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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 KASSANDRA MENDIVIL, on behalf of
14 herself, and as an “aggrieved employee” on
15 behalf of other similarly situated “aggrieved
16 employees” under the Labor Code Private
17 Attorney General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 IGS SOLUTIONS, LLC, a California limited
21 liability company, AUTHENTIC 760 LLC, a
22 California limited liability company, SHRYNE
23 GROUP, INC., a California corporation; and
24 DOES 1 through 50, inclusive,

25 *Defendant(s).*

Case No.: **20STCV45949**

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE
§§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



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1 Plaintiff KASSANDRA MENDIVIL (hereafter “Plaintiff”), on behalf of herself, the
2 State of California, and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 4-2001 (hereafter “the
6 Wage Order”), against IGS SOLUTIONS, LLC, a California limited liability company,
7 AUTHENTIC 760 LLC, a California limited liability company, SHRYNE GROUP, INC., a
8 California corporation, and Does 1-50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 her, the State of California, and other similarly situated aggrieved current and former employees
11 who worked in California as hourly assistant managers, managers, inventory managers,
12 budtenders, receptionists, fillers, fulfillment and employees in similar positions, at any time
13 during the period of September 21, 2019 to the present, for civil penalties and other related
14 relief. These claims are based on Defendants’ alleged failures to (1) pay all wages earned for all
15 hours worked at the correct rates of pay, (2) provide all rest breaks and meal periods, (3)
16 indemnify Plaintiff and the below-described Aggrieved Employees for reasonable expenses
17 incurred during the course of performing their duties, (4) provide accurate written wage
18 statements, (5) timely pay wages during employment, (6) timely pay final wages upon
19 termination of employment and (8) maintain accurate employment records. Accordingly,
20 Plaintiff now seeks to recover civil penalties and related relief through this representative
21 action.

22 **II. JURISDICTION AND VENUE**

23 3. This Court has subject matter jurisdiction because the aggregate claims of
24 Plaintiff and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in
25 controversy.

26 4. Venue is proper in Los Angeles County pursuant to California Code of Civil
27 Procedure sections 395(a) and 395.5 in that liability arose in Los Angeles County because at
28 least some of the transactions that are the subject matter of this Complaint occurred therein



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1 and/or because each defendant is found, maintains offices, transacts business, and/or has an
2 agent therein.

3 **III. THE PARTIES**

4 5. Plaintiff is a resident of Thousand Palms, California. Defendants employed
5 Plaintiff from February 12, 2020 to approximately April 27, 2020 as an assistant manager. At all
6 relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of
7 Regulations Section 11040 and an “Aggrieved Employee” within the meaning of Labor Code
8 Section 2699(c).

9 6. Defendant IGS SOLUTIONS, LLC is a limited liability company organized and
10 existing under the laws of California and a citizen of California based on Plaintiff’s information
11 and belief.

12 7. Defendant AUTHENTIC 760 LLC is a limited liability company organized and
13 existing under the laws of California and a citizen of California based on Plaintiff’s information
14 and belief.

15 8. Defendant SHRYNE GROUP, INC. is a corporation organized and existing
16 under the laws of California and a citizen of California based on Plaintiff’s information and
17 belief.

18 9. **The Aggrieved Employees:** The “Aggrieved Employees” are all individuals
19 Defendants employed in California as hourly assistant managers, managers, inventory
20 managers, budtenders, receptionists, fillers, fulfillment, and in similar positions, during the
21 period of September 21, 2019 and entry of judgment (“the PAGA Period”).

22 10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
23 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
24 is informed and believes and thereon alleges that said defendants are legally responsible for the
25 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
26 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
27 defendants when ascertained.

28 11. Plaintiff is informed and believes and thereon alleges that, at all relevant times



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1 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
2 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
3 and scope of such agency or employment, and with the approval and ratification of each of the
4 other Defendants.

5 12. Plaintiff is informed and believes and thereon alleges that each and every one
6 of the acts and omissions alleged herein were performed by, and/or attributable to, all
7 defendants, each acting as agents and/or employees, and/or under the direction and control of
8 each of the other defendants, and that said acts and failures to act were within the course and
9 scope of said agency, employment and/or direction and control.

10 13. At all relevant times, in perpetrating the acts and omissions alleged herein,
11 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
12 lack of a practice which resulted in Defendants not paying Plaintiff and other Aggrieved
13 Employees in accordance with applicable California labor laws as alleged herein.

14 **IV. FACTUAL ALLEGATIONS**

15 14. Defendants first employed Plaintiff on or about February 12, 2020 to work as an
16 assistant manager at their Authentic 760 cannabis dispensary located at 72180 CA-111 in Palm
17 Desert, California. Plaintiff continuously worked for Defendants from the time of her hire until
18 approximately April 27, 2020 when Defendants terminated her employment.

