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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – SOUTH JUDICIAL DISTRICT

JUDITH TORRES,

Plaintiff,

v.

NSI SERVICES, INC. and DOES 1
through 50, inclusive,

Defendants.

Case No.: **20LBCV00360**

COMPLAINT FOR DAMAGES

1. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Recovery of Unpaid Wages and Overtime;
2. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq for Failure to Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys General Act, Labor Code § 2802 for Failure to Reimburse for Necessary Expenditures; and
6. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq for Failure to Pay Wages Due Upon Termination of Employment.

1 Plaintiff JUDITH TORRES (“Plaintiff” or “Ms. Torres”) complains and alleges as follows:

2 **INTRODUCTION**

3 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
4 who were subjected to one or more of the violations alleged herein (“Aggrieved Employees”) by
5 Defendant NSI Services, Inc. (“Defendant”). The term “RELEVANT TIME PERIOD” or “TIME
6 PERIOD” is defined as one (1) year prior to the filing of the complaint. Plaintiff reserves the
7 right to amend this complaint to reflect a different “Time Period” as further discovery is
8 conducted.

9 2. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief
10 against Defendant for its: (1) failure to pay all wages due, including regular and overtime wages;
11 (2) failure to provide meal periods or premium compensation in lieu thereof; (3) failure to provide
12 rest periods or premium compensation in lieu thereof; (4) failure to provide accurate itemized
13 wage statements; (5) failure to reimburse for necessary business expenses; and (6) failure to pay
14 wages due upon termination of employment.

15 3. At all relevant times herein, Defendant has consistently maintained and enforced
16 the following unlawful policies and practices against Plaintiff:

- 17 (a) Willfully refusing to pay all hours worked, including both regular and overtime
18 wages;
19 (b) Willfully refusing to permit off-duty meal periods or providing compensation in
20 lieu thereof;
21 (c) Willfully refusing to permit rest periods or providing compensation in lieu
22 thereof;
23 (d) Willfully refusing to furnish accurate itemized wage statements upon payment of
24 wages; and
25 (e) Willingly refusing to reimburse necessary business expenses; and
26 (f) Willfully refusing to pay all wages due upon separation of employment;

27 **JURISDICTION AND VENUE**

28 4. This Court has subject matter jurisdiction over the causes of action alleged in this

1 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
2 excluded from exercising subject matter jurisdiction over said causes of action.

3 5. Venue is proper in the County of Los Angeles because Defendant, NSI SERVICES,
4 INC., transacts business in this county, the obligations and liability arise in this county, and work
5 performed by Plaintiff that forms the subject of this action occurred in this county.

6 6. The California Superior Court has jurisdiction in the matter, because of the
7 individual claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional
8 threshold for Federal Court and this action seeks recovery of civil penalties. Plaintiff is a resident
9 of and/or domiciled in the County of Los Angeles, State of California. Defendant is a corporation
10 doing business in the State of California

11 7. Further, there is no federal question at issue as the issues herein are based solely on
12 California statutes and law, including the Labor Code, Code of Civil Procedure, Business and
13 Professions Code, and California Rules of Court.

14 **THE PARTIES**

15 **Plaintiff**

16 8. Ms. Torres began her employment with Defendant in 2016, as a food service
17 worker, with duties including making coffee, placing food in carts for distribution, checking
18 patient diet cards, and serving patients. Ms. Torres was terminated by Defendant on or about June
19 5, 2019. Throughout the relevant time period, Plaintiff worked for Defendant within the County
20 of Los Angeles during her employment. Plaintiff was always paid an hourly wage, and was
21 deemed a non-exempt hourly employee by Defendant. Plaintiff is accordingly entitled to
22 compensation for all hours worked, overtime compensation, premium pay, and penalties from
23 Defendant.

24 **Defendant**

25 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a
26 California corporation which maintains its headquarters in Arroyo Grande, San Luis Obispo
27 County, California, and is and/or was the employer of Plaintiff and similarly situated employees
28 during the Relevant Time Period. Defendant provides support services including facility

1 management and food services for the healthcare industry throughout California, including Los
2 Angeles County, where Plaintiff was employed.

3 10. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
4 participation in the conduct herein alleged of Defendant sued herein as DOES 1 through 50,
5 inclusive, but on information and belief alleges that said Defendant is legally responsible for the
6 violations alleged herein. Plaintiff will amend this complaint to allege the true names and
7 capacities of the DOE Defendant when ascertained.

