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SARAH MELLAND

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

SARAH MELLAND, an individual,
Plaintiff,

v.

BEVERLY HILLS RETAIL & PRODUCT., a
California corporation; PORTOFINO LOS
ANGELES CORP., a California corporation;
JENNIFER PHILLIPS, an individual; and
DOES 1 through 20, inclusive,

Defendants.

Case No. **20STCV31488**

COMPLAINT FOR DAMAGES FOR:

- 1. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 558.1, 1194);**
- 2. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 558.1, 1194);**
- 3. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);**
- 4. FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS (LABOR CODE §§226 ET SEQ., 1174 ET SEQ.);**
- 5. FAILURE TO REIMBURSE EMPLOYEE EXPENSES (LABOR CODE §2802);**
- 6. WAITING TIME PENALTIES (LABOR CODE §§201-203);**
- 7. FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS (CAL. LABOR CODE §§226(b), 432, 1198.5);**
- 8. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.);**
- 9. CIVIL PENALTIES UNDER PRIVATE ATTORNEY GENERAL ACT (CAL. LAB. CODE §2699);**

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**10. RETALIATION IN VIOLATION OF
LABOR CODE §98.6; AND**

**11. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, SARAH MELLAND, and for causes of action against
Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in the County of Los Angeles, because Defendants' obligations and liability arise therein, because Defendants transact business within the County of Los Angeles, and because the work that is the subject of this action was performed by Plaintiff in the County of Los Angeles.

THE PARTIES

2. Plaintiff SARAH MELLAND (hereinafter referred to as "MS. MELLAND" and "Plaintiff"), at all relevant times herein, was and is a resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant BEVERLY HILLS RETAIL & PRODUCT (hereinafter referred to individually as "BHRP") was and is a California corporation, doing business in the County of Los Angeles, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant PORTOFINO LOS ANGELES CORP. (hereinafter referred to individually as "PORTOFINO") was and is a California corporation, doing business in the County of Los Angeles, State of California.

1 5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
2 hereto, Defendant JENNIFER PHILLIPS was and is an individual domiciled and residing in the County
3 of Los Angeles, State of California.

4 6. Defendants BHRP, PORTOFINO, and MS. PHILLIPS and DOES 1-20, (hereinafter
5 collectively referred to as “Defendants”), were Plaintiff’s employer, joint employer and/or special
6 employer within the meaning of Government Code §§12926, subdivision (d), 12940, subdivisions
7 (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employs five (5) or more persons and are
8 therefore subject to the jurisdiction of this Court.

9 7. The true names and capacities, whether individual, corporate, associate, or otherwise, of
10 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and
11 therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
12 complaint to insert the true names and capacities of said Defendants when the same become known to
13 Plaintiff. Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously
14 named Defendants are responsible for the wrongful acts alleged herein, and are therefore liable to
15 Plaintiff as alleged hereinafter.

16 8. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
17 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
18 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of
19 Defendants, and in doing the things alleged herein, were acting at least in part within the course and
20 scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or
21 joint venture and with the permission and consent of Defendants.

22 9. Plaintiff is informed and believes, and based thereupon alleges, that Defendants and
23 defendants named as DOES 1-20, acted in concert with one another to commit the wrongful acts alleged
24 herein, and aided, abetted, incited, compelled and/or coerced one another in the wrongful acts alleged
25 herein, and/or attempted to do so, including pursuant to Government Code §12940(i). Plaintiff is further
26 informed and believes, and based thereupon alleges, that Defendants and defendants named as DOES
27 1-20, and each of them, formed and executed a conspiracy or common plan pursuant to which they
28 would commit the unlawful acts alleged herein, with all such acts alleged herein done as part of and

1 pursuant to said conspiracy, intended to cause and actually causing Plaintiff harm.

2 10. Whenever and wherever reference is made in this complaint to any act or failure to act
3 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
4 and/or failures to act by Defendants and DOES 1-20 acting individually, jointly and severally.

5
6 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

7 11. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
8 unity of interest and ownership between each of the various defendants who are collectively referred to
9 as Defendants and DOES 1-20 that the individuality and separateness of defendants have ceased to exist.