19 15. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
20 to perform tasks during their off-the-clock meal periods and after clocking out at the end of their
21 shifts, including, but not limited to, assisting customers with purchases, handling complaints
22 from customers, taking inventory, ordering inventory and supplies, conducting audits,
23 performing daily cash intakes, creating reports, assisting with payroll, preparing documents, and
24 training new employees. Plaintiff and the Aggrieved Employees regularly spent approximately
25 one hour on duty after clocking out to complete required tasks prior to leaving work.
26 Defendants, however, failed to pay Plaintiff and the other Aggrieved Employees for this off-the-
27 clock work.

28 16. At all relevant times, Plaintiff and the Aggrieved Employees have worked over



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1 eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this,
2 Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely rest and
3 meal periods pursuant to California law, including, but not limited to, two timely 30-minute
4 uninterrupted meal periods and three ten-minute rest periods on workdays they worked more
5 than ten hours. Defendants failed to hire sufficient staff members to cover Plaintiff and the
6 Aggrieved Employees so they could take duty-free, ten-minute rest periods and duty-free, 30-
7 minute meal periods. Even when Plaintiff and the Aggrieved Employees tried to take duty-free
8 rest and/or meal periods, other employees and managers, including Brenda (last name
9 unknown), Joanna (last name unknown), Catherine (last name unknown), Store Manager Daniel
10 (last name unknown), and Retail District Manager, Jennifer Arteaga (collectively “Defendants’
11 Managers”) interrupted them with requests for help serving customers and for other business
12 needs. Further, on the rare occasions that Defendants permitted Plaintiff and the Aggrieved
13 Employees to take timely, off-duty rest breaks, Defendants required her and the Aggrieved
14 Employees to remain on the premises. Defendants did not request an exemption from
15 California’s rest period law from the Division of Labor Standards Enforcement.

16 17. Defendants also often failed to provide Plaintiff and the Aggrieved Employees
17 with 30-minute meal periods before their fifth work hour. Defendants’ Managers required
18 Plaintiff and the Aggrieved Employees to request permission prior to taking a meal period,
19 which they often prohibited, due to the press of business. On a number of occasions, Plaintiff
20 complained to Defendants’ Managers about Defendants’ failure to provide her and the
21 Aggrieved Employees with timely rest and meal periods. In spite of this, Defendants refused to
22 make changes.

23 18. At all relevant times, Defendants’ Managers instructed Plaintiff and the
24 Aggrieved Employees to falsify their timecards and clock out for meal periods they did not take.
25 Defendants’ Managers also modified Plaintiff’s and the other Aggrieved Employees’ time
26 records to falsely state that they took duty-free, timely, 30-minute meal periods. Defendants
27 failed to compensate Plaintiff and the other Aggrieved Employees for this work. Finally,
28 Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages for days on



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1 which they failed to provide them with all timely meal periods and unrestricted rest periods.

2 19. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
3 to incur certain business expenses in the course of performing their duties. Defendants
4 instructed Plaintiff and the Aggrieved Employees to download the “WhenIWork” and
5 “WhatsApp” applications on their personal mobile phones to check their schedules and
6 communicate with management and other employees while working and when they were
7 clocked out from work. Defendants failed to pay Plaintiff and the Aggrieved Employees for this
8 time spent working while clocked out. Further, Defendants failed to reimburse Plaintiff and the
9 Aggrieved Employees for mobile phone charges, nor did they offer them a free alternative to
10 such personal phone use. Defendants also failed to offer an alternative for checking work
11 schedules. Defendants also required Plaintiff and the Aggrieved Employees to use their personal
12 vehicles to make bank deposits and pick up necessary supplies. Defendants did not reimburse
13 Plaintiff and the Aggrieved Employees for such mileage expenses.

14 20. For the reasons stated herein, Plaintiff alleges that as a result of Defendants’
15 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

16 A. Not paid all wages earned, including but not limited to, minimum wages for
17 all hours worked, one and one-half times their regular rates of pay for all hours worked over
18 eight hours in one workday, over 40 hours in one workweek, and double time wages for all
19 hours worked over 12 hours in one workday;

20 B. Not provided with all rest breaks and timely meal periods;

21 C. Not reimbursed for the reasonable expenses incurred during the course of
22 performing their duties;

23 D. Not paid one hour’s pay for each workday in which Defendants failed to
24 provide them with one or more timely rest periods;

25 E. Not paid one hour’s pay for each workday in which Defendants failed to
26 provide them with one or more timely meal periods;

27 F. Not provided with accurate and complete wage statements;

28 G. Not provided with accurate employment records; and



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1 H. Not timely paid all earned and unpaid wages during their employment with
2 Defendants and at the time such employment ended.

3 **V. FIRST AND ONLY CAUSE OF ACTION**

4 **CIVIL PENALTIES**

5 **(Lab. Code §§ 2698, *et seq.*)**

6 **(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against all**
7 **Defendants)**

8 21. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.
9 **A. FAILURE TO PAY FOR ALL HOURS WORKED AT THE CORRECT RATES**
10 **OF PAY**

11 22. At all relevant times, Plaintiff and the Aggrieved Employees have been entitled
12 to the benefits and protections of California Labor Code §§ 510, 1194, 1197, 1198, and the
13 Wage Order.