8 11. Plaintiff is informed and believes and thereon alleges, that each Defendant acted
9 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
10 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
11 are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint
12 venture and/or single business enterprise, integrated enterprise and/or are agents of one another,
13 are alter egos, joint employers and conspire with one another to increase profits by engaging in
14 the conduct described in this complaint.

15 12. Plaintiff is informed and believes and based thereon alleges, that each Defendant
16 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
17 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
18 below was acting, at least in part, within the course and scope of that authority as such agent,
19 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
20 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
21 are legally attributable to the other Defendants.

22 **PAGA ADMINISTRATIVE PREREQUISITE**

23 13. This complaint, Plaintiff brings this case as a representative action seeking
24 penalties for the State of California in a representative capacity, as provided by the Private
25 Attorney General Act, Labor Code section 2698 et seq. ("PAGA"), as an aggrieved employee was
26 employed by Defendant and did not receive all wages due, was not paid regular wage, was not
27 paid overtime, was not provided accurate wage statements, was not reimbursed for necessary
28 expenditures, and was not able to take lawful meal and rest breaks or receive premium

1 compensation in lieu thereof.

2 14. Prior to filing this complaint on June 5, 2020, Plaintiff gave written notice by
3 certified electronic mail to the Labor and Workforce Development Agency ("LWDA") and to
4 Defendant of the specified provisions alleged to have been violated, including the facts and
5 theories to support the alleged violation as required by Labor Code section 2699.3. A true and
6 correct copy of Plaintiff's original letter sent to the LWDA is attached hereto as Exhibit A.

7 15. More than 65 days have passed since Plaintiff submitted her June 5, 2020, notice
8 to the LWDA and Defendant of the specific alleged Labor Code violations and the LWDA have
9 not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further
10 has received no notice of Defendant's intent to cure any of the alleged violations. Therefore,
11 Plaintiff has satisfied the administrative prerequisites for filing this action with regard to his June
12 5, 2020, PAGA notice.

13 **FACTUAL ALLEGATIONS**

14 16. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its
15 employees the benefits due under California's wage and hour laws for work performed in
16 California. Defendant wrongfully refused to pay Plaintiff and the Aggrieved Employees regular
17 wages, overtime compensation, meal and rest break premiums, and other statutory benefits
18 mandated by California.

19 17. Throughout the Relevant Time Period, Defendant employed Plaintiff and the
20 Aggrieved Employees in non-exempt positions throughout its California locations. Plaintiff and
21 Aggrieved Employees were employed by Defendant in positions that are paid at an hourly rate
22 less than twice that of the state minimum wage and remain under the direct control and
23 supervision of Defendant. Accordingly, these positions remain non-exempt from California's
24 wage and hour laws yet Defendant fails to pay overtime, provide meal and rest breaks and
25 otherwise pay all wages due to these non-exempt employees as required by law.

26 18. Plaintiff is informed and believes and based thereon alleges, that Defendant's
27 policies and practices described herein are common across each of Defendant's locations within
28 the State of California.

1 19. Plaintiff is informed and believes and based thereon alleges, that at all times herein
2 mentioned, Defendant was advised by skilled lawyers, employees and other professionals who
3 were knowledgeable about California's wage and hour laws, employment and personnel
4 practices, and the requirements of California law.

5 20. Plaintiff is informed and believes and based thereon alleges, that Defendant knew
6 or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages for
7 all hours worked, including minimum, regular, and overtime wages, and that they were not
8 receiving all wages earned for work that was required to be performed. In violation of the Labor
9 Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Aggrieved Employees earned
10 wages by failing compensate Plaintiff and Aggrieved Employees the mandatory minimum wage.
11 Defendant also failed to pay Plaintiff and Aggrieved Employees at the requisite over and double
12 time rate for all hours worked in excess of eight (8) hours and/or twelve (12) hours per workday.
13 Specifically, Plaintiff and Aggrieved Employees were obligated by Defendant to work off-the-
14 clock after being clocked out for their meal period or less than the mandatory minimum wage
15 when they were obligated to complete work such as exchanging water dispensers, removing
16 empty water bottles, routing their deliveries, amongst other responsibilities.

17 21. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
18 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all required
19 meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees'
20 regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In
21 violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy
22 of not providing proper meal periods. Plaintiff and Aggrieved Employees missed their meal
23 periods, took them late, or had them interrupted by Defendant who required Aggrieved
24 Employees to attend to patients, or perform other work-related tasks. Defendant also had a pattern,
25 practice, and policy of not providing second meal periods. As a result of Defendant's daily work
26 requirements, demands, and unlawful policies, Plaintiff and Aggrieved Employees did not receive
27 all meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
28 Employees' regular rate of pay when they did not receive a timely, uninterrupted 30- minute off-

1 duty meal period.