10 12. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
11 of purported corporate existence between each of various defendants who are collectively referred to as
12 Defendants and DOES 1-20 are, in reality, one and the same, including, but not limited to because:

13 a. Plaintiff is informed and believes that various defendants who are collectively
14 referred to as Defendants and DOES 1-20 are completely dominated and controlled by one another and
15 DOES 1-20, who personally committed the frauds and violated the laws as set forth in this complaint,
16 and who have hidden and currently hide behind the other Defendants to perpetrate frauds, circumvent
17 statutes, or accomplish some other wrongful or inequitable purpose.

18 b. Plaintiff is informed and believes that various defendants who are collectively
19 referred to as Defendants and DOES 1-20 derive actual and significant monetary benefits by and
20 through each other's unlawful conduct, and by using one another as the funding source for their own
21 personal expenditures.

22 c. Plaintiff is informed and believes that various defendants who are collectively
23 referred to as Defendants and DOES 1-20, while really one and the same, were segregated to appear as
24 though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
25 accomplishing some other wrongful or inequitable purpose.

26 d. Plaintiff is informed and believes that various defendants who are collectively
27 referred to as Defendants and DOES 1-20 do not comply with all requisite corporate formalities to
28 maintain a legal and separate corporate existence.

1 e. Plaintiff is informed and believes, and based thereon alleges, that the business
2 affairs of various defendants who are collectively referred to as Defendants and DOES 1-20 are, and at
3 all times relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and
4 the same are in inextricable confusion. The various defendants who are collectively referred to as
5 Defendants and DOES 1-20 are, and at all times relevant hereto were, used by one another and DOES 1-
6 20 as mere shells and conduits for the conduct of certain of Defendants' affairs, and are, and were, the
7 alter egos of one another. The recognition of the separate existence of various defendants who are
8 collectively referred to as Defendants and DOES 1-20 would not promote justice, in that it would permit
9 Defendants to insulate themselves from liability to Plaintiff for violations of the Government Code and
10 other statutory violations. The corporate existence of various defendants who are collectively referred to
11 as Defendants and DOES 1-20 should be disregarded in equity and for the ends of justice because such
12 disregard is necessary to avoid fraud and injustice to Plaintiff herein.

13 13. Accordingly, various defendants who are collectively referred to as Defendants and
14 DOES 1-20 constitute the alter egos of each other, and the fiction of their separate corporate existence
15 must be disregarded.

16 14. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
17 thereon alleges that various defendants who are collectively referred to as Defendants and DOES 1-20
18 are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of
19 various defendants who are collectively referred to as Defendants and DOES 1-20. Plaintiff performed
20 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all
21 Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner in
22 which Defendants' business was and is conducted.

23 15. Alternatively, Plaintiff is informed and believes, and based thereupon alleges, that as and
24 between various defendants who are collectively referred to as Defendants and DOES 1-20, (1) there is
25 an express or implied agreement of assumption pursuant to various defendants who are collectively
26 referred to as Defendants and DOES 1-20 agreed to be liable for the debts of each other, (2) the
27 transactions between various defendants who are collectively referred to as Defendants and DOES 1-
28 20 amounts to a consolidation or merger of the two corporations, (3) various defendants who are

1 collectively referred to as Defendants and DOES 1-20 are mere continuations of each other, or (4) the
2 transfer of assets between various defendants who are collectively referred to as Defendants and DOES
3 1-20 is for the fraudulent purpose of escaping liability for each other's debts. Accordingly, various
4 defendants who are collectively referred to as Defendants and DOES 1-20 are the successors of each
5 other, and are liable on that basis.

6
7 **FACTS COMMON TO ALL ALLEGATIONS**

8 16. On or about 2012, Plaintiff MS. MELLAND was hired by Defendants as a front desk
9 and sales agent in its tanning salon/luxury retail goods business. At all relevant times, Plaintiff was a
10 full-time, non-exempt employee before Plaintiff was wrongfully terminated on or about February 28,
11 2020.

12 17. Plaintiff's hourly wage rate was \$18.00 per hour.

13 18. In addition to her hourly rate MS. MELLAND was contracted to be paid a 5% sales
14 commission for any and all retail goods she sold while working her shifts.

15 19. In addition to her hourly rate and 5% sales commission, MS. MELLAND was to be paid
16 \$400.00 every month to train other employees.

17 20. Throughout the entirety of the employer-employee relationship, DEFENDANT
18 JENNIFER PHILLIPS, the owner and CEO of PORTOFINO and BHRP, would continually, constantly,
19 and consistently fail to paid MS. MELLAND all wages she earned as a 5% sales commission for the
20 retail goods she sold while working her shifts. Many pay periods PHILLIPS would unlawfully withhold
21 hundreds and even thousands of dollars of MS. MELLAND'S wages she had earned as a 5% sales
22 commission.

