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LISETTE ELIZALDE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

LISETTE ELIZALDE, an Individual;

Plaintiff,

v.

EDEN HOUSING INC., a California
Corporation; and DOES 1 through 50,
Inclusive,

Defendants.

Case No. RG20055706

Assigned for all purposes to: Hon Richard
Seabolt

Dept. 521

FIRST AMENDED COMPLAINT FOR

- (1) RETALIATION**
- (2) WRONGFUL TERMINATION**
- (3) VIOLATION OF CALIFORNIA
LABOR CODE §§ 510 AND 1198
(UNPAID OVERTIME)**
- (4) VIOLATION OF CALIFORNIA
LABOR CODE §§ 1194, 1197 AND
1197.1 (UNPAID MINIMUM
WAGES)**
- (5) VIOLATION OF CALIFORNIA
LABOR CODE § 226.7 (UNPAID
REST PERIOD PREMIUMS)**
- (6) VIOLATION OF CALIFORNIA
LABOR CODE §§ 226.7 AND 512(a)
(UNPAID MEAL PERIOD
PREMIUMS)**
- (7) VIOLATION OF CALIFORNIA
LABOR CODE § 226(a) (FAILURE
TO PROVIDE ACCURATE WAGE
STATEMENTS)**
- (8) VIOLATION OF CALIFORNIA
LABOR CODE §§ 201, 202 AND 203
(FINAL WAGES NOT TIMELY
PAID)**

1 (9) VIOLATION OF CALIFORNIA
2 LABOR CODE §§ 2800 AND 2802
(FAILURE TO REIMBURSE
3 EXPENSES)

4 (10) VIOLATION OF CALIFORNIA
5 BUSINESS AND PROFESSIONS
6 CODE § 17200, ET SEQ.

7 (11) PRIVATE ATTORNEY
8 GENERAL ACT, LABOR CODE
9 §2698 ET SEQ

10 Complaint Filed: February 24, 2020
11 Trial Date: None Set

12 Plaintiff LISETTE ELIZALDE (“Plaintiff”), as an individual, alleges as follows:

13 **THE PARTIES, JURISDICTION AND VENUE**

14 1. Plaintiff is an individual who, at all times relevant to this action, resided in the County
15 of Alameda, State of California.

16 2. Plaintiff is informed, believes and thereupon alleges that Defendant EDEN
17 HOUSING, INC., (“EDEN”) is a California Corporation, lawfully doing substantial business in
18 County of Alameda, State of California, and was Plaintiff’s employer at all times relevant herein.
19 Eden has a principal office located at 22645 Grand Street, Hayward, California, 94541.

20 3. Defendant Eden was at all times herein mentioned, (a) conducting business in the
21 County of Alameda, State of California; (b) the employer of Plaintiff consistent with California
22 Labor Code and Industrial Welfare Commission Wage Orders; and (c) Plaintiff’s employer as
23 defined under Government Code §12926(c).

24 4. The acts alleged herein arose in Alameda County, within the State of California.

25 5. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and
26 therefore sues these defendants by such fictitious names. The Doe defendants may be individuals,
27 partnerships or corporations. Plaintiff is informed and believes, and thereupon alleges, that at all
28 times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant,
employee, co-venturer, and/or co-conspirator of each of the other defendants and was at all times
mentioned, acting within the scope, purpose, consent, knowledge, ratification and authorization of

1 such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to
2 allege their true names and capacities when ascertained. Plaintiff is informed and believes and
3 thereon alleges that each of the fictitiously named Doe defendants are responsible in some manner
4 for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately
5 caused by their conduct. Doe defendants 1 through 50, and Eden are herein collectively referred to
6 as "Defendants."

7 **GENERAL ALLEGATIONS**

8 6. By this reference, Plaintiff alleges and incorporates herein, each and every allegation
9 set forth in all previous paragraphs of the Complaint.