2 22. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
3 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all paid
4 rest periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees'
5 regular rate of pay when a rest period was missed, interrupted, or shortened. In violation of the
6 Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy of not providing
7 paid rest periods. Specifically, Defendant failed to implement a rest break policy and Defendant
8 did not inform Plaintiff and Aggrieved Employees when they were entitled took to breaks and or
9 prioritized work responsibilities over providing Plaintiff and Aggrieved Employees their
10 mandatory rest breaks. As a result of Defendant's daily work requirements, demands, and failure
11 to implement a rest break policy, Plaintiff and Aggrieved Employees did not receive all paid rest
12 periods or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved Employees'
13 regular rate of pay when a paid rest period was missed, truncated, or interrupted.

14 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
15 or should have known that Plaintiff and Aggrieved Employees were entitled to receive itemized
16 wage statements that accurately showed their actual hours worked, total hours worked, number
17 of hours worked at each hourly rate, gross and net wages earned, and premium wages earned per
18 pay period in accordance with California law. In violation of the Labor Code, Plaintiff and
19 Aggrieved Employees were not provided with accurate itemized wage statements showing their
20 rate of pay, the actual hours worked, correct premium wages earned per pay period, as well as the
21 total hours work per pay period.

22 24. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
23 or should have known that Plaintiff and Aggrieved Employees were entitled to reimbursement
24 for necessary business expenditures. Defendant required Plaintiff and Aggrieved Employees to
25 wear logo-bearing uniforms which become heavily soiled due to the work environment. In
26 violation of the Labor Code, Defendant required Plaintiff and Aggrieved Employees to clean and
27 maintain their uniforms at their own expense without reimbursement.

28 25. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew

1 or should have known that Plaintiff and certain Aggrieved Employees were entitled to timely
2 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
3 and certain Aggrieved Employees did not receive payment of all wages due, within permissible
4 time periods, upon separation of employment.

5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF PAGA FOR RECOVERY OF UNPAID MINIMUM WAGE AND**
7 **OVERTIME**

8 **(Plaintiff Against All Defendants)**

9 26. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
10 complaint as if fully set forth herein.

11 27. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
12 and forty (40) hours per week. Defendant failed to pay Plaintiff and Aggrieved Employees
13 minimum wage for all hours worked and overtime premium for hours worked in excess of over
14 eight (8) hours per day and/or forty (40) hours per week for work performed for the Defendant.
15 Defendant failed to pay Plaintiff and Aggrieved Employees overtime premium for hours worked
16 in excess of eight (8) hours per day and forty (40) hours per week for work performed for
17 Defendant. Defendant failed to schedule Plaintiff and Aggrieved Employees in such a manner
18 that allowed Plaintiff and Aggrieved Employees to be relieved of their shift immediately, thereby
19 causing Plaintiff and Aggrieved Employees to work in excess of eight (8) hours per day and/or
20 forty (40) hours per week. As such, Plaintiff and Aggrieved Employees seek overtime in an
21 amount according to proof, which they earned and accrued one (1) year prior to filing this
22 complaint, according to proof, as part of the civil penalty pursuant to Labor Code section 558,
23 subdivision (a).

24 28. Defendant willfully violated the Labor Code by failing to pay Plaintiff and
25 Aggrieved Employees all wages, including both minimum wage and overtime. Plaintiff and
26 Aggrieved Employees were denied proper wages as a result of Defendant's policy of having
27 Plaintiff and Aggrieved Employees work before clocking in and/or after clocking out and failing
28 to compensate Plaintiff and Aggrieved Employees when they worked through meal breaks off-

1 the-clock. As such, Defendant failed to compensate Plaintiff and Aggrieved Employees for all
2 hours worked at the proper rate of pay pursuant to Labor Code section 510.

3 29. Since the LWDA has not indicated that it will be investigating more than 65 days
4 since Plaintiff provided notice, and because Defendant took no corrective action to remedy the
5 allegations set forth above, Plaintiff, as a representative of the people of the State of California,
6 will seek any and all penalties otherwise capable of being collected by the Labor Commission,
7 the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each
8 of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
9 subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

10 30. Plaintiff is informed and believes that Defendant has violated, and continues to
11 violate, provisions of the Labor Code and applicable Wage Orders related to the payment of
12 minimum wages and overtime.