23 21. Throughout Plaintiff's employment period, from her first day to her last day, Plaintiff
24 worked approximately 32 hours a week in shifts ranging from 6-8 hours apiece. However, she would
25 work overtime during the holiday seasons but received only Plaintiff's regularly hourly wage rate for
26 these hours, with no overtime premium, when Plaintiff worked shifts in excess of 8 hours.

27 22. Throughout Plaintiff's employment period PHILLIPS would routinely help herself to tip
28 money earned as wages by MS. MELLAND and MS. MELLAND's colleagues even though PHILLIPS

1 was the CEO and Owner of the Employer. Given the affluent customer base of BHRP and
2 PORTOFINO, the tip amounts PHILLIPS would unlawfully take from the common tip pool would
3 amount to thousands of dollars at a time during each pay period.

4 23. Throughout Plaintiff's employment, Plaintiff was not permitted to exercise her right to
5 take statutory 10-minute rest breaks for every four hours worked or substantial portion thereof, nor was
6 she advised of said right.

7 24. Throughout Plaintiff's employment, Plaintiff did not receive timely uninterrupted
8 statutory 30-minute meal periods for days on which Plaintiff worked at least 5 hours. One or more of
9 Plaintiff's 30-minute meal periods were either not timely provided or not provided approximately four
10 (4) times per week.

11 25. Throughout Plaintiff's employment, for each pay period, Plaintiff was not provided with
12 a paystub that accurately reflected the applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by Plaintiff and did not accurately reflect
14 the amount of tips or commission wages paid out to Plaintiff.

15 26. Throughout Plaintiff's employment, for each pay period, Plaintiff or any of her
16 colleagues were never reimbursed for business expenses incurred as an unavoidable element of the
17 employment relationship with DEFENDANTS. Specifically, DEFENDANTS would never reimburse
18 employees for the parking fee they would have to incur simply to work shifts for DEFENDANTS. This
19 parking fee was at least \$20.00 that Plaintiff and her employees were forced to pay unreimbursed for
20 every shift worked.

21 27. DEFENDANTS would also force Plaintiff to use her phone and phone bill for work
22 purposes yet refuse to reimburse her for this bill to the tune of \$50.00 per month.

23 28. MS. MELLAND vocalized her concerns about her unlawfully withheld wages to
24 PHILLIPS and demanded the full sum of her wages owed. After reporting her unpaid wages to
25 PHILLIPS numerous times, PHILLIPS threatened to terminate her for complaining.

26 29. MS. MELLAND demanded to know why her paystubs were missing crucial wages
27 information, why PHILLIPS continually refused to show the employees the mathematical breakdown
28 of their 5% commission bonuses, refused to show the employees the mathematical breakdown of the

1 tip-pooling, refused to reimburse the employees for the parking fees, and why PHILLIPS refused to
2 show the employees their time cards for their meal breaks.

3 30. Thereafter, on or about February 28, 2020 Defendants wrongfully terminated Plaintiff
4 under the false pretext that her complaining about her shorted wages meant she wished to resign.

5
6 **FIRST CAUSE OF ACTION**

7 **FOR FAILURE TO PAY WAGES DUE**

8 **LABOR CODE §§201, 1182.12, 1194, 1194.2, 558.1**

9 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

10 31. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
11 though set forth in full herein.

12 32. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
13 required by 8 Code of Regulations §11050, as set forth hereinabove.

14 33. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510,
15 §558.1, 8 Code of Regulations §11050, and Industrial Welfare Commission Order No. 2-2001.

16 34. As alleged herein, Defendants failed to pay the overtime premium wages for all hours
17 worked beyond 8 in a day or 40 in a week, failed to pay earned commission wages which were
18 indisputably non-discretionary, reimbursement of business expenses, and earned tip pool wages.

19 35. As alleged herein, Defendants routinely failed to pay Plaintiff one hour pay for every
20 day that Plaintiff was not provided a rest period, one hour pay for every day that Plaintiff was not
21 provided a meal period, and one hour for every day that Plaintiff was not provided a timely meal period,
22 which was every day Plaintiff worked.

23 36. Plaintiff has been deprived of Plaintiff's rightfully earned compensation as a direct and
24 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to
25 recover such amounts, plus interest thereon, attorneys' fees and costs.