14 23. Section 2 of the Wage Order defines “hours worked” as “the time during which
15 an employee is subject to the control of an employer, and includes all the time the employee is
16 suffered or permitted to work, whether or not required to do so.” As the California Supreme
17 Court has explained, this definition is disjunctive, meaning time can be an “hour worked” if
18 either (a) the employee is subject to the employer's control, or (b) the employer suffers or
19 permits the employee to work during that time, whether or not the employee is required to do
20 so. *Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal. 4th 833, 838 (citing *Morillion v. Royal*
21 *Packing Co.* (2000) 22 Cal.4th 575, 582-83).

22 24. In relevant part, Section 3 of the Wage Order states,

23 **(A) Daily Overtime - General Provisions**

24 (1) The following overtime provisions are applicable to
25 employees 18 years of age or over and to employees 16 or 17
26 years of age who are not required by law to attend school and
27 are not otherwise prohibited by law from engaging in the
28 subject work. Such employees shall not be employed more
than eight (8) hours in any workday or more than 40 hours in
any workweek unless the employee receives one and one-half
(1 1/2) times such employee's regular rate of pay for all hours



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1 worked over 40 hours in the workweek. Eight (8) hours of
2 labor constitutes a day's work. Employment beyond eight (8)
3 hours in any workday or more than six (6) days in any
4 workweek is permissible provided the employee is
5 compensated for such overtime at not less than:

6 (a) One and one-half (1 1/2) times the employee's regular rate of
7 pay for all hours worked in excess of eight (8) hours up to and
8 including 12 hours in any workday, and for the first eight (8)
9 hours worked on the seventh (7th) consecutive day of work in a
10 workweek; and

11 (b) Double the employee's regular rate of pay for all hours
12 worked in excess of 12 hours in any workday and for all hours
13 worked in excess of eight (8) hours on the seventh (7th)
14 consecutive day of work in a workweek.

15 25. Section 4 of the Wage Order requires an employer to pay non-exempt employees
16 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
17 an employer has actual or constructive knowledge that employees are working.

18 26. In relevant part, California Labor Code § 510 states,

19 Any work in excess of eight hours in one workday and any work in
20 excess of 40 hours in any one workweek and the first eight hours worked
21 on the seventh day of work in any one workweek shall be compensated at
22 the rate of no less than one and one-half times the regular rate of pay for
23 an employee. Any work in excess of 12 hours in one day shall be
24 compensated at the rate of no less than twice the regular rate of pay for an
25 employee. In addition, any work in excess of eight hours on any seventh
26 day of a workweek shall be compensated at the rate of no less than twice
27 the regular rate of pay of an employee.

28 27. Labor Code section 1194 invalidates any agreement between an employer and
an employee to work for less than the minimum wage required under the applicable Wage
Order.

29 28. Labor Code section 1197 makes it unlawful for an employer to pay an employee
less than the minimum wage required under the applicable Wage Order for all hours worked
during a payroll period.

30 29. Labor Code section 1198 makes it unlawful for an employer to employ an



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1 employee under conditions that violate the Wage Order.

2 30. In conjunction, these provisions of the Labor Code require employers to pay
3 non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all
4 hours worked, including unrecorded hours when the employer knew or reasonably should have
5 known that employees were working during those hours. (See *Morillion v. Royal Packing Co.*
6 (2000) 22 Cal.4th 575, 585.)

7 31. At all relevant times, Defendants required Plaintiff and the Aggrieved
8 Employees to perform tasks during their off-the-clock meal periods and after clocking out at the
9 end of their shifts, including, but not limited to, assisting customers with purchases, handling
10 complaints from customers, taking inventory, ordering inventory and supplies, conducting
11 audits, performing daily cash intakes, creating reports, assisting with payroll, preparing
12 documents, and training new employees. Plaintiff and the Aggrieved Employees regularly spent
13 approximately one hour on duty after clocking out to complete required tasks prior to leaving
14 work. Defendants, however, failed to pay Plaintiff and the other Aggrieved Employees for this
15 off-the-clock work.

16 32. At all relevant times, Defendants knowingly failed to compensate Plaintiff and
17 the Aggrieved Employees for all hours worked, including but not limited to, minimum,
18 overtime and double time wages. As such, Defendants failed to compensate Plaintiff and the
19 Aggrieved Employees for all hours worked at the correct rates of pay.

20 33. Plaintiff is informed and believes that, at all relevant times, Defendants have
21 applied centrally devised policies and practices to her and the Aggrieved Employees with
22 respect to working conditions and compensation arrangements.

23 34. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
24 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
25 Defendants' failure to compensate the Aggrieved Employees for all hours worked at the correct
26 rates of pay as required by California law.