13 31. Plaintiff, as a personal representative of the general public, will and does seek to
14 recover any and all penalties for each and every violation shown to exist or to have occurred
15 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
16 otherwise only available to public agency enforcement actions. Funds recovered will be
17 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
18 reimbursed to the LWDA.

19 32. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
20 costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
21 interest.

22 **SECOND CAUSE OF ACTION**

23 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR**
24 **PREMIUM COMPENSATION IN LIEU THEREOF**

25 **(Lab. Code, §§ 226.7 and 512)**

26 **(Plaintiff against All Defendants)**

27 33. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
28 fully set forth herein.

1 34. Labor Code sections 226.7 and 512 and IWC Wage Order 17-2001, Sect. 9
2 provides that no employer shall employ any person for a work period of more than five (5) hours
3 without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes
4 or employ any person for a work period of more than ten (10) hours without a second meal period
5 of not less than thirty (30) minutes.

6 35. Labor Code section 226.7 provides that if an employer fails to provide an
7 employee a meal period in accordance with this section, the employer shall pay the employee one
8 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
9 period is not provided in accordance with this section. Plaintiff alleges Defendant failed to provide
10 legally compliant meal periods in addition to impeding, discouraging, dissuading and/or not
11 relieving employees from all work duties during meal periods thereby preventing employees from
12 taking legally compliant meal periods.

13 36. Industrial Welfare Commission (IWC) Wage Order No. 9-2001 (Wage Order 9)
14 section 11(A) states, "Unless the employee is relieved of all duty during a 30-minute meal period,
15 the meal period shall be considered an "on duty" meal period and counted as time worked. An
16 "on duty" meal period shall be permitted only when the nature of the work prevents an employee
17 from being relieved of all duty and when by written agreement between the parties an on-the-job
18 paid meal period is agreed to. The written agreement shall state that the employee may, in writing,
19 revoke the agreement at any time."

20 37. The burden to prove that a meal or rest period violation has occurred normally
21 rests on the Plaintiff. However, under *Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th
22 1138, 1159-60, where an employer fails to keep accurate records of meal and rest periods, a
23 presumption of meal and rest period violations is created, shifting the burden to the employer to
24 prove that meal and rest period violations did not occur.

25 38. Defendant failed to schedule non-exempt employees adequately to reasonably
26 ensure Plaintiff and Aggrieved Employees could take and/or receive such meal periods within the
27 statutory timeframe. Defendant denied Plaintiff and Aggrieved Employees duty-free meal
28 periods, as a result, Plaintiff and Aggrieved Employees were often forced to forego meal periods

1 and/or work during their meal periods, attending to patients or completing other work-related
2 tasks. In so doing, Defendant has intentionally and improperly denied meal periods to Plaintiff
3 and Aggrieved Employees in violation of Labor Code sections 226.7 and 512 and other
4 regulations and statutes.

5 39. Defendant failed to keep accurate records of the meal periods taken by Plaintiff
6 and Aggrieved Employees.

7 40. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
8 than five (5) hours in a workday.

9 41. At varying times relevant hereto, Plaintiff and Aggrieved Employees at times have
10 worked more than ten (10) hours in a workday.

11 42. At all times relevant hereto, Defendant, failed offer or to schedule non-exempt
12 positions in a manner so as to reasonably provide meal and/or work free meal period as required
13 by Labor Code sections 226.7 and 512.

14 43. Defendant's failure to schedule Plaintiff and Aggrieved Employees in such a way
15 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,
16 and/or to provide on-duty meal periods in accordance with the applicable Wage Order, has caused
17 Plaintiff and Aggrieved Employees to suffer, and continue to suffer, injury which will be
18 ascertained according to proof at trial.

19 44. Further, Defendant's failure to maintain accurate records of the meal periods taken
20 by Plaintiff and Aggrieved Employees creates a presumption of the violations having occurred
21 and shifts the burden to Defendant to prove they did not occur.

22 45. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
23 recovery of meal period compensation pursuant to Labor Code sections 226.7 and 558,
24 subdivision (a), which they are owed beginning one (1) year prior to filing this complaint as well
25 as the assessment of any civil penalties against Defendants, and each of them, in a sum as provided
26 by the Labor Code and/or other statutes.

27 46. Since the LWDA has not indicated that it will be investigating and 65 days have
28 passed since Plaintiff mailed his letter, and because Defendant took no corrective action to remedy

1 the allegations set forth above, Plaintiff, as a representative of the people of the State of California,
2 will seek any and all penalties otherwise capable of being collected by the Labor Commission,
3 the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each
4 of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
5 subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

6 47. Plaintiff is informed and believes that Defendant has violated and continues to
7 violate provisions of the Labor Code and applicable Wage orders related to the payment of
8 minimum wages, including overtime.