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1 37. Pursuant to Labor Code section 558.1, the individual agent of an employer defendant
2 who causes the employer to violate wage-and-hour laws shall be deemed as liable as employer for said
3 violation of wage-and-hour laws. Thus, individual defendant PHILLIPS is as liable as all other
4 Defendants.

5
6 **SECOND CAUSE OF ACTION**
7 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
8 **LABOR CODE §§510, 558.1, 1194**
9 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

10 38. Plaintiff re-alleges and incorporates by reference all preceding factual allegations,
11 inclusive, as though set forth in full herein.

12 39. Labor Code 510 requires employers to pay their non-exempt employees one and one-
13 half times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day,
14 or 40 hours per week.

15 40. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
16 compensation required by Labor Code 510 and 8 Code of Regulations §11050, and Industrial Welfare
17 Commission Order No. 2-2001.

18 41. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
19 Code §510, 8 Code Regulations §11050, and Industrial Welfare Commission Order No. 2-2001.

20 42. At all relevant times, Defendants required Plaintiff to work more than eight hours per
21 day and/or more than 40 hours per workweek.

22 43. As alleged herein, Defendants owe Plaintiff for Plaintiff's overtime premium for each
23 day that Plaintiff worked more than 8 hours per day and/or more than 40 hours in a given week:

24 44. Thus, for the entirety of the time period set forth above, Plaintiff is entitled to recover
25 such amounts in the amount of approximately \$1,460.50.

26 45. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a
27 direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is
28 entitled to recover such amounts set forth above, plus interest thereon, attorney's fees, and costs.

1 46. Pursuant to Labor Code section 558.1, the individual agent of an employer defendant
2 who causes the employer to violate wage-and-hour laws shall be deemed as liable as employer for said
3 violation of wage-and-hour laws. Thus, individual defendant PHILLIPS is as liable as all other
4 Defendants.

5
6 **THIRD CAUSE OF ACTION**
7 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
8 **LABOR CODE §§226.7 AND 512**
9 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

10 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
11 though set forth in full herein.

12 48. Labor Code §512 requires employers to provide every employee with an uninterrupted
13 timely meal period of not less than 30 consecutive minutes, for every period of work exceeding five
14 hours.

15 49. Labor Code §226.7 requires an employer to provide every employee with an
16 uninterrupted rest period of not less than 10 minutes, for every period worked in excess of four hours.

17 50. Throughout Plaintiff's employment, Plaintiff regularly worked in excess of six hours per
18 day, and was thereby entitled to take a timely uninterrupted 30-minute meal period and two 10-minute
19 rest periods on each day Plaintiff worked. Nevertheless, Plaintiff was not permitted to, and not advised
20 of Plaintiff's right to take the statutory timely meal and rest periods to which Plaintiff was entitled.

21 51. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of
22 8 Code of Regulations §11050 and Industrial Welfare Commission Order No. 2-2001.

23 52. At all relevant times, Defendants failed and refused to provide Plaintiff with timely meal
24 and rest periods, and failed to compensate Plaintiff for missed meal and rest periods, as required by
25 Labor Code §§226.7 and the applicable sections of 8 Code of Regulations §11050 and Industrial
26 Welfare Commission Order No. 2-2001.

27 53. Consequently, Plaintiff is owed one hour of pay at Plaintiff's regular hourly rate, or the
28 requisite minimum wage, whichever is greater, for each day that Plaintiff was denied such timely meal

1 and rest periods.

2 54. Pursuant to Labor Code section 558.1, the individual agent of an employer defendant
3 who causes the employer to violate wage-and-hour laws shall be deemed as liable as employer for said
4 violation of wage-and-hour laws. Thus, individual defendant PHILLIPS is as liable as all other
5 Defendants.

6 55. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and
7 rest breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

8 56. Thus, for the entirety of the time period set forth above, Plaintiff is entitled to recover
9 such amounts in the total of \$29,952.00 pursuant to Labor Code §§226.7(b) and 512, plus interest
10 thereon and costs of suit.

11
12 **FOURTH CAUSE OF ACTION**
13 **FOR FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS**
14 **LABOR CODE §§226 AND 1174 ET SEQ.**
15 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

16 57. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
17 though set forth in full herein.

18 58. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
19 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
20 total deductions and net wages earned. An employer who violates these code sections is liable to its
21 employees for the greater of actual damages suffered by the employee, or \$50 in civil penalties for the
22 initial pay period in which a violation occurred, and \$100 per employee for each subsequent pay period,
23 up to a statutory maximum of \$4,000.00.