27 ///

28 ///



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1 **B. UNPROVIDED REST PERIODS**

2 35. In relevant part, Section 12 of the Wage Order states

3 “Rest Periods:

4 (A) Every employer shall authorize and permit all employees
5 to take rest periods, which insofar as practicable shall be in the
6 middle of each work period. The authorized rest period time shall
7 be based on the total hours worked daily at the rate often (10)
8 minutes net rest time per four (4) hours or major fraction thereof.
9 However, a rest period need not be authorized for employees
10 whose total daily work time is less than three and one-half (3 1/2)
11 hours. Authorized rest period time shall be counted as hours
12 worked for which there shall be no deduction from wages.

13 (B) If an employer fails to provide an employee a rest period
14 in accordance with the applicable provisions of this Order, the
15 employer shall pay the employee one (1) hour of pay at the
16 employee’s regular rate of compensation for each work day that
17 the rest period is not provided.”

18 36. “[I]n the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break
19 should fall on either side of the meal break. (Ibid.)” *Brinker Rest. Corp. v. Superior Court*
20 (2012) 53 Cal. 4th 1004, 1032.

21 37. In addition, Labor Code Section 226.7 states

22 (b) An employer shall not require an employee to work during a meal
23 or rest or recovery period mandated pursuant to an applicable statute, or
24 applicable regulation, standard, or order of the Industrial Welfare
25 Commission, the Occupational Safety and Health Standards Board, or the
26 Division of Occupational Safety and Health.

27 (c) If an employer fails to provide an employee a meal or rest or
28 recovery period in accordance with a state law, including, but not limited
to, an applicable statute or applicable regulation, standard, or order of the
Industrial Welfare Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety and Health, the
employer shall pay the employee one additional hour of pay at the
employee's regular rate of compensation for each workday that the meal
or rest or recovery period is not provided.

35. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were
entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of
work, or major fraction thereof.



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1 39. By not providing adequate staff to relieve Plaintiff and the Aggrieved Employees
2 of their duties, Defendants have intentionally and improperly failed to provide all rest breaks
3 free from any work or duties to Plaintiff and the Aggrieved Employees in accordance with the
4 Wage Order, including, but not limited to, a third rest break when they worked more than 10
5 hours in a workday. Even when Plaintiff and the Aggrieved Employees tried to take duty-free
6 rest periods, other employees and managers, including Brenda (last name unknown), Joanna
7 (last name unknown), Catherine (last name unknown), Store Manager Daniel (last name
8 unknown), and Retail District Manager, Jennifer Arteaga (collectively “Defendants’ Managers”)
9 interrupted them with requests for help serving customers and for other business needs. Further,
10 on the rare occasions that Defendants permitted Plaintiff and the Aggrieved Employees to take
11 timely, off-duty rest breaks, Defendants required her and the Aggrieved Employees to remain
12 on the premises. Defendants did not request an exemption from California’s rest period law
13 from the Division of Labor Standards Enforcement.

14 40. Plaintiff is informed and believes and thereon alleges that, at relevant times
15 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
16 which resulted in Defendants not providing the Aggrieved Employees with all timely rest breaks
17 required by California law.

18 41. Defendants failed to pay Plaintiff the additional wages required by California
19 Labor Code § 226.7 for workdays in which one or more timely rest breaks were not provided to
20 her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the
21 applicable limitations period, Defendants have maintained a policy, practice, or a lack of a
22 policy which resulted in Defendants not providing the Aggrieved Employees with additional
23 wages for all workdays on which one or more timely rest breaks were not provided to them as
24 required by California Labor Code § 226.7.

25 **C. UNPROVIDED MEAL PERIODS**

26 42. In relevant part, Labor Code Section 512 states

27 “An employer may not employ an employee for a work period of more
28 than five hours per day without providing the employee with a meal
 period of not less than 30 minutes, except that if the total work period per



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1 day of the employee is no more than six hours, the meal period may be
2 waived by mutual consent of both the employer and employee. An
3 employer may not employ an employee for a work period of more than
4 10 hours per day without providing the employee with a second meal
5 period of not less than 30 minutes, except that if the total hours worked is
no more than 12 hours, the second meal period may be waived by mutual
consent of the employer and the employee only if the first meal period
was not waived.”

6 43. In relevant part, Section 11 of the Wage Order states

7 “Meal Periods

8 (A) No employer shall employ any person for a work period of
9 more than five (5) hours without a meal period of not less than 30
10 minutes, except that when a work period of not more than six (6)
hours will complete the day’s work the meal period may be
waived by mutual consent of the employer and the employee...

11 (B) If an employer fails to provide an employee a meal period
12 in accordance with the applicable provisions of this Order, the
13 employer shall pay the employee one (1) hour of pay at the
14 employee’s regular rate of compensation for each workday that
the meal period is not provided.

15 44. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
16 Aggrieved Employees were entitled to uninterrupted meal periods of at least thirty (30) minutes
17 for each day they worked five or more hours, and to a second uninterrupted 30-minute meal on
18 days they worked more than ten hours.

