address, "3600 AMERICAN BLVD W STE 165, BLOOMINGTON, MN 55431." *See example paystub below.*

CO. TMP	FILE	DEPT.	CLOCK
STIX HOLDINGS LLC 24422 AVE DE LA CARLOTA STE 360 LAGUNA HILLS , CA 92653			

Social Security Number:		Earnings Statement Period Beginning Date: 12/02/2019 Period Ending: 12/18/2019 Pay Date: 12/18/2019
Taxable Marital Status:		
Exemptions/Allowances:		
Federal:		
State:		
Local:		JANETH B. ESPARZA

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), STIX willfully failed to maintain accurate payroll records for Ms. Esparza and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for

longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, STIX engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Esparza and other aggrieved employees in violation of section 1198. Furthermore, in light of STIX’s failure to provide Ms. Esparza and other aggrieved employees with second 30-minute meal periods to which they were entitled, STIX kept no records of meal start and end times for second meal periods.

Because STIX failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Esparza and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Esparza and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Esparza and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, STIX failed to pay Ms. Esparza and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Esparza and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, 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.

STIX willfully failed to pay Ms. Esparza and other aggrieved employees who are no longer employed by STIX all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving STIX's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Esparza and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, STIX, on a company-wide basis, required that Ms. Esparza and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Ms. Esparza used her personal cellular phone to complete work-related tasks, such as discussing scheduling or work assignments, with STIX's supervisors. Ms. Esparza would spend 60 minutes per week texting or speaking with her supervisors on her personal cellular phone. Although STIX required Ms. Esparza to regularly utilize her personal cellular phone to carry out work-related responsibilities, STIX failed to reimburse her for this cost.

Second, STIX, on a company-wide basis, expected Ms. Esparza and other aggrieved employees to report to work in clean and presentable uniforms, including a uniform black button-up shirt emblazoned with STIX's logo, which forced Mr. Arellano and other aggrieved employees to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses for doing so. For example, Ms. Esparza and other aggrieved employees were only provided three (3) uniform shirts each, but were scheduled to work five (5) days in a week, and thus incurred laundry expenses for the upkeep of their uniforms.

Third, on information and belief, STIX, on a company-wide basis, required other aggrieved employees to utilize their own personal vehicles to carry out company business, such as picking up restaurant supplies and produce, but failed to reimburse them for all costs of travel, including mileage. Although STIX required that other aggrieved employees use their own vehicles and complete these tasks as part of their job duties, STIX never reimbursed them for all of their travel expenses. Additionally, STIX, on a company-wide basis, required other aggrieved employees to obtain and pay for their food handler permits or certifications that were required for their

employment. STIX failed to reimburse other aggrieved employees for all of the costs of obtaining these permits and certifications.

STIX could have provided Ms. Esparza and/or other aggrieved employees with the actual tools for use on the job, such as company phones and vehicles, and with an adequate number of uniform shirts or access to a cleaning service. Or, STIX could have reimbursed employees for their cellular phone, mileage, travel, food handler permit/certifications, and uniform laundering expenses. Instead, STIX passed these operating costs off onto Ms. Esparza and other aggrieved employees. At all relevant times, Ms. Esparza did not earn at least two (2) times the minimum wage.

Thus, STIX had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Esparza and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

STIX failed to provide Ms. Esparza and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

Ms. Esparza and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting 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 shall be subject to a civil penalty as follows: (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" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." STIX, at all relevant times, was an employer or person acting on behalf of an employer(s) who

violated Ms. Esparza' and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Esparza seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Esparza, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against STIX for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Esparza seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Mao Shiokura', with a stylized flourish at the end.

Mao Shiokura

Copy: STIX HOLDINGS, LLC (via U.S. Certified Mail); STIX SFO, LLC (via U.S. Certified Mail)

one
AW APC
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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

On **July 10, 2020**, I served the document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [] to interested parties as follows [or] [✓] as stated on the attached service list:

Wendy E. Lane, (SBN 196883)
wlane@ggfirm.com
Kelly M. Raney
kraney@ggfirm.com
GREENBER GLUSKER
2049 Century Park East, Suite 2600
Los Angeles, CA 90067-3101
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Fax: (310) 553-0687

Attorneys for Defendant
STIX HOLDINGS, LLC and
STIX SFO, LLC

[] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[X] **ELECTRONIC SERVICE:** A true and correct copy of the above-referenced document(s) was electronically served on counsel of record by means of transmitting the document to [CaseAnywhere](#) in accordance with the Court’s Order.

[] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

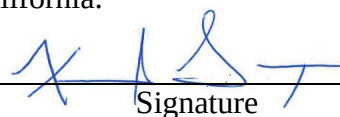
[] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

[] **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **July 10, 2020**, at Los Angeles, California.

Xochitl Tapia
Type or Print Name


Signature