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7 Attorney for Plaintiff(s),
KASSANDRA MENDIVIL, and all others similarly situated
8 (Additional Counsel on Following Page)

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**
11 **(UNLIMITED JURISDICTION)**

12 KASSANDRA MENDIVIL, on behalf of
herself, and all others similarly situated and
13 on behalf of herself as an “aggrieved
employee” on behalf of other “aggrieved
14 employees” under the Labor Code Private
Attorneys General Act of 2004,

15
16 *Plaintiff(s),*

17 vs.

18 IGS SOLUTIONS, LLC, a California limited
19 liability company, STRATEGIC GREEN
PARTNERS LLC dba AUTHENTIC 760, a
20 California limited liability company;
SHRYNE GROUP, INC., a California
21 corporation; and DOES 1 through 50,
22 inclusive,

23 *Defendant(s).*
24
25
26
27
28

FILED
Superior Court of California
County of Los Angeles
11/10/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: A. Rodriguez Deputy

Case No.: 20STCV45949

CLASS ACTION

**[PROPOSED] FIRST AMENDED
COMPLAINT FOR:**

1. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1182.11, 1182.12, 1194, 1197, and 1198);
2. Vacation Pay Forfeiture (Lab. Code § 227.3);
3. Failure to Provide Sick Leave (Lab. Code §§ 233, 246, and 246.5);
4. Failure to Provide Rest Breaks (Lab. Code § 226.7 and 1198);
5. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
6. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
7. Unlawful Tip Collection (Lab. Code § 351);
8. Wage Statement Penalties (Lab. Code § 226);
9. Waiting Time Penalties (Lab. Code §§ 201, 201.5, 202, and 203);



10. Unfair Competition (Bus. & Prof. Code
§§ 17200, et seq.); and
11. Civil Penalties (Lab. Code §§ 2698, et
seq.).

JURY TRIAL DEMANDED

ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff KASSANDRA MENDIVIL (hereafter “Plaintiff”), on behalf of herself and all
2 other similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action based on alleged violations of
5 the California Labor Code and Industrial Welfare Commission Order No. 7-2001 (hereafter “the
6 Wage Order”), against IGS SOLUTIONS, LLC, a California limited liability company,
7 STRATEGIC GREEN PARTNERS LLC dba AUTHENTIC 760, a California limited liability
8 company, SHRYNE GROUP, INC., a 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, and other similarly situated current and former employees in California for unpaid wages and
11 other related relief. These claims are based on Defendants’ alleged failures to (1) pay all wages
12 earned for all hours worked at the correct rates of pay, (2) provide all rest breaks and meal periods,
13 (3) indemnify Plaintiff and the below-described Class Members for reasonable expenses incurred
14 during the course of performing their duties, (4) provide accurate written wage statements, (5)
15 timely pay wages during employment, (6) timely pay final wages upon termination of
16 employment and (8) fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages,
17 premium wages, statutory penalties, reimbursement for expenses, and related relief through this
class and representative action.

18 **JURISDICTION AND VENUE**

19 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
20 and the Class Members, inclusive of all relief, place more than \$25,000 in controversy.

21 4. Venue is proper in Los Angeles County pursuant to California Code of Civil
22 Procedure sections 395(a) and 395.5 in that liability arose in Los Angeles County because at least
23 some of the transactions that are the subject matter of this Complaint occurred therein and/or
24 because each defendant is found, maintains offices, transacts business, and/or has an agent
therein.

25 **THE PARTIES**

26 5. Plaintiff is a resident of Thousand Palms, California. Defendants employed
27 Plaintiff from February 12, 2020 to approximately April 27, 2020 as an assistant manager. At all
28 relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of



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1 Regulations Section 11040 and an “Aggrieved Employee” within the meaning of Labor Code
2 Section 2699(c).

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

6 7. Defendant STRATEGIC GREEN PARTNERS LLC dba AUTHENTIC 760 is a
7 limited liability company organized and existing under the laws of California and a citizen of
8 California based on Plaintiff’s information and belief.