24 59. At all relevant times, Defendants failed to provide Plaintiff with wage and hour
25 statements that accurately showed gross wages earned, all deductions made, net wages earned, and all
26 applicable hours and rates in effect during each pay period and the corresponding number of hours
27 worked at each hourly rate by Plaintiff. The paystubs Plaintiff received were knowingly and
28 intentionally, not inadvertently, inaccurate as showing regular pay for hours overtime hours worked,

1 and intentionally excluded pay for untimely meal periods, and excluded pay for missed rest periods.

2 60. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §226.

3 61. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of Plaintiff's
4 hour, wage, and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and
5 expense in attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages to
6 which Plaintiff is entitled, causing Plaintiff to be unable to rely on earnings statements in dealings with
7 third parties, eviscerating Plaintiff's rights under Labor Code §226(b) to review itemized wage
8 statement information by inspecting the employers' underlying records, and deceiving Plaintiff
9 regarding Plaintiff's entitlement to minimum wage, overtime, meal period, and rest period wages.
10 Consequently, Defendants are liable to Plaintiff for damages, up to the statutory maximum of \$4,000.00.

11 62. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor Code
12 §226 approximately 26 times during the last year that Plaintiff worked for Defendants. Consequently,
13 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
14 amount of \$4,000.00, whichever is greater.

15 63. Pursuant to Labor Code section 558.1, the individual agent of an employer defendant
16 who causes the employer to violate wage-and-hour laws shall be deemed as liable as employer for said
17 violation of wage-and-hour laws. Thus, individual defendant PHILLIPS is as liable as all other
18 Defendants.

19 64. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
20 statutory penalties pursuant to Labor Code §226 and other applicable provisions, as well as attorneys'
21 fees and costs.

22
23 **FIFTH CAUSE OF ACTION**
24 **FOR FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES**
25 **LABOR CODE §2802**
26 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

27 65. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
28 though set forth in full herein.

1 66. Pursuant to Labor Code §450(a), “no employer...may compel or coerce any employee...
2 to patronize Plaintiff’s or her employer, or any other person, in the purchase of anything of value.”

3 67. Pursuant to Labor Code §2802(a), “an employer shall indemnify Plaintiff’s or her
4 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
5 the discharge of Plaintiff’s or her duties, or of Plaintiff’s or her obedience to the directions of the
6 employer.”

7 68. Plaintiff was required by Defendants to expend Plaintiff’s personal funds because of the
8 duties required by Defendants, as alleged hereinabove.

9 69. Pursuant to Labor Code §2802(a), Defendants are legally required to reimburse Plaintiff
10 for all necessary expenditures incurred in the performance of her duties.

11 70. Defendants have failed and refused to reimburse Plaintiff for all necessary business
12 expenditures, including Plaintiff’s transportation parking costs.

13 71. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
14 2502(a), Plaintiff is entitled to recover from Defendants the unpaid balance of all of the necessary
15 aforementioned expenditures.

16 72. As a proximate result of the aforementioned violations of §§450(a) and 2502(a), Plaintiff
17 has been damaged in an amount according to proof at the time of trial, but estimated as follows:
18 Defendants failed to reimburse Plaintiff approximately \$20,800.00 dollars in transportation parking
19 costs in the four years preceding this action. Defendants failed to reimburse Plaintiff approximately
20 \$2,400.00 in monthly phone bills.

21 73. In grand sum, Plaintiff is owed no less than \$23,200.00 in unreimbursed business
22 expenses.

23 74. Pursuant to Labor Code §2802(b), Plaintiff requests that the Court award interest at the
24 same rate as judgment in civil actions, accruing from the date on which Plaintiff incurred the necessary
25 expenditure or loss.

26 75. Pursuant to Labor Code §2802(c), Plaintiff requests that the Court award Plaintiff
27 reasonable attorneys’ fees and costs incurred in this action.

28 ///

SIXTH CAUSE OF ACTION
FOR WAITING TIME PENALTIES

LABOR CODE §§201-203
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

76. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as though set forth in full herein.

77. At all relevant times, Defendants failed to pay all of Plaintiff's accrued wages and other compensation due immediately upon termination. These wages refer to, at a minimum, overtime compensation, rest and meal period compensation, and parking costs that Defendants should have paid, but did not pay to Plaintiff during the term of Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-203.

78. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §§201-203.

79. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff is entitled to payment of Plaintiff's meal and rest periods and overtime premium wages as previously pleaded herein, and more than \$4,320.00 in waiting time penalties, calculated based on 30 days of regular wages (\$18.00 x 8 hours = \$144.00 per day. \$144.00 x 30 = \$4,320.00).

80. Based on Defendants' conduct as alleged herein, Defendants are liable for \$4,320.00 in statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys' fees and costs.

SEVENTH CAUSE OF ACTION
FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS

LABOR CODE §§ 226(b), 432, and 1198.5
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

81. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

82. Labor Code §226(b) requires an employer to afford current and former employees the

1 right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to
2 the employer.

3 83. Labor Code §432 requires an employer to provide an employee a copy of any instrument
4 relating to the obtaining or holding of employment signed by an employee or applicant, upon request to
5 the employer.

6 84. Labor Code §1198.5 requires an employer, within thirty (30) days of a written request
7 thereof, to permit current and former employee to inspect or receive a copy of an employee's personnel
8 and payroll records. An employer's failure to do so subjects the employer to a \$750.00 penalty, payable
9 to the employee.

10 85. On October 2, 2019, Plaintiff made a written request to inspect or receive a copy of
11 Plaintiff's personnel and payroll records from Defendants, which Defendants received.

12 86. Defendants failed and refused to permit Plaintiff's inspection of Plaintiff's personnel and
13 payroll records, and failed to provide a copy of Plaintiff's personnel and payroll records to Plaintiff
14 within the time required by Labor Code §§ 226(b), 432, and 1198.5, or ever.

15 87. As a result of Defendants' failure and refusal to comply with Labor Code §1198.5,
16 Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

17
18 **EIGHTH CAUSE OF ACTION**

19 **FOR UNFAIR COMPETITION**

20 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

21 **AGAINST BHRP, PORTOFINO, AND DOES 1-20, INCLUSIVE**

22 88. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
23 though set forth in full herein.

24 89. Defendants' violations of 8 Code of Regulations §11050, Industrial Welfare
25 Commission Order No. 2-2001, Labor Code §§201, 203, 226, 226.7, 510, 512, 1182.12, 1194, 1198.5
26 and other applicable provisions, as alleged herein, including Defendants' failure and refusal to pay meal
27 breaks; Defendants' failure to provide timely and accurate wage and hour statements, Defendants'
28 failure to pay compensation due in a timely manner upon termination or resignation, and Defendants'

1 failure to maintain complete and accurate payroll records for Plaintiff, constitutes unfair business
2 practices in violation of Business & Professions Code §§17200, et seq.

3 90. As a result of Defendants' unfair business practices, Defendants have reaped unfair
4 benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be
5 made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

6 91. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent
7 injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and
8 restore to Plaintiff the other monies and benefits unlawfully withheld from her.

9
10 **NINTH CAUSE OF ACTION**
11 **FOR PRIVATE ATTORNEY GENERAL ACT**
12 **LABOR CODE §2699**

13 **AGAINST BHRP, PORTOFINO, AND DOES 1-20, INCLUSIVE**

14 92. Plaintiffs re-allege and incorporate by reference the above, inclusive, as though set forth
15 fully herein.

16 93. Under the Private Attorneys General Act of 2006, Labor Code §2698-2699.5, Plaintiffs,
17 as aggrieved employees, may bring an action against Defendants, on behalf of themselves and other
18 current or former employees, seeking statutory civil penalties for Defendants' violations of the
19 California Labor Code.

20 94. As set forth above, Plaintiffs are aggrieved employees within the meaning of Labor Code
21 §§2699(c) and 2699.3(a), as Defendants has committed multiple California Labor Code violations
22 against them, as previously pleaded in this complaint.