10 7. On approximately December 10, 2018, Defendants hired Plaintiff for the position of
11 "Property Supervisor," within one day of completing a series of phone and in-person interviews.
12 Plaintiff's primary duties included overseeing twelve of Defendants' thirteen properties located
13 throughout Contra Costa County, in California. Notably, one of the properties that Defendants
14 assigned to Plaintiff had itself been acknowledged by Defendants as being the most difficult and
15 work-intensive. Clearly, given how quickly Defendants hired Plaintiff and the breadth of
16 responsibility they assigned to her, Defendants trusted Plaintiff and valued her skills. Moreover,
17 Defendants entrusted Plaintiff with conducting interviews, and often let her participate in hiring and
18 firing decisions.

19 8. Throughout her tenure, Plaintiff carried out her duties with outstanding diligence and
20 dedication. She earned repeated praise, including commendation as a "good worker" from upper
21 management and directors less than two weeks before her wrongful discharge. During her
22 employment, Plaintiff did not face a single written disciplinary action, verbal warning or
23 investigation of any type.

24 9. Starting in July 2019, on multiple occasions, Defendants nudged Plaintiff to falsify
25 incident and insurance reports related to one of its properties, "Emerson Arms." Plaintiff repeatedly
26 tried to submit accurate reports about "Emerson Arms." Plaintiff's accurate and honest reports
27 regarding the property would have resulted in denial of insurance coverage for Defendants, and also
28 compromised Defendants' governmental subsidies. Additionally, Plaintiff's reports about "Emerson

Arms” confirmed Defendants’ negligent conduct and unlawful housing conditions. Consequently, Defendants wanted Plaintiff to change her reports and falsify facts. Plaintiff outrightly refused to fabricate documents or engage in Defendants’ attempts to commit insurance fraud or cover up their illegal conduct.

10. Throughout July and August 2019, on numerous occasions, Plaintiff expressed her unwillingness to participate in Defendants’ illegal conduct.

11. On or about August 8, 2019, Plaintiff voiced her refusal during a meeting that included many of her superiors and upper management individuals. Additionally, during this August 8th meeting, Plaintiff explicitly told Defendants that their handling of the “Emerson Arms” property amounted to “negligence.”

12. The next day, on approximately August 9, 2019, Plaintiff repeated her concerns regarding “Emerson Arms” to one of her directors and asked the director how Defendants could let a property fall into such egregious degradation and disrepair. Conspicuously, a mere seven days later, on approximately August 16, 2019, Defendants terminated Plaintiff’s employment. Plaintiff was fired the morning of August 16th, which indicates that most likely the decision to discharge her had been made on or before August 15, 2019, less than one week after Plaintiff repeated her concerns about Defendants’ illegal conduct.

13. Conspicuously, in September 2019, Defendants were due for an inspection by the Federal Urban and Housing Development Department (“HUD”), approximately one month before Plaintiff’s unlawful termination. The inspection was going to focus on “Emerson Arms,” the very property about which Plaintiff had voiced concerns. Clearly, Defendants discharged Plaintiff because they believed she might disclose Defendants’ violations to the HUD inspectors, who were agents that had the authority to investigate, discover and correct Defendants’ failures to comply with applicable housing codes.

14. Further, Defendants misclassified Plaintiff as an exempt employee despite the fact that she was not primarily engaged in an exempt position, and in part, due to the nature of her responsibilities, she was required to seek supervisor approval for nearly all decisions rather than regularly exercise discretion and independent judgement.

1 15. Plaintiff was required, as part of her job responsibilities, to drive approximately 100
2 miles per day, visiting facilities in approximately thirteen (13) locations. Plaintiff was not
3 accurately reimbursed for the use of her personal vehicle.

4 16. Plaintiff was provided with a company cell phone, however Defendants' would
5 frequently call or send text messages to Plaintiff on her personal cell, especially for calls after
6 regular business hours or if she did not answer her company cell phone.

7 17. Plaintiff and similarly aggrieved current and former non-exempt employees
8 ("Aggrieved Employees") incurred business expenses in the discharge of her duties for Defendants
9 and in obedience to Defendants' instructions, which included the use of her personal vehicle and
10 personal cell phone for which she and Aggrieved Employees did not receive the appropriate
11 reimbursement.

12 18. Plaintiff and Aggrieved Employees were required to regularly work more than five
13 (5) hours without being provided a meal period and to work more than ten (10) hours without being
14 provided with a second meal period. In fact, Plaintiff was reprimanded for taking or attempting to
15 take an uninterrupted 30-minute meal period. Further, Defendants forced Plaintiff and Aggrieved
16 employees to take their lunch after six (6) hours of working.