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

11 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
12 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
13 is informed and believes and thereon alleges that said defendants are legally responsible for the
14 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
15 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants
16 when ascertained.

17 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times
18 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
19 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
20 and scope of such agency or employment, and with the approval and ratification of each of the
21 other Defendants.

22 11. Plaintiff is informed and believes and thereon alleges that each and every one of
23 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
24 each acting as agents and/or employees, and/or under the direction and control of each of the other
25 defendants, and that said acts and failures to act were within the course and scope of said agency,
26 employment and/or direction and control.

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

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CLASS ACTION ALLEGATIONS

13. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

14. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California as hourly employees, including assistant managers, managers, inventory managers, budtenders, receptionists, fillers, fulfillment employees, drivers, manufacturing employees, production employees, barcoders, brand ambassadors, warehouse employees, cultivation employees, data entry employees, inventory employees, accounting employees, e-commerce employees, and other similar hourly or non-exempt positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

15. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

16. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California law.

17. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to provide the Class with all rest periods as required by section 12 of the Wage Order?

B. Whether Defendants failed to provide the Class with all meal periods as required by section 11 of the Wage Order?

C. Whether Defendants failed to pay the Class for all hours worked at the correct rates of pay, including but not limited to, minimum, regular, and overtime wages?

D. Whether Defendants failed to indemnify the Class Members for the



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reasonable expenses they incurred during the course of performing their duties;

E. Whether Defendants unlawfully collected the Class Members' monetary tips?

F. Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements?

G. Whether Defendants willfully failed to provide the Class with timely final wages?

H. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*, with respect to the Class?

18. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or a lack of a policy which resulted in Defendants failing to comply with the California Labor Code and the Business and Professions Code as alleged herein.

19. **Adequacy of Class Representative:** Plaintiff is an adequate Class representative in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

20. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate Class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in wage and hour class action litigation and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

21. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will



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1 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

2 **STATEMENT OF FACTS**

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

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

15 24. At all relevant times, Plaintiff and the Class Members have worked over eight (8)
16 hours in one workday and/or over forty (40) hours in one work week. Despite this, Defendants
17 failed to provide Plaintiff and the Class Members with all timely rest and meal periods pursuant
18 to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods
19 and three ten-minute rest periods on workdays they worked more than ten hours. Defendants
20 failed to hire sufficient staff members to cover Plaintiff and the Class Members so they could take
21 duty-free, ten-minute rest periods and duty-free, 30-minute meal periods. Even when Plaintiff and
22 the Class Members tried to take duty-free rest and/or meal periods, other employees and
23 managers, including Brenda (last name unknown), Joanna (last name unknown), Catherine (last
24 name unknown), Store Manager Daniel (last name unknown), and Retail District Manager,
25 Jennifer Arteaga (collectively "Defendants' Managers") interrupted them with requests for help
26 serving customers and for other business needs. Further, on the rare occasions that Defendants
27 permitted Plaintiff and the Class Members to take timely, off-duty rest breaks, Defendants
28 required her and the Class Members to remain on the premises. Defendants did not request an
exemption from California's rest period law from the Division of Labor Standards Enforcement.

25 25. Defendants also often failed to provide Plaintiff and the Class Members with 30-
26 minute meal periods before their fifth work hour. Defendants' Managers required Plaintiff and



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1 the Class Members to request permission prior to taking a meal period, which they often
2 prohibited, due to the press of business. On a number of occasions, Plaintiff complained to
3 Defendants' Managers about Defendants' failure to provide her and the Class Members with
4 timely rest and meal periods. In spite of this, Defendants refused to make changes.

5 26. At all relevant times, Defendants' Managers instructed Plaintiff and the Class
6 Members to falsify their timecards and clock out for meal periods they did not take. Defendants'
7 Managers also modified Plaintiff's and the other Class Members' time records to falsely state that
8 they took duty-free, timely, 30-minute meal periods. Defendants failed to compensate Plaintiff
9 and the other Class Members for this work. Finally, Defendants failed to pay Plaintiff and the
10 Class Members premium wages for days on which they failed to provide them with all timely
11 meal periods and unrestricted rest periods.