19 45. By not providing adequate staff to relieve Plaintiff and the Aggrieved Employees
20 of their duties, Defendants have intentionally and improperly failed to provide all meal periods
21 free from any work or duties to Plaintiff and the Aggrieved Employees in accordance with the
22 Wage Order, including, but not limited to, a second 30-minute meal period when they worked in
23 excess of ten hours in a workday. Even when Plaintiff and the Aggrieved Employees tried to
24 take duty-free meal periods, other employees and managers, including Brenda (last name
25 unknown), Joanna (last name unknown), Catherine (last name unknown), Store Manager Daniel
26 (last name unknown), and Retail District Manager, Jennifer Arteaga (collectively “Defendants’
27 Managers”) interrupted them with requests for help serving customers and for other business
28 needs.



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1 46. Defendants also often failed to provide Plaintiff and the Aggrieved Employees
2 with 30-minute meal periods before their fifth work hour. Defendants' Managers required
3 Plaintiff and the Aggrieved Employees to request permission prior to taking a meal period,
4 which they often prohibited, due to the press of business. On a number of occasions, Plaintiff
5 complained to Defendants' Managers about Defendants' failure to provide her and the
6 Aggrieved Employees with timely rest and meal periods. In spite of this, Defendants refused to
7 make changes.

8 47. At all relevant times, Defendants' Managers instructed Plaintiff and the
9 Aggrieved Employees to falsify their timecards and clock out for meal periods they did not take.
10 Defendants' Managers also modified Plaintiff's and the other Aggrieved Employees' time
11 records to falsely state that they took duty-free, timely, 30-minute meal periods. Defendants
12 failed to compensate Plaintiff and the other Aggrieved Employees for this work.

13 48. Plaintiff is informed and believes and thereon alleges that, at all relevant times
14 within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a
15 policy which resulted in Defendants not providing the Aggrieved Employees with all timely
16 meal periods required by California Labor Code § 512 and the Wage Order.

17 49. Defendants failed to pay Plaintiff the additional wages required by California
18 Labor Code § 226.7 for all workdays in which one or more timely meal periods were not
19 provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times
20 within the applicable limitations period, Defendants have maintained a policy, practice, or a
21 lack of a policy which resulted in Defendants not providing the Aggrieved Employees with
22 additional wages for all workdays on which one or more timely meal periods were not provided
23 to them as required by California Labor Code § 226.7.

24 **D. FAILURE TO REIMBUSE FOR BUSINESS EXPENSES**

25 50. In pertinent part, California Labor Code section 2802(a) states, "An employer
26 shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee
27 in direct consequence of the discharge of his or her duties."

28 51. In relevant part, Section 9 of the Wage Order states,



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(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

52. Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

53. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. Defendants instructed Plaintiff and the Aggrieved Employees to download the “WhenIWork” and “WhatsApp” applications on their personal mobile phones to check their schedules and communicate with management and other employees while working and when they were clocked out from work. Defendants failed to pay Plaintiff and the Aggrieved Employees for this time spent working while clocked out. Further, Defendants failed to reimburse Plaintiff and the Aggrieved Employees for mobile phone charges, nor did they offer them a free alternative to such personal phone use. Defendants also failed to offer an alternative for checking work schedules. Defendants also required Plaintiff and the Aggrieved Employees to use their personal vehicles to make bank deposits and pick up necessary supplies. Defendants did not reimburse Plaintiff and the Aggrieved Employees for such mileage expenses.

E. INCOMPLETE AND INACCURATE WAGE STATEMENTS

54. Pursuant to California Labor Code section 226(a), Plaintiff and the Aggrieved Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect during the pay period; and d) the corresponding number of hours worked at each hourly rate by the employee.

55. Pursuant to California Labor Code section 226, an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code section 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during



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1 the pay period or any of the other information required to be provided on the itemized wage
2 statement pursuant to California Labor Code § 226(a);

3 B. Which deductions the employer made from gross wages to determine the
4 net wages paid to the employee during the pay period;

5 C. The name and address of the employer and, if the employer is a farm
6 labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the
7 name and address of the legal entity that secured the services of the employer during the pay
8 period;

9 D. The name of the employee and only the last four digits of his or her social
10 security number or an employee identification number other than a social security number; and

11 E. The number of piece-rate units earned and the piece rate.

12 56. “Promptly and easily determine,” as stated in California Labor Code section
13 226(e), means a reasonable person would be able to readily ascertain the information without
14 reference to other documents or information.

15 57. As alleged herein, Defendants failed to pay Plaintiff and the Aggrieved
16 Employees all wages owed. As a result, Defendants have failed to properly and accurately
17 itemize each employee’s gross wages earned, net wages earned, total hours worked,
18 corresponding number of hours worked, and other requirements of California Labor Code
19 section 226. As a result, Defendants have violated California Labor Code section 226.

20 58. Defendants’ failure to provide Plaintiff and the Aggrieved Employees with
21 accurate wage statements was knowing and intentional. Defendants had the ability to provide
22 Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally
23 provided wage statements that Defendants knew were not accurate.

24 59. As a result of being provided with inaccurate wage statements by Defendants,
25 Plaintiff and the Aggrieved Employees have suffered an injury. Their legal rights to receive
26 accurate wage statements were violated and they were misled about the amount of wages they
27 had actually earned and were owed. In addition, the absence of accurate information on their
28 wage statements prevented immediate challenges to Defendants’ unlawful pay practices, has
required discovery and mathematical computations to determine the amounts of wages owed,
has caused difficulty and expense in attempting to reconstruct time and pay records and/or has
led to the submission of inaccurate information about wages to state and federal government



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1 agencies. Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the
2 wage statements whether Defendants complied with their obligations under California Labor
3 Code section 226(a).

4 **F. UNTIMELY WAGES DURING EMPLOYMENT**

60. Labor Code section 204 states:

5 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
6 or 204.2, earned by any person in any employment are due and payable twice
7 during each calendar month, on days designated in advance by the employer as
8 the regular paydays. Labor performed between the 1st and 15th days, inclusive,
9 of any calendar month shall be paid for between the 16th and the 26th day of the
10 month during which the labor was performed, and labor performed between the
11 16th and the last day, inclusive, of any calendar month, shall be paid for
12 between the 1st and 10th day of the following month. ...

13 (b) (1) Notwithstanding any other provision of this section, all wages
14 earned for labor in excess of the normal work period shall be paid no later than
15 the payday for the next regular payroll period.

16 (2) An employer is in compliance with the requirements of subdivision (a)
17 of Section 226 relating to total hours worked by the employee, if hours worked
18 in excess of the normal work period during the current pay period are itemized
19 as corrections on the paystub for the next regular pay period. Any corrections set
20 out in a subsequently issued paystub shall state the inclusive dates of the pay
21 period for which the employer is correcting its initial report of hours worked.

22 (c) However, when employees are covered by a collective bargaining
23 agreement that provides different pay arrangements, those arrangements shall
24 apply to the covered employees.

25 (d) The requirements of this section shall be deemed satisfied by the
26 payment of wages for weekly, biweekly, or semimonthly payroll if the wages
27 are paid not more than seven calendar days following the close of the payroll
28 period.

61. Defendants paid wages to employees on regular intervals. Defendants failed to
pay Plaintiff on such intervals for all wages earned and all hours worked. On information and
belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
intervals for all wages earned and all hours worked.

G. UNTIMELY FINAL WAGES

62. Labor Code § 201 provides that all earned and unpaid wages of an employee
who is discharged are due and payable immediately at the time of discharge.



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63. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

64. By failing to pay Plaintiff and the Aggrieved Employees earned minimum, overtime, and double time wages, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

65. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

H. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

66. Labor Code section 1174 states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

67. Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

68. Section 7 of Wage Order states,



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(a) Every employer shall keep accurate information with respect to each employee including the following:

1. Full name, home address, occupation and social security number.
2. Birth date, if under 18 years, and designation as a minor.
3. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
4. Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
5. Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
6. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

69. On information and belief, Plaintiff alleges that Defendants failed to maintain accurate employment records for Plaintiff and the Aggrieved Employees.

I. CIVIL PENALTIES SOUGHT

70. During the applicable time period, Defendants violated California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

71. California Labor Code section 2699, subdivisions (a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code section 2699.3.

72. Pursuant to California Labor Code section 2699, subdivisions (a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of Defendants' violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code section 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code section 210).

B. For violations of California Labor Code section 226(a), two hundred fifty



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dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code section 226.3).

C. For violations of California Labor Code sections 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code section 1197, one hundred dollars (\$100.00) for each aggrieved employee for each initial and intentional violation per pay period (regardless of whether the initial violations were intentionally committed) and two hundred fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed).

E. For violations of California Labor Code sections 201, 202, 203, 226.7, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code section 2699(f)(2)).

F. For the violations of California Labor Code section 1174, \$500 for each aggrieved employee for each violation of California Labor Code section 1174 (penalty amounts established by California Labor Code § 1174.5).

J. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

73. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code section 2699.3. By letter dated September 21, 2020, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA dated September 21, 2020 is attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff’s letter.

74. Pursuant to California Labor Code section 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in



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connection with their claims for civil penalties.

VI. PRAYER FOR RELIEF

75. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, pray for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit; and
- C. Reasonable attorney's fees.

76. For clarity, any reference above to liabilities other than PAGA civil penalties is made only to establish liability for PAGA civil penalties. Plaintiff stipulates that this lawsuit seeks only recovery of PAGA civil penalties for Plaintiff and the Aggrieved Employees, costs of suit, and reasonable attorneys' fees.

VII. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: November 30, 2020

By: _____



DAVID SPIVAK
MARALLE MESSRELIAN
Attorneys for Plaintiff, KASSANDRA
MENDIVIL, and the Aggrieved Employees



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

September 21, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Kassandra Mendivil/ Shryne Group, Inc.*

To whom it may concern:

This notice concerns the following employers:

1. IGS Solutions, LLC
2. Authentic 760 LLC
3. Shryne Group, Inc.

Collectively, the aforementioned employers are herein referred to as “Shryne Group.”

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Kassandra Mendivil (hereafter “Mendivil”) provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly employees, including but not limited to assistant managers, managers, inventory managers, budtenders, receptionists, fillers, fulfillment and other comparable positions (hereafter referred to as “Aggrieved Employees”), by Shryne Group of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174.5, 1194, 1197, 1198 and 2802.

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At all relevant times, Shryne Group has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Mendivil and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”), section 2, subdivision (F), and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

Shryne Group first employed Mendivil on or about February 12, 2020 to work as an assistant manager at its Authentic 760 cannabis dispensary located at 72180 CA-111 in Palm Desert, California. Mendivil worked at Authentic 760 for Shryne Group continuously from the time of her hire until approximately April 27, 2020 when Shryne Group terminated her employment.

At all relevant times, Shryne Group paid Mendivil and the other Aggrieved Employees at an hourly rate of pay on a bi-weekly basis. At all relevant times, Shryne Group classified Mendivil and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Shryne Group required Mendivil and the Aggrieved Employees to perform tasks during their off-the-clock meal periods and after clocking out at the end of their shifts, including, but not limited to, assisting customers with purchases, handling complaints from customers, taking inventory, ordering inventory and supplies, conducting audits, performing daily cash intakes, creating reports, assisting with payroll, preparing documents, and training new employees. Mendivil and the Aggrieved Employees regularly spent approximately one hour on duty after clocking out to complete required tasks prior to leaving work. Shryne Group, however, failed to pay Mendivil and the other Aggrieved Employees for this off-the-clock work.

At all relevant times, Mendivil and the Aggrieved Employees have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this, Shryne Group failed to provide Mendivil and the Aggrieved

Employees with all timely rest and meal periods pursuant to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods and three ten-minute rest periods on workdays they worked more than ten hours. Shryne Group failed to hire sufficient staff members to cover Mendivil and the Aggrieved Employees so they could take duty-free, ten-minute rest periods and duty-free, 30-minute meal periods. Even when Mendivil and the Aggrieved Employees tried to take duty-free rest and/or meal periods, other Shryne Group employees and managers, including Brenda (last name unknown), Joanna (last name unknown), Catherine (last name unknown), Store Manager Daniel (last name unknown), and Retail District Manager, Jennifer Arteaga (collectively “the Shryne Group Managers”) interrupted them with requests for help serving customers and for other Shryne Group business. Further, on the rare occasions that the Shryne Group permitted Mendivil and the Aggrieved Employees to take timely, off-duty rest breaks, Shryne Group required her and the Aggrieved Employees to remain on the premises. Shryne Group did not request an exemption from California’s rest period law from the Division of Labor Standards Enforcement.

Shryne Group also often failed to provide Mendivil and the Aggrieved Employees with 30-minute meal periods before their fifth work hour. The Shryne Group Managers required Mendivil and the Aggrieved Employees to request permission prior to taking a meal period, which they often prohibited, due to the press of business. On a number of occasions, Mendivil complained to the Shryne Group Managers about Shryne Group’s failure to provide her and the Aggrieved Employees with timely rest and meal periods. In spite of this, Shryne Group refused to make changes.

At all relevant times, the Shryne Group Managers instructed Mendivil and the Aggrieved Employees to falsify their timecards and clock out for meal periods they did not take. The Shryne Group Managers also modified Mendivil’s and the other Aggrieved Employees’ time records to falsely state that they took duty-free, timely, 30-minute meal periods. Shryne Group failed to compensate Mendivil and the other Aggrieved Employees for this work. Finally, Shryne Group failed to pay Mendivil and the Aggrieved Employees premium wages

for days on which it failed to provide them with all timely meal periods and unrestricted rest periods.

At all relevant times, Shryne Group required Mendivil and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. Shryne Group instructed Mendivil and the Aggrieved Employees to download the “WhenIWork” and “WhatsApp” applications on their personal mobile phones to check their schedules and communicate with management and other Shryne Group employees while working and when they were clocked out from work. Shryne Group failed to pay Mendivil and the Aggrieved Employees for this time spent working while clocked out. Further, Shryne Group failed to reimburse Mendivil and the Aggrieved Employees for mobile phone charges, nor did it offer them a free alternative to such personal phone use. Shryne Group also failed to offer an alternative for checking work schedules. Shryne Group also required Mendivil and the Aggrieved Employees to use their personal vehicles to make bank deposits and pick up necessary supplies. Shryne Group did not reimburse Mendivil and the Aggrieved Employees for such mileage expenses.

As a result of the practices described above, Shryne Group failed to provide Mendivil and the Aggrieved Employees with accurate wage statements that properly and accurately itemize Mendivil and the other Aggrieved Employees’ gross and net wages earned and the total hours worked. As a further result, Shryne Group failed to timely pay Mendivil and the Aggrieved Employees all earned and unpaid wages during, and upon termination of, their employment.