17 19. Plaintiff and Aggrieved Employees never waived their rights to a meal period when
18 they worked six (6) or more hours.

19 20. Plaintiff and Aggrieved Employees never received a second lunch period.

20 21. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour
21 of pay at their regular rate of pay when a meal period was missed or interrupted.

22 22. Because of Defendants' policies and practices, Plaintiff was never able to take an
23 uninterrupted ten (10) minute rest break and was reprimanded every time he asked for one or
24 attempted to take one.

25 23. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour
26 of pay at their regular rate of pay when a rest break was missed or interrupted.

24. Plaintiff requested that her supervisors provide her with a ten (10) minute uninterrupted rest break and/or a thirty (30) minute uninterrupted meal period, however such requests were denied.

25. Defendants employed a time rounding policy that was not neutral and designed to consistently round time in Defendants' favor, ensuring that Plaintiff, and the Aggrieved Employees were not paid for all time worked.

26. Furthermore, Defendants often requested Plaintiff and Aggrieved Employees to work prior to clocking-in or to keep working after they clocked-out for the day to finish their assigned work. Defendants failed to pay Plaintiff and Aggrieved Employees for time worked off the clock prior to and at the end of their respective shifts.

27. Plaintiff and Aggrieved Employees regularly worked more than eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

28. Plaintiff and Aggrieved Employees did not receive payment of all wages, including overtime and minimum wages and meal and rest period premiums, within any time permissible under California Labor Code section 204.

29. Plaintiff and Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance with California law, but, in fact, they did not receive complete and accurate wage statements from Defendants. The deficiencies included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and Aggrieved Employees and the failure to include premium pay for missed and/or interrupted rest and meal breaks.

30. In view of the foregoing, Plaintiff has suffered and continues to suffer, severe emotional distress, including but not limited to emotional distress, anxiety and mental suffering.

31. On or about July 6, 2020, Plaintiff notified Defendants via certified mail and filed an online PAGA claim notice with the California Labor and Workforce Development Agency (“LWDA”) identifying Defendants’ violations of the California Labor Code identified in this Complaint and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code section 2698 et seq.

FIRST CAUSE OF ACTION

1 (Retaliation)

2 (Against All Defendants)

3 32. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
4 forth above.

5 33. Defendants, by and through their managing agents and supervisors, retaliated against
6 Plaintiff for engaging in protected activity including complaining of Defendants' insurance fraud
7 and negligent housing management practices.

8 34. Such conduct also violates Labor Code section 1102.5(b) which provides that "[a]n
9 employer, or any person acting on behalf of the employer, shall not retaliate against an employee
10 for disclosing information, or because the employer believes that the employee disclosed or may
11 disclose information... to a person with authority over the employee or another employee who has
12 the authority to investigate, discover, or correct the violation or noncompliance...if the employee
13 has reasonable cause to believe that the information discloses a violation of state or federal statute,
14 or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
15 whether disclosing the information is part of the employee's job duties."

16 35. During her employment, Plaintiff complained about Defendants' insurance fraud and
17 negligent housing management practices. Furthermore, Plaintiff refused to participate in
18 Defendants' insurance fraud attempts. Plaintiff's complaints are protected from retaliation by
19 statute, including, California's Labor Code.

20 36. In violation of her statutory rights, and, in part, on the basis of Plaintiff's
21 aforementioned legally protected opposition and complaints, Defendants retaliated against Plaintiff
22 by wrongly terminating Plaintiff's employment.

23 37. Plaintiff alleges that Defendants were motivated to retaliate against Plaintiff, in part,
24 for her protected complaints. Plaintiff's refusal to participate in Defendants' insurance fraud
25 attempts, and its negligent housing management practices, was a contributing factor in Defendants'
26 decision to terminate Plaintiff's employment.

27 38. By the aforesaid acts and omissions of Defendants Plaintiff has been directly and
28 legally caused to suffer actual damages including, but not limited to, substantial losses in earnings,

1 other employment benefits, and future earning capacity, and other pecuniary loss not presently
2 ascertained, in an amount according to proof at the time of trial.