23 95. As a direct and proximate result of Defendants' California Labor Code violations as set
24 forth in this complaint, Plaintiffs are entitled to recover, on their own behalves and on behalf of others
25 similarly situated, civil penalties permitted by the Private Attorneys General Act from Defendants, for
26 all violations of Labor Code §§201, 202, 203, 226, 226.7, 510, 512, 558, and 1174, as well as reasonable
27 attorney's fees and costs as follows:

28 ///

1 96. For failing to pay Plaintiffs and others similarly situated the legally-mandated overtime
2 wage for each overtime hour worked;

3 97. For failing to provide required meal periods to Plaintiffs, and others similarly situated,
4 in violation of Labor Code §§226.7 and 512, and Wage Order 2-2001;

5 98. For failing to pay Plaintiffs and others similarly situated the additional hour of
6 compensation earned for every shift that a mandated meal period was denied, in violation of Labor Code
7 §226.7(b) and Wage Order 2-2001;

8 99. For failing to authorize and/or permit required rest periods to Plaintiffs and others
9 similarly situated, in violation of Labor Code §226.7(b) and Wage Order 2-2001;

10 100. For failing to pay Plaintiffs and others similarly situated the additional hour of
11 compensation earned for every shift that a mandated rest period was denied, in violation of Labor Code
12 §226.7(b) and Wage Order 2-2001;

13 101. For failing to pay wages promptly following termination of employment, or when due
14 and payable, in violation of Labor Code §§201, 202, and 204; and

15 102. For failing to maintain and provide to Plaintiffs and others similarly situated, itemized
16 wage statements required by Labor Code §226.

17 103. These penalties recoverable for Plaintiff alone total approximately \$61,282.50. Plaintiff
18 may also seek these same penalties on behalf of other aggrieved employees.

19 104. Plaintiffs reserve their rights to allege any additional and all other violations of the Labor
20 Code and the Wage Order as may be disclosed in discovery and as a result of additional investigation
21 that may be pursued in this action.

22 105. On June 8, 2020, more than 60 calendar days before filing this complaint, Plaintiff
23 provided written notice by certified mail to the Labor and Workforce Development Agency and to
24 Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
25 satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§201,
26 202, 203, 223, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2, 2802, and each of which is
27 enumerated among the serious violations set forth in Labor Code §2699.5.

28 106. As of the filing of this complaint, Plaintiff has not received any response from the Labor

1 and Workforce Development Agency (“LWDA”) on its intent to pursue an action against Defendants.
2 Consequently, Plaintiff did not commence a civil action, pursuant to Labor Code §2699.3 against
3 Defendants.

4 107. On or about June 8, 2020, Plaintiff provided written notice by certified mail to the
5 LWDA and to Defendants separately of the specific provisions of the California Labor Code that
6 Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). These violations
7 included Labor Code §§201, 202, 203, 223, 226, 226.7, 510, 512, 1174, 1182.12, 1194, and 1194.2,
8 each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

9 108. Plaintiffs are also entitled to reasonable attorneys’ fees and costs, and 25% of the
10 recovered civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

11
12 **TENTH CAUSE OF ACTION**

13 **RETALIATION IN VIOLATION OF LABOR CODE §98.6**

14 **AGAINST BHRP, PORTOFINO, AND DOES 1-20 INCLUSIVE**

15 109. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
16 though set forth in full herein.

17 110. Labor Code section 98.6(a) provides that “A person shall not discharge an employee or
18 in any manner discriminate, retaliate, or take any adverse action against any employee . . . because the
19 employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused
20 to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the
21 Labor Commissioner . . . or has testified or is about to testify in a proceeding pursuant to that section,
22 or because of the exercise by the employee or applicant for employment on behalf of himself, herself,
23 or others of any rights afforded him or her.”

24 111. Labor Code section 98.6(b)(1) provides that “any employee who is discharged,
25 threatened with discharged, demoted, suspended, retaliated against, subject to an adverse action, or in
26 any other manner discriminated against in the terms and conditions of his or her employment because
27 the employee engaged in any conduct delineated in this chapter . . . shall be entitled to reinstatement
28 and reimbursement for lost wages and work benefits caused by those acts of the employer.”

1 112. Labor Code section 98.6(b)(3) provides that “ an employer who violates this section is
2 liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation
3 of this section, to be awarded to the employee or employees who suffered the violation.”

4 113. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
5 terminated from Plaintiff’s employment with Defendants as a result of Plaintiff’s complaints about not
6 being paid all wages due, not receiving meal and/or rest breaks, exercising Plaintiff’s right to take meal
7 and/or rest breaks. Defendants’ retaliatory animus is evidenced by, among other things, the following
8 facts: Plaintiff made a bona fide claim to protect her rights, and the rights of several of her coworkers,
9 which were wage rights within the jurisdiction of the Labor Commissioner. Specifically, she pointed
10 out to Defendants an entire litany of ways in which the employees were being shortchanged of their
11 breaks and wages.