9 48. Plaintiff, as a personal representative of the general public, will and does seek to
10 recover any and all penalties for each and every violation shown to exist or to have occurred
11 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
12 otherwise only available to public agency enforcement actions. Funds recovered will be
13 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
14 reimbursed to the LWDA.

15 49. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
16 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

17 **THIRD CAUSE OF ACTION**

18 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR**
19 **PREMIUM COMPENSATION IN LIEU THEREOF**

20 **(Lab. Code, §§ 226.7 and 512)**

21 **(Plaintiff against All Defendants)**

22 50. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
23 preceding paragraphs of this complaint as if fully set forth herein.

24 51. Labor Code section 226.7 provides that employers authorize and permit all
25 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

26 52. Labor Code section 226.7, subdivision (b), provides that if an employer fails to
27 provide an employee rest periods in accordance with this section, the employer shall pay the
28 employee one (1) hour of pay at the employee's regular rate of compensation for each workday

1 that the rest period is not provided.

2 53. Defendant, and each of them, failed and or refused to implement a relief system
3 by which Plaintiff and Aggrieved Employees could receive rest periods and/or work free rest
4 periods. Defendant denied Plaintiff and Aggrieved Employees duty free rest periods by
5 interrupting Plaintiff and Aggrieved Employees' rest periods. By and through their actions,
6 Defendant intentionally and improperly denied duty free rest periods to the Plaintiff and
7 Aggrieved Employees in violation of Labor Code sections 226.7 and 512.

8 54. Furthermore, Defendant failed to provide Plaintiff and Aggrieved Employees with
9 duty free rest periods or failed to provide Plaintiff and Aggrieved Employees with rest periods all
10 together in violation of Labor Code section 226.7 and 512.

11 55. Defendant failed to keep accurate records of the rest periods taken by Plaintiff and
12 Aggrieved Employees.

13 56. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked
14 more than four (4) hours in a workday.

15 57. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
16 and Aggrieved Employees as a result of their routes scheduled by Defendant, Plaintiff and
17 Aggrieved Employees have suffered, and will continue to suffer, damages, in amounts which are
18 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
19 ascertained according to proof at trial.

20 58. Plaintiff, by virtue of Plaintiff's employment with Defendant, Defendant's failure
21 to provide Plaintiff and Aggrieved Employees with rest breaks, and Defendant's policy of
22 requiring employees to work through their rest periods without receiving compensation in lieu
23 thereof, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has
24 satisfied all prerequisites to serve as a representative of the general public to enforce California's
25 labor laws, and the penalty provisions identified in Labor Code section 2699.5.

26 59. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
27 recovery of meal period compensation pursuant to Labor Code sections 226.7 and 558,
28 subdivision (a), which they are owed beginning one (1) year prior to filing this complaint as well

1 as the assessment of any civil penalties against Defendants, and each of them, in a sum as provided
2 by the Labor Code and/or other statutes. Plaintiff, as a representative of the people of the State of
3 California, will seek any and all penalties otherwise capable of being collected by the Labor
4 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in
5 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
6 alleged violation of the following provisions: 226.7 and 512.

7 60. Plaintiff, as a personal representative of the general public, will and does seek to
8 recover any and all penalties for each and every violation shown to exist or to have occurred
9 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
10 otherwise only available to public agency enforcement actions. Funds recovered will be
11 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
12 reimbursed to the LWDA.

13 61. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
14 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

15 **FOURTH CAUSE OF ACTION**

16 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE ACCURATE ITEMIZED**

17 **WAGE STATEMENTS**

18 **(Lab. Code, §§ 1174, 226, subd. (A), (E))**

19 **(Plaintiff against All Defendants)**

20 62. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
21 preceding paragraphs of this complaint as if fully set forth herein.

22 63. Labor Code section 226, subdivision (a), states in pertinent part that, "every
23 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
24 employees, either as a detachable part of the check, draft, or voucher paying the employee's
25 wages, or separately when wages are paid by personal check or cash, an accurate itemized
26 statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee . .
27 . . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (6) the
28 inclusive dates of the period for which the employee is paid; (7) the name of the employee and

1 only the last four digits of his or her social security number or an employee identification number
2 other than a social security number; (8) the name and address of the legal entity that is the
3 employer . . . ; and (9) all applicable hourly rates in effect during the pay period and corresponding
4 number of hours worked at each hourly rate by the employee...” (Lab. Code, § 226.)

5 64. Defendant knowingly and intentionally failed to provide timely and accurate
6 itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code
7 section 226, subdivision (a), by failing to record the accurate number of hours worked, the
8 accurate rate of pay for each hour worked, the accurate amount of premiums wages earned, the
9 accurate net pay, and the accurate gross pay. Such failure caused injury to Plaintiff and Aggrieved
10 Employees.

11 65. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code
12 section 226, subdivision (a), and the greater of all actual damages or fifty dollars (\$50.00) for the
13 initial pay period in which a violation occurs and one-hundred (\$100.00) per employee for each
14 violation in each subsequent pay period, pursuant to Labor Code section 226, subdivision (e).

15 66. Plaintiff, as a personal representative of the general public, will and does seek to
16 recover any and all penalties for each and every violation shown to exist or to have occurred
17 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
18 otherwise only available to public agency enforcement actions. Funds recovered will be
19 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
20 reimbursed to the LWDA.

21 67. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees and
22 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

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FIFTH CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO REIMBURSE

NECESSARY BUSINESS EXPENDITURES

(Lab. Code § 2802)

(Plaintiff against All Defendants)

68. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs.

69. Labor Code section 2802 states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...."

70. Plaintiff and similarly-aggrieved employees were not reimbursed by Defendant for necessary expenditures as a direct consequence of the discharge of their duties.

71. Defendant knowingly, willingly, and intentionally attempted to offset the cost of doing business on Plaintiff and similarly-aggrieved employees.

72. Defendant had a corporate practice and policy of requiring Plaintiff and similarly-aggrieved employees to shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiff and Aggrieved Employees for necessary business expenditures, specifically by requiring Plaintiff and Aggrieved Employees to wear logo-bearing uniforms, and requiring them to pay the cost of washing and maintaining the uniforms that became heavily soiled at the workplace.

73. Accordingly, Plaintiff and similarly-aggrieved employees are entitled to civil penalties in accordance with PAGA, which shall also include all reasonable costs, including, but not limited to, attorneys' fees and interest.

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SIXTH CAUSE OF ACTION
VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON
TERMINATION OF EMPLOYMENT
(Lab. Code, §§ 201, 203)
(Plaintiff against All Defendants)

74. Plaintiff and Aggrieved Employees reallege and incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

75. Plaintiff and certain members of the Aggrieved Employees who ended their employment with Defendant during the Relevant Time Period, were entitled to be promptly paid both minimum wage and lawful overtime compensation and other premiums, as required by Labor Code sections 201 and 203.

76. Defendant refused and/or failed to promptly compensate Plaintiff and Aggrieved Employees wages owed as a result of Defendant's failure to provide meal and/or rest periods as well as pay both minimum and overtime compensation owed for work performed for Defendant.

77. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee with standing to bring an action under the PAGA and has suffered injury as to one or more violations committed by Defendant. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

78. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 201-203, 226, 226.7, 510, 512, 1174, and 1194.

79. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be

1 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
2 reimbursed to the LWDA.

3 80. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
4 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

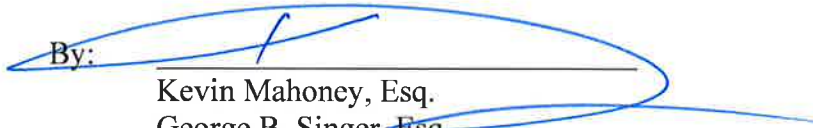
5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff and Aggrieved Employees pray for judgment as follows:

- 7 1. For civil penalties for each violation for Plaintiff and each Aggrieved
8 Employee as provided by law, including, but not limited to, those civil
9 penalties provided by statute, provided by PAGA and for unpaid wages
10 pursuant to Labor Code section 558;
- 11 2. For costs of suit and expenses incurred herein pursuant to Labor Code section
12 2699, subdivision (g), and any other statutory basis or pursuant to the
13 California Rules of Court;
- 14 3. For reasonable attorneys' fees pursuant to Labor Code section 2699,
15 subdivision (g), and any other statutory basis; and
- 16 4. For all such other and further relief as the Court may deem just and proper.
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18 Dated: August 10, 2020

MAHONEY LAW GROUP, APC

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20 By: 

Kevin Mahoney, Esq.

George B. Singer, Esq.

Attorneys for Plaintiff JUDITH TORRES
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