3 39. As a further direct and legal result of the acts and conduct of Defendants, Plaintiff has
4 been caused to and did suffer emotional and mental distress, anguish, humiliation, embarrassment,
5 fright, depression, lowered self-esteem, mental and physical pain, discomfort and anxiety, all to her
6 damage in an amount according to proof at the time of trial. Plaintiff does not know at this time the
7 exact duration or permanence of said injuries.

8 40. Plaintiff is informed and believes and thereon alleges that Defendants by engaging in
9 the aforementioned acts and/or in authorizing and/or ratifying such acts, engaged in willful,
10 malicious, intentional, oppressive, fraudulent and despicable conduct.

11 41. Defendants also acted in willful and conscious disregard of the rights, welfare and
12 safety of Plaintiff thereby justifying the award of punitive and exemplary damages in an amount
13 according to proof at the time of trial.

14 42. Plaintiff is also entitled to recover reasonable attorneys' fees and costs.

15 **SECOND CAUSE OF ACTION**

16 **(Wrongful Termination)**

17 **(Against All Defendants)**

18 43. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
19 forth above.

20 44. Defendants terminated Plaintiff's employment in retaliation for complaints and
21 refusals to engage in unlawful conduct, as discussed above, in violation of California Labor Code
22 sections 1102.5 which is in violation of fundamental, substantial, and well-grounded public policies.

23 45. The facts set forth herein above establish that Defendants are guilty of malice and
24 oppression, warranting an assessment of exemplary damages in an amount appropriate to punish
25 said Defendants and to deter others from engaging in similar misconduct.

26 46. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has
27 sustained and continues to sustain severe emotional pain and suffering, including but not limited to
28

1 anguish, humiliation, anger, tension, anxiety, depression, and lowered self-esteem, according to
2 proof at trial.

3 47. As a further direct and proximate result of the unlawful conduct, Plaintiff has suffered
4 and continues to suffer loss of income, loss of earning capacity, loss of job opportunity, and other
5 economic damages, according to proof at trial.

6 **THIRD CAUSE OF ACTION**

7 **(Violation of California Labor Code §§ 510 and 1198)**

8 **(Against All Defendants)**

9 48. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
10 forth above.

11 49. California Labor Code section 1198 makes it illegal to employ an employee under
12 conditions of labor that are prohibited by the applicable wage order. California Labor Code section
13 1198 requires that "...the standard conditions of labor fixed by the commission shall be the
14 ...standard conditions of labor for employees. The employment of any employee ...under conditions
15 of labor prohibited by the order is unlawful."

16 50. California Labor Code section 1198 and the applicable Industrial Welfare
17 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
18 compensating them at a rate of pay either time and one-half or two-times that person's regular rate
19 of pay, depending on the number of hours worked by the person on a daily or weekly basis.

20 51. Specifically, the applicable IWC Wage Order provides that Defendants were required
21 to pay Plaintiff, when working more than eight (8) hours in a day or more than forty (40) hours in a
22 workweek, at the rate of time-and one-half for all hours worked in excess of eight (8) hours in a day
23 or more than forty (40) hours in a workweek.

24 52. The applicable IWC Wage Order further provides that Defendants were required to
25 pay Plaintiff, when working more than twelve (12) hours in a day, overtime compensation at a rate
26 of two (2) times their regular rate of pay.

27 53. California Labor Code section 510 codifies the right to overtime compensation at one-
28 and one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or

forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day.

54. During the relevant time period, Plaintiff 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. Although Plaintiff regularly worked off-the-clock that should have been compensated at an overtime rate.

55. Moreover, Defendants failed to pay the correct overtime rate. Defendants' failure to pay Plaintiff this overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

56. Pursuant to California Labor Code section 1194, Plaintiff is entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against All Defendants)

57. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

58. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

59. As set forth above, Defendants regularly required Plaintiff to work off-the-clock during meal periods and before and after her scheduled shifts. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not even pay minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1194, 1197 and 1197.1.

60. Defendants' failure to pay Plaintiff the minimum wage as required violates California Labor Code sections 1194, 1197 and 1197.1. Pursuant to those sections, Plaintiff is entitled to

1 recover the unpaid balance of her minimum wage compensation as well as interest, costs, and
2 attorney's fees.