For the reasons herein, Mendivil alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and Aggrieved Employees:

- a) Shryne Group failed to pay Mendivil and Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum and overtime wages;

- b) Shryne Group failed to provide Mendivil and the Aggrieved Employees with all meal periods;
- c) Shryne Group failed to pay Mendivil and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) Shryne Group failed to provide Mendivil and the Aggrieved Employees with all rest breaks;
- e) Shryne Group failed to pay Mendivil and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely rest breaks;
- f) Shryne Group failed to reimburse Mendivil and the other Aggrieved Employees for expenses incurred in the course of performing of their duties;
- g) Shryne Group failed to provide Mendivil and the Aggrieved Employees with accurate itemized wage statements;
- h) Shryne Group failed to timely pay Mendivil and the Aggrieved Employees all earned and unpaid wages during their employment at Shryne Group and at the time such employment ended; and
- i) Shryne Group failed to maintain accurate employment records.

Accordingly, Mendivil now seeks civil penalties on behalf of herself and Aggrieved Employees based on Shryne Group's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate,

commission, or other basis...” At all relevant times during the applicable limitations period, Shryne Group employed Mendivil as an assistant manager to help run its retail store and provide its customers with information and assistance. Accordingly, Mendivil and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

**Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2 of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be

compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Shryne Group knowingly failed to compensate Mendivil and the other Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed during their off-the-clock meal periods and after clocking out at the end of their shifts.

Accordingly, Mendivil now seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and

4. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As described above, at all relevant times during the applicable time period, Shryne Group failed to provide Mendivil and the Aggrieved Employees with all timely 30-minute duty-free meal periods.

Accordingly, Mendivil seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Paid Rest Periods
(Lab. Code §§ 226.7 & 1198)

In relevant part, section 2 of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

In addition, Labor Code section 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As described above, Shryne Group required Mendivil and the Aggrieved Employees to work into and/or through their rest periods. Moreover, by requiring Mendivil and the Aggrieved Employees to remain on work premises during their rest periods, Shryne Group has intentionally and improperly failed to provide Mendivil and the Aggrieved Employees with all duty-free rest periods. Further, Shryne Group failed to compensate Mendivil and the Aggrieved Employees at one hour's pay for each workday in which it failed to provide them with one or more timely rest periods as provided by California law.

Accordingly, Mendivil seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code § 2802 and 1198)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, during the applicable limitations period, Shryne Group required Mendivil and the other Aggrieved Employees to use their personal vehicles and personal mobile phones for work related activities without reimbursing them for their mileage and phone expenses. Accordingly, Mendivil seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226 requires employers to provide employees with accurate written wage statements showing:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
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, except that by January 1, 2008, only the last four digits of his or her social security number or an employee

identification number other than a social security number may be shown on the itemized statement;

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.

Shryne Group did not pay Mendivil and the Aggrieved Employees minimum, and overtime wages for work it required them to perform during their off-the-clock meal periods and after clocking out at the end of their shifts. Shryne Group failed to provide Mendivil and the Aggrieved Employees with all meal and rest periods in compliance with California law. Shryne Group also failed to provide Mendivil and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. Shryne Group knowingly and intentionally did not state this worktime and wages earned on the itemized wage statements it issued to Mendivil and the Aggrieved Employees. As a result, Shryne Group has failed to properly itemize Mendivil and the Aggrieved Employees' gross and net wages earned, total hours worked, hourly rate of pay, and other requirements of California Labor Code § 226. As a result, Shryne Group has violated California Labor Code § 226.

Accordingly, Mendivil seeks civil penalties for the Labor Code violations that Shryne Group has committed against her and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code section 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code section 226.3).

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Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Shryne Group's failure to pay Mendivil and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided off-duty meal and rest periods within the time periods set by California Labor Code § 204, Shryne Group failed to timely pay all wages due during employment. Accordingly, Mendivil now seeks civil penalties for the Labor Code violations that Shryne Group has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code section 210).

Failure To Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code section 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under section 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the Employee is entitled to his or her wages at the time of quitting.

Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Under Labor Code section 203, if an employer willfully fails to pay, without abatement or reduction, in accordance sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Shryne Group did not pay Mendivil and the Aggrieved Employees minimum and overtime wages for work it required them to perform during their off-the-clock meal periods and after clocking out at the end of their shifts. Shryne Group failed to provide Mendivil and the Aggrieved Employees with meal and rest periods in compliance with California law. Shryne Group also failed to provide Mendivil and the other Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. These failures were willful. Due to its willful failures to pay all minimum, overtime, and premium wages earned to Mendivil and the Aggrieved Employees at the time of termination, Shryne Group is liable for violations of Labor Code sections 201, 202, and 203.

Accordingly, Mendivil now seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the other Aggrieved Employees as follows:

1. For violations of Labor Code section 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 201 occurred (penalties set by Labor Code section 2699(f)(2));

2. For violations of Labor Code section 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 202 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 203 occurred (penalties set by Labor Code section 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be

provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and 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. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Shryne Group has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed or untimely meal and rest periods, and records pertaining to all unpaid hours worked by Mendivil and the Aggrieved Employees. Accordingly, Mendivil seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



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cc: Kassandra Mendivil
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