12 114. At all relevant times herein, Defendants retaliated against her.

13 115. The above said acts of Defendants constitute violations of the Labor Code, and were a
14 proximate cause in Plaintiff’s damages as stated below.

15 116. Defendants’ conduct described herein was undertaken, authorized, and/or ratified by
16 Defendants, and Defendants’ officers and/or managing agents, including, and those identified herein as
17 DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create policy
18 for Defendants. The aforementioned conduct of said managing agents and individuals was therefore
19 undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions and
20 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
21 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore
22 identified and designated herein as DOES 1-20, inclusive.

23 117. Based on Defendants’ conduct alleged herein, Defendants are liable for the statutory
24 penalty of \$10,000.00 per violation, in an amount according to proof, under Labor Code section
25 98.6(b)(3.)

26 118. Because the acts taken toward Plaintiff were carried out by managerial employees acting
27 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiffs’ rights
28 and in order to injure and damage them, Plaintiffs requests that punitive damages be levied against

1 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.

2
3 **ELEVENTH CAUSE OF ACTION**
4 **FOR WRONGFUL TERMINATION**
5 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
6 **AGAINST BHRP, PORTOFINO, AND DOES 1-20, INCLUSIVE**

7 119. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
8 though set forth in full herein.

9 120. At all relevant times mentioned in this complaint, the Labor Code was in full force and
10 effect and was binding on Defendants. The Labor Code requires Defendants to refrain from retaliating
11 against employees for engaging in protected activity under the Labor Code.

12 121. At all times mentioned in this complaint, it was a fundamental policy of the State of
13 California that Defendants cannot retaliate against any employee on the basis of their assertion of their
14 rights under the Code.

15 122. Plaintiff believes and thereon alleges that Plaintiff's demand for her wages owed, wages
16 unpaid, business costs unreimbursed, and tip money stolen was a proximate cause of her termination.
17 Such retaliation was a proximate cause in Plaintiff's damages as stated below.

18 123. The above said acts of Defendants constitute violations of the Labor Code and the public
19 policy of the State of California embodied therein as set forth above.

20 124. At all times mentioned in this complaint, it was a fundamental policy of the State of
21 California that employers cannot retaliate against any employee in violation of the Labor Code.

22 125. The foregoing conduct of Defendants individually, and/or by and through its officers,
23 directors, and/or managing agents, was intended by Defendants to cause injury to Plaintiff or was
24 despicable conduct carried out by Defendants with a willful and conscious disregard of the rights of
25 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
26 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
27 punitive damages in an amount appropriate to punish or make an example of Defendants.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them, in an amount according to proof, as follows:

1. For money judgment representing compensatory damages including lost wages, earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts; for other special damages; and for general damages for mental pain and anguish and emotional distress and loss of earning capacity;

2. For prejudgment interest on each of the foregoing at the legal rate from the date the obligation became due through the date of judgment in this matter;

3. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$40,000.00;

4. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194, Industrial Welfare Commission Order No. 2-2001, and 8 Code of Regulations §11050, in the amount of no less than \$1,460.50;

5. For payment of meal period and rest period compensation pursuant to Labor Code §226.7, in the amount of approximately \$29,952.00;

6. For damages pursuant to Labor Code §226 in the amount of approximately \$4,000.00;

7. For unreimbursed business expenses of \$20,800.00 pursuant to Labor Code §2802;

8. For waiting time penalties pursuant to Labor Code §§201-2013, in the amount of approximately \$4,320.00;

9. For statutory penalties pursuant to Labor Code §1198.5 in the amount of approximately \$750.00;

10. For total damages and penalties under the PAGA at an estimated \$800,000.00 for all estimated similarly aggrieved employees;

11. For punitive damages, pursuant to Civil Code §3294 in amounts sufficient to punish Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

12. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA and/or any other basis;

1 13. For post-judgment interest; and

2 14. For any other relief that is just and proper.

3
4 DATED: August 17, 2020

THE DOMINGUEZ FIRM, LLP

5
6 By: 

Jace H. Kim, Esq.
Carlos A. Perez, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff
SARAH MELLAND

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10 **JURY TRIAL DEMANDED**

11 Plaintiff SARAH MELLAND demands trial of all issues by jury.

12
13 DATED: August 17, 2020

THE DOMINGUEZ FIRM, LLP

14
15 By: 

Jace H. Kim, Esq.
Carlos A. Perez, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff
SARAH MELLAND