3 61. Pursuant to California Labor Code section 1194.2, Plaintiff is entitled to recover
4 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

5 **FIFTH CAUSE OF ACTION**

6 **(Violation of California Labor Code § 226.7)**

7 **(Against All Defendants)**

8 62. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
9 forth above.

10 63. At all relevant times herein set forth, the applicable IWC Wage Order and California
11 Labor Code section 226.7 were applicable to Plaintiff's employment by Defendants.

12 64. At all relevant times, California Labor Code section 226.7 provides that no employer
13 shall require an employee to work during any rest period mandated by an applicable order of the
14 California IWC.

15 65. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
16 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
17 in the middle of each work period" and that the "rest period time shall be based on the total hours
18 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof
19 unless the total daily work time is less than three and one-half (3 1/2) hours."

20 66. During the relevant time period, Defendants required Plaintiff to work four (4) or
21 more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour
22 period worked. Defendants' failure to properly staff and coordinate Plaintiff's schedule forced
23 Plaintiff to work through all or part of her rest breaks.

24 67. Defendants had no policy and/or practice to pay premiums for missed rest breaks and
25 thus failed to pay Plaintiff the full rest period premium due pursuant to California Labor Code
26 section 226.7.

27 68. Defendants' conduct violates the applicable IWC Wage Orders and California Labor
28 Code section 226.7.

69. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at Plaintiff's regular hourly rate of compensation for each work day that the rest period was not provided.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against All Defendants)

70. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

71. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's employment by Defendants.

72. At all relevant times herein set forth, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal period mandated by the applicable IWC Wage Order.

73. At all relevant times herein set forth, California Labor Code section 512(a) provides that 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 a 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.

74. During the relevant time period, Defendants willfully required Plaintiff to work during meal periods and failed to compensate Plaintiff for work performed during meal periods. Moreover, Defendants did not schedule or take any action to relieve Plaintiff of her duties for second meal periods when she worked shifts over 10 hours or more. At the same time, Defendants had a practice and/or policy of not paying all premiums due for meal break violations. As a result, Defendants failed to pay Plaintiff all meal period premiums due pursuant to California Labor Code section 226.7.

75. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

76. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at Plaintiff's regular hourly rate of compensation for each work day that the meal period was not provided.

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against All Defendants)

77. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

78. Labor Code § 226(a) requires employers, including Defendants, to furnish employees accurate itemized wage statements in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

79. Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff with accurate and complete wage statements regarding, among other things, Plaintiff's correct regular rates of pay, rates of overtime pay, corresponding hours worked at each rate of pay, total gross wages earned, proper entity name, and total net wages earned, in violation of Labor Code § 226.

80. Defendants' failure to furnish Plaintiff with complete and accurate itemized wage statements resulted in actual injury, as said failures lead to, among other things, the non-payment of all Plaintiff's wages, and deprived Plaintiff of the information necessary to, among other things,

1 identify the discrepancies in Defendants' reported data, and to know, understand and question the
2 rate of pay and hours Defendants used to calculate their wages.

3 81. Defendants' failures create an entitlement to recovery by Plaintiff in a civil action for
4 all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil
5 penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code §§ 226
6 and 226.3.

7 **EIGHTH CAUSE OF ACTION**

8 **(Violation of California Labor Code §§ 201, 202, 203)**

9 **(Against All Defendants)**

10 82. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
11 forth above.

12 83. At all times herein set forth, California Labor Code sections 201 and 202 provide that
13 if an employer discharges an employee, the wages earned and unpaid at the time of discharge are
14 due and payable immediately, and that if an employee voluntarily leaves his or her employment, his
15 or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless
16 the employee has given seventy-two (12) hours previous notice of his or her intention to quit, in
17 which case the employee is entitled to his or her wages at the time of quitting.

18 84. During the relevant time period, Defendants willfully failed to pay Plaintiff earned
19 and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages,
20 and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72)
21 hours of their leaving Defendants' employ.

22 85. Defendants' failure to pay Plaintiff her wages earned and unpaid at the time of
23 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of
24 California Labor Code sections 201 and 202.

25 86. California Labor Code section 203 provides that if an employer willfully fails to pay
26 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
27 continue as a penalty from the due date, and at the same rate until paid or until an action is
28 commenced; but the wages shall not continue for more than thirty (30) days.

87. Plaintiff is entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against All Defendants)

88. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

89. Labor Code § 2802 requires that an “employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in the direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

90. Labor Code § 2802 further provides “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

91. The statute further identifies “necessary expenditures or losses” as “all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

92. Based on Plaintiff's employment with Defendants, Plaintiff incurred business expenses in the discharge of her duties for Defendants and in obedience to Defendants' instructions, which includes the use of her personal vehicle and personal cell phone.

93. As a direct and proximate cause of Defendants' wrongful conduct, Plaintiff has sustained and will continue to sustain damages in the amount of unreimbursed expenditures and losses, together with interest thereon, attorney's fees and costs of suit. Plaintiff is entitled to an

1 unpaid balance of expenses owed, penalties plus interest and reasonable attorney's fees and costs of
2 suit, in an amount to be determined at trial according to proof.

3 **TENTH CAUSE OF ACTION**

4 **(Violation of Cal. Business & Professions Code §§ 17200, et seq.)**

5 **(Against All Defendants)**

6 94. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
7 forth above.

8 95. California Business & Professions Code § 17200, et seq., prohibits acts of unfair
9 competition, which includes any "*unlawful, unfair or fraudulent business act or practice....*"

10 96. Defendants have engaged and continue to engage in unfair and/or unlawful business
11 practices in California in violation of California Business and Professions Code § 17200, et seq., by
12 engaging in the conduct alleged herein, including, but not limited to, (1) failing to pay Plaintiff all
13 overtime and minimum wages owed; (2) failing to pay Plaintiff an additional hour of premium pay
14 for meal period violations; (3) failing to pay Plaintiff an additional hour of premium pay for rest
15 period violations; (4) willfully failing to timely pay Plaintiff all wages during and at the end of
16 employment; (5) knowingly failing to furnish Plaintiff with accurate and complete wage statements;
17 and (6) willfully failing to reimburse Plaintiff for incurred business expenses in the discharge of her
18 duties for Defendants and in obedience to Defendants' instructions, which includes the use of her
19 personal cell phone and personal vehicle.

20 97. Defendants' utilization of these unfair and/or unlawful business practice deprived
21 Plaintiff of compensation to which Plaintiff was legally entitled, constitutes unfair and/or unlawful
22 competition, and provides an unfair advantage over Defendants' competitors who have been and/or
23 are currently employing workers and attempting to do so in honest compliance with applicable wage
24 and hour laws.

25 98. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
26 herein, Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore any
27 and all monies withheld, acquired and/or converted by the Defendants pursuant to Business and
28 Professions Code §§ 17203, 17208.

99. The acts complained of herein occurred within the last four (4) years immediately preceding the filing of the Complaint in this action.

100. Plaintiff retained the services of counsel to file this court action to protect her interests, to obtain restitution, and to enforce important rights affecting the public interest. Plaintiff thereby incurred the financial burden of attorneys' fees and costs, which they are entitled to recover under the Code of Civil Procedure § 1021.5.

ELEVENTH CAUSE OF ACTION

(Violation of Labor Code § 2698, et seq.)

(Against All Defendants)

101. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

102. Plaintiff brings this claim as an individual employee and in her capacity as a private attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, et seq. (“PAGA”).

103. On or about July 6, 2020, Plaintiff notified Defendants via certified mail and filed an online PAGA claim notice with the California Labor and Workforce Development Agency (“LWDA”) identifying Defendants’ violations of the California Labor Code identified in this Complaint and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code section 2698 et seq. The LWDA assigned Plaintiff’s case number LWDA-CM-795831-20. Plaintiff also submitted a filing fee of seventy-five (\$75.00) to the LWDA in accordance with Labor Code section 2699.3(a)(1)(B). Sixty-five days have passed from the date of Plaintiff’s notice to the LWDA, and thus Plaintiff has exhausted her administrative remedies, thereby allowing Plaintiff to commence a civil action against Defendants pursuant to Labor Code section 2699.

104. During all relevant times for this action, Defendants regularly required Plaintiff and Aggrieved Employees to work more than eight (8) hours per day and forty (40) hours per week. However, Plaintiff and Aggrieved Employees were not paid wages, including minimum wages and/or overtime wages, for such time worked. Instead, Plaintiff and Aggrieved Employees were paid for just eight (8) hours in a day or forty (40) hours in a week.

1 105. During all relevant times for this action, Defendants failed to provide uninterrupted
2 meal periods to Plaintiff and Aggrieved Employees when they worked more than five (5) hours per
3 day and ten (10) hours per day because Defendants required Plaintiff and Aggrieved Employees to
4 stay on duty and never provided an uninterrupted first or second meal break.

5 106. In addition, Defendants failed to permit Plaintiff and Aggrieved Employees to take
6 uninterrupted rest breaks for any shift exceeding four (4) hours of work or a major fraction thereof.

7 107. Although Defendants failed to provide uninterrupted meal and rest breaks as required
8 by California law, Defendants failed to pay Plaintiff and Aggrieved Employees premium pay for
9 those days in which they were not permitted to take a meal and/or rest break which was duty free.

10 108. In addition, Defendants failed to provide Plaintiff and Aggrieved Employees with
11 properly itemized wage statements including because Defendants failed to include the actual hours
12 worked, the correct rate of pay and the meal and rest period premiums owed.

13 109. Further, during Plaintiff and Aggrieved Employees' employment, Defendants were
14 required to pay all wages earned for labor in excess of the normal work period not later than the
15 payday for the next regular payroll period. However, Defendants failed to pay Plaintiff and
16 Aggrieved Employees all wages due to them within the time period specified by California Labor
17 Code section 204, including premiums owed.

18 110. Plaintiff, as an "Aggrieved Employee" within the meaning of Labor Code § 2698 *et*
19 *seq.*, acting on behalf of herself and other similarly Aggrieved Employees, brings this representative
20 action against Defendants to recover the civil penalties due to Plaintiff, other similarly Aggrieved
21 Employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and
22 (f) including, but not limited to \$100.00 for each initial violation and \$200.00 for each subsequent
23 violation per employee per pay period for the following Labor Code violations:

24 a. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned minimum
25 wage compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*;

26 b. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned overtime
27 compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*;

- c. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour of premium pay for meal period violations in violation of Labor Code §§ 226.7 and 512;
- d. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour of premium pay for rest period violations in violation of Labor Code §§ 226.7 and 512;
- e. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages at end of employment in violation of Labor Code § 203;
- f. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages owed during employment;
- g. Failing to furnish Plaintiff and other similarly Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- h. Failing to reimburse Plaintiff and Aggrieved Employees for incurred business expenses in the discharge of their duties for Defendants and in obedience to Defendants' instructions, which includes the use of their personal vehicles and personal cell phones in violation of Labor Code §§2800 and 2802; and for
- i. Failing to maintain accurate records relating to Plaintiff and other similarly Aggrieved Employees work periods, meal periods, total daily hours, hours per pay period, and applicable pay rates.

111. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which they are entitled to recover under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

1. For general and compensatory damages including but not limited to, lost wages and benefits and damages for emotional distress normally associated retaliation, wrongful termination, humiliation, and loss of reputation;
2. For punitive and exemplary damages according to proof;

1 3. For statutory attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and
2 Labor Code sections 226, 1194, 1198, 1198.5, 2669, *et seq.*, and as allowed by law and according
3 to proof;

4 4. For statutory civil penalties pursuant to Labor Code section 2669, *et seq.*, and as allowed
5 by law and according to proof;

6 5. For unpaid wages and overtime;

7 6. For unpaid wage premiums for each day Plaintiff did not receive a meal and/or rest period;

8 7. For costs of suit incurred herein;

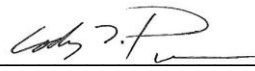
9 8. For pre- and post-judgment interest at the maximum legal rate on all amounts claimed;
10 and

11 9. For such other and further relief as the Court may deem just and proper.

12 Dated: September 8, 2020

PAYNE NGUYEN, LLP

13
14 By: _____


15 CODY PAYNE
16 KIM NGUYEN
17 Attorneys for Plaintiff
18 LISETTE ELIZALDE
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