12 27. At all relevant times, Defendants required Plaintiff and the Class Members to incur
13 certain business expenses in the course of performing their duties. Defendants instructed Plaintiff
14 and the Class Members to download the "WhenIWork" and "WhatsApp" applications on their
15 personal mobile phones to check their schedules and communicate with management and other
16 employees while working and when they were clocked out from work. Defendants failed to pay
17 Plaintiff and the Class Members for this time spent working while clocked out. Further,
18 Defendants failed to reimburse Plaintiff and the Class Members for mobile phone charges, nor
19 did they offer them a free alternative to such personal phone use. Defendants also failed to offer
20 an alternative for checking work schedules. Defendants also required Plaintiff and the Class
21 Members to use their personal vehicles to make bank deposits and pick up necessary supplies.
22 Defendants did not reimburse Plaintiff and the Class Members for such mileage expenses.

23 28. Defendants failed to provide Plaintiff and the Class with accurate itemized written
24 wage statements. As a result of the violations above, Defendants also failed to timely pay Plaintiff
25 and the Class all earned wages at the time of termination or separation from employment as it did
26 not pay them for all minimum wages, overtime wages, and reimburse them for all expenses.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 221, 510, 1182.11, 1182.12, 1194, 1197, and 1198)

(By Plaintiff and the Class against all Defendants)

28 29. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.



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1 30. At all relevant times, Plaintiff and the Class Members have been entitled to the
2 benefits and protections of California Labor Code §§ 510, 1182.11, 1182.12, 1194, 1197, 1198,
3 and the Wage Order.

4 31. Labor Code § 1182.11 states,

5 Notwithstanding any other provision of this part, on and after March 1, 1997, the
6 minimum wage for all industries shall not be less than five dollars (\$5.00) per
7 hour; on and after March 1, 1998, the minimum wage for all industries shall not
8 be less than five dollars and seventy-five cents (\$5.75) per hour. The Industrial
9 Welfare Commission shall, at a public meeting, adopt minimum wage orders
consistent with this section without convening wage boards, which wage orders
shall be final and conclusive for all purposes.

10 32. At all relevant times, Labor Code § 1182.12 required employers like Defendants
11 to pay their employees as follows:

12 (a) Notwithstanding any other provision of this part, on and after July 1,
13 2014, the minimum wage for all industries shall be not less than nine
14 dollars (\$9) per hour, and on and after January 1, 2016, the minimum
15 wage for all industries shall be not less than ten dollars (\$10) per hour.

16 (b) Notwithstanding subdivision (a), the minimum wage for all industries
17 shall not be less than the amounts set forth in this subdivision, except
18 when the scheduled increases in paragraphs (1) and (2) are temporarily
suspended under subdivision (d).

19 (1) For any employer who employs 26 or more employees, the
20 minimum wage shall be as follows:

21 (A) From January 1, 2017, to December 31, 2017, inclusive,-
22 ten dollars and fifty cents (\$10.50) per hour.

23 (B) From January 1, 2018, to December 31, 2018, inclusive,-
24 eleven dollars (\$11) per hour.

25 (C) From January 1, 2019, to December 31, 2019, inclusive,-
26 twelve dollars (\$12) per hour.

27 (D) From January 1, 2020, to December 31, 2020, inclusive,-
28 thirteen dollars (\$13) per hour.



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(E) From January 1, 2021, to December 31, 2021, inclusive, fourteen dollars (\$14) per hour.

(F) From January 1, 2022, and until adjusted by subdivision (c)-fifteen dollars (\$15) per hour.

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

34. 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 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 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 (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(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.



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

4 36. In relevant part, California Labor Code § 510 states,

5 Any work in excess of eight hours in one workday and any work in excess
6 of 40 hours in any one workweek and the first eight hours worked on the
7 seventh day of work in any one workweek shall be compensated at the rate
8 of no less than one and one-half times the regular rate of pay for an
9 employee. Any work in excess of 12 hours in one day shall be compensated
10 at the rate of no less than twice the regular rate of pay for an employee. In
11 addition, any work in excess of eight hours on any seventh day of a
12 workweek shall be compensated at the rate of no less than twice the regular
13 rate of pay of an employee.

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

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

19 39. Labor Code section 1198 makes it unlawful for an employer to employ an
20 employee under conditions that violate the Wage Order.

21 40. California Labor Code § 221 prohibits an employer from taking deductions from
22 an employee's wages without the employee's express written consent or other legal authority for
23 doing so.

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

 42. At all relevant times, Defendants required Plaintiff and the Class Members 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



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1 employees. Still, Defendants deducted wages for such time that Plaintiff and the Class Members
2 spent working. Additionally, Defendants deducted as many as 16 hours per pay period from the
3 wages Plaintiff and the Class Members earned and recorded. Plaintiff and the Class Members
4 complained about these deductions to Defendants. Nevertheless, Defendants did not return the
5 wages wrongfully deducted. Plaintiff and the Class Members regularly spent approximately one
6 hour on duty after clocking out to complete required tasks prior to leaving work. Defendants,
7 however, failed to pay Plaintiff and the other Class Members for this off-the-clock work.

8 43. At all relevant times, Defendants knowingly failed to compensate Plaintiff and the
9 Class Members for all hours worked, including but not limited to, minimum, overtime and double
10 time wages. As such, Defendants failed to compensate Plaintiff and the Class Members for all
11 hours worked at the correct rates of pay.

12 44. Plaintiff is informed and believes that, at all relevant times, Defendants have
13 applied centrally devised policies and practices to her and the Class Members with respect to
14 working conditions and compensation arrangements.

15 45. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
16 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
17 failure to compensate the Class Members for all hours worked at the correct rates of pay as
18 required by California law.

19 46. As a result of Defendants' unlawful conduct, Plaintiff and the Class have suffered
20 damages in an amount, subject to proof, to the extent that they were not paid the full amount of
21 wages earned during each pay period during the applicable limitations period, including
22 minimum, overtime, and double-time wages.

23 47. Pursuant to California Labor Code § 1194, Plaintiff, on behalf of herself and the
24 Class, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of
25 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, including
26 interest thereon, as permitted by law, all in amounts subject to proof.

SECOND CAUSE OF ACTION

VACATION PAY FORFEITURE

(Lab. Code § 227.3)

(By Plaintiff and the Class against all Defendants)

28 48. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.



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1 49. Section 227.3 of the Labor Code states that, unless otherwise stipulated by a
2 collective bargaining agreement, whenever a contract of employment or employer policy provides
3 for paid vacations and an employee is terminated without having fully utilized his vested vacation
4 time, all vested vacation must be paid to the employee at his final rate in accordance with such
5 contract of employment or employer policy respecting vacation eligibility or time served. In
6 addition, the statute prohibits an employment contract or employer policy from providing for
7 forfeiture of such vested vacation time upon an employee's termination of employment,
8 regardless of the reason for termination. (See *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d
9 774, [183 Cal.Rptr. 846, 646 P.2d 122 (1982)].)

10 50. The California Supreme Court has examined the terms under which an employee
11 acquires a vested right to vacation benefits that is protected against forfeiture. The Supreme Court
12 concluded that a "proportionate right to a paid vacation 'vests' as the labor is rendered." Thus, an
13 employee is entitled to a pro rata share of vacation pay upon termination of employment even
14 though he has not completed all of the service requirements specified in the employer's policy or
15 plan.

16 51. An employer should never, by reason of the employee's termination, attempt to
17 divest or forfeit any portion of the vacation benefits in which the employee has acquired a vested
18 interest pursuant to the terms of the employer's policy or agreement.

19 52. A vacation policy that provides for the forfeiture of vacation pay that is not used
20 by a specified date, such as an employee's anniversary date, is impermissible under California
21 law. Courts have held that such "use-it-or-lose-it policies" result in forfeitures of vested vacation
22 pay and thus transgress the requirements of Labor Code Section 227.3. Such policies do not
23 permit employees to carry over vacation time from one year to the next and do not allow
24 employees to receive vacation pay in lieu of taking vacation time off.

25 53. The DLSE's enforcement policy permits employers to exclude employees from a
26 vacation policy during a specified period of time at the beginning of employment. This could
27 apply to a probationary or introductory period or even the first year of employment. If the policy
28 is properly drafted, employees will not be entitled to prorated vacation benefits if they separate
from the employer for any reason during the probationary period or "initial employment."
(D.L.S.E. Operations and Procedures Manual § 7(a).) However, such an exclusion will be
recognized only if it is not found to be a "subterfuge." The Division will deem a subterfuge to



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1 exist if vacation benefits are implicitly earned or accrued during the waiting period. For example,
2 if a policy provides that employees do not earn any vacation during their first year of employment,
3 but earn four weeks' vacation during the second year and are reduced to two weeks' vacation the
4 third year, the Division will contend that the policy involves a subterfuge. This is based on the
5 Division's position that the policy, when viewed as a whole, makes it clear that two of the four
6 weeks' vacation attributed to the second year are actually earned in the first years. In a case where
7 such a subterfuge is found, employees who separate during the so-called "waiting period" (i.e.,
8 the first year of employment in the example) will be entitled to prorated vacation pay.

9 54. The Division takes the position that vacation pay for a terminating employee must
10 be prorated on a daily basis and must be paid at the final rate of pay in effect as of the date of the
11 separation. (See D.L.S.E. Operations and Procedures Manual § 8; D.L.S.E. Enforcement Policies
12 and Interpretations Manual § 13.3 (1998); Letter of Chief Deputy Labor Commissioner Albert J.
13 Reyff (Oct. 28, 1986).)

14 55. The Defendants maintained vacation pay policies and practices with accrual
15 components that violate Labor Code § 227.3 based on the California Supreme Court's decision
16 in *Suastez v. Plastic Dress-Up Co.*, supra. The Defendants' vacation policy fails to provide for
17 proportionate vacation pay accruals as employees render labor and causes employees to forfeit
18 their vested rights to vacation pay. Under the policies and practices of the Defendants, Plaintiff
19 and all of the other Class Members earned the following forms of vacation pay during
20 employment: vacation, and paid time off (PTO). Under such policies, these accrued but unused
21 forms of vacation pay were subject to forfeit at the conclusion of the employment relationship.
22 Consequently, the Class Members are entitled to recover vacation pay.

23 56. In *Suastez*, the defendant-employer "refused to pay vacation benefits to anyone
24 whose employment was terminated before . . . [his or her employment] anniversary date" and
25 refused to pay the plaintiff-employee a pro rata share of his vacation pay for the time period
26 between his last employment anniversary date and his termination date. (*Id.* at 776–77.) In finding
27 for the plaintiff-employee, the Court held that "a proportionate right to a paid vacation 'vests' as
28 the labor is rendered" and that Labor Code § 227.3 protects that right from forfeiture. (*Id.* at 784.)

57. It is especially worth noting that, in rejecting the contention that the plaintiff-
employee had no vested right to vacation pay until his anniversary date, the Court specifically
stated: "The right to some share of vacation pay vests, like pension rights, on acceptance of



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1 employment. Nonperformance of a condition subsequent, such as [defendant-employer's]
2 requirement that employees remain until their anniversary, can, at most, result in a forfeiture of
3 the right to a vacation; *it cannot prevent that right from vesting.*" (*Id.* at 780–81, (italics added).)

4 58. Like the vacation pay policy the Court rejected in *Suastez*, the Defendants'
5 vacation pay policies also fail to provide for proportionate accruals. Defendants willfully failed
6 to pay out at the end of the employment relationship and at the correct final rates of pay the unused
7 vacation pay Plaintiff and the Class Members earned and accrued. During the employment
8 relationship between Defendants and Plaintiff and the Class Members, Defendants paid out
9 accrued vacation pay at lower rates than the regular rates of pay of Plaintiff and the Class
Members.

10 59. Defendants did not pay Plaintiff or the Class Members at the time they were
11 terminated for any unused but accrued vacation days and the like. Defendants had the ability to
12 provide Plaintiff and the Class Members payment for their accrued but unused vacation days and
13 similar compensation but intentionally failed to pay Plaintiff and the Class Members.

14 60. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
15 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
16 failure to pay Plaintiff and the other Class Members vacation wages as required by California
law.

17 **THIRD CAUSE OF ACTION**
18 **FAILURE TO PROVIDE SICK LEAVE**
19 **(Lab. Code §§ 233, 246, and 246.5)**

20 **(By Plaintiff and the Class against all Defendants)**

21 61. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22 62. Labor Code section 233 states

23 Any employer who provides sick leave for employees shall permit an employee to
24 use in any calendar year the employee's accrued and available sick leave
25 entitlement, in an amount not less than the sick leave that would be accrued during
26 six months at the employee's then current rate of entitlement, for the reasons
specified in subdivision (a) of Section 246.5.

27 63. Labor Code section 246(a)(1) states

28 An employee who, on or after July 1, 2015, works in California for the same



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1 employer for 30 or more days within a year from the commencement of
2 employment is entitled to paid sick days as specified in this section.

3 64. Labor Code section 246.5 states

4 (a) Upon the oral or written request of an employee, an employer shall provide
5 paid sick days for the following purposes:

6 (1) Diagnosis, care, or treatment of an existing health condition of, or
7 preventive care for, an employee or an employee's family member.

8 ...

9 (c) (1) An employer shall not deny an employee the right to use accrued
10 sick days ...

11 65. Labor Code § 248 entitles food sector workers such as Plaintiff and the Class
12 Members of up to 80 hours of COVID-19 food sector supplemental paid sick leave. Additionally,
13 Labor Code § 248.2 entitles workers such as Plaintiff and the Class Members of up to 80 hours
14 of COVID-19 supplemental paid sick leave when they were unable to work or telework.

15 66. The Defendants failed to provide Plaintiff and all of the other Class Members with
16 the categories of paid sick leave specified above at their regular rates of pay. Defendants at times
17 conditioned such leaves of absence on finding other employees to cover for the employee
18 concerned. The Defendants also failed to implement COVID-19 safety measures, including
19 temperature checks, social distancing, and masks.

20 67. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
21 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
22 failure to pay Plaintiff and the other Class Members sick leave, including COVID-19 food sector
23 supplemental paid sick leave, as required by California law.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE REST BREAKS**

26 **(Lab. Code §§ 226.7 and 1198)**

27 **(By Plaintiff and the Class against all Defendants)**

28 68. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

69. At all relevant times during the applicable limitations period, Plaintiff and the
Class have been employees of Defendants and entitled to the benefits and protections of California
Labor Code §§ 226.7, 1198, and the Wage Order.



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1 70. Labor Code § 1198 states,

2 “The maximum hours of work and the standard conditions of labor fixed
3 by the commission shall be the maximum hours of work and the standard
4 conditions of labor for employees. The employment of any employee for
5 longer hours than those fixed by the order or under conditions of labor
6 prohibited by the order is unlawful.”

7 71. In relevant part, Section 12 of the Wage Order states

8 “Rest Periods:

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

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

23 72. “[I]n the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break
24 should fall on either side of the meal break. (Ibid.)” *Brinker Rest. Corp. v. Superior Court* (2012)
25 53 Cal. 4th 1004, 1032.

26 73. In addition, Labor Code Section 226.7 states

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

32 (c) If an employer fails to provide an employee a meal or rest or recovery
33 period in accordance with a state law, including, but not limited to, an
34 applicable statute or applicable regulation, standard, or order of the
35 Industrial Welfare Commission, the Occupational Safety and Health
36 Standards Board, or the Division of Occupational Safety and Health, the



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1 employer shall pay the employee one additional hour of pay at the
2 employee's regular rate of compensation for each workday that the meal or
3 rest or recovery period is not provided.

4 74. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
5 provided with net rest breaks of at least ten minutes for each four-hour period of work, or major
6 fraction thereof.

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

20 76. Plaintiff is informed and believes and thereon alleges that, at relevant times within
21 the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which
22 resulted in Defendants not providing the Class Members with all timely rest breaks required by
23 California law.

24 77. Defendants failed to pay Plaintiff the additional wages required by California
25 Labor Code § 226.7 for workdays in which one or more timely rest breaks were not provided to
26 her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the
27 applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy
28 which resulted in Defendants not providing the Class Members with additional wages for all
workdays on which one or more timely rest breaks were not provided to them as required by
California Labor Code § 226.7.

78. As a result of Defendants' unlawful conduct, Plaintiff and the Class have suffered



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1 damages in amounts subject to proof to the extent they were not paid additional wages owed for
2 all rest breaks not provided to them.

3 79. By reason of the above, Plaintiff and the members of the Class are entitled to
4 premium wages for workdays in which one or more rest breaks were not provided to them
5 pursuant to California Labor Code § 226.7.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS**

8 **(Lab. Code §§ 226.7, 512, and 1198)**

9 **(By Plaintiff and the Class against all Defendants)**

10 80. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 81. At all relevant times during the applicable limitations period, Plaintiff and the
12 Class have been employees of Defendants and entitled to the benefits and protections of California
13 Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

14 82. Labor Code § 1198 states,

15 “The maximum hours of work and the standard conditions of labor fixed
16 by the commission shall be the maximum hours of work and the standard
17 conditions of labor for employees. The employment of any employee for
18 longer hours than those fixed by the order or under conditions of labor
19 prohibited by the order is unlawful.”

20 83. In relevant part, Labor Code Section 512 states

21 “An employer may not employ an employee for a work period of more
22 than five hours per day without providing the employee with a meal period
23 of not less than 30 minutes, except that if the total work period per day of
24 the employee is no more than six hours, the meal period may be waived by
25 mutual consent of both the employer and employee. An employer may not
26 employ an employee for a work period of more than 10 hours per day
27 without providing the employee with a second meal period of not less than
28 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.”

84. 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,



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1 except that when a work period of not more than six (6) hours will
2 complete the day's work the meal period may be waived by mutual
3 consent of the employer and the employee.

4 (B) An employer may not employ an employee for a work period of
5 more than ten (10) hours per day without providing the employee
6 with a second meal period of not less than 30 minutes, except that if
7 the total hours worked is no more than 12 hours, the second meal
8 period may be waived by mutual consent of the employer and the
9 employee only if the first meal period was not waived.

10 (C) Unless the employee is relieved of all duty during a 30 minute meal
11 period, the meal period shall be considered an "on duty" meal period
12 and counted as time worked. An "on duty" meal period shall be
13 permitted only when the nature of the work prevents an employee
14 from being relieved of all duty and when by written agreement
15 between the parties an on-the-job paid meal period is agreed to. The
16 written agreement shall state that the employee may, in writing,
17 revoke the agreement at any time.

18 (D) If an employer fails to provide an employee a meal period in
19 accordance with the applicable provisions of this Order, the
20 employer shall pay the employee one (1) hour of pay at the
21 employee's regular rate of compensation for each workday that the
22 meal period is not provided.

23 (E) In all places of employment where employees are required to eat on
24 the premises, a suitable place for that purpose shall be designated.

25 85. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
26 Class Members were entitled to uninterrupted meal periods of at least thirty (30) minutes for each
27 day they worked five or more hours, and to a second uninterrupted 30-minute meal on days they
28 worked more than ten hours.

86. By not providing adequate staff to relieve Plaintiff and the Class Members of their
duties, Defendants have intentionally and improperly failed to provide all meal periods free from
any work or duties to Plaintiff and the Class Members in accordance with the Wage Order,
including, but not limited to, a second 30-minute meal period when they worked in excess of ten
hours in a workday. Even when Plaintiff and the Class Members tried to take duty-free meal
periods, other 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 "Defendants' Managers") interrupted



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1 them with requests for help serving customers and for other business needs.

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

8 88. Defendants also required Plaintiff and the Class Members to eat on the premises
9 of their worksite the Defendants failed to provide them with a break room or other suitable place
10 for that purpose shall be designated.

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

16 90. Plaintiff is informed and believes and thereon alleges that, at all relevant times
17 within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a
18 policy which resulted in Defendants not providing the Class Members with all timely meal periods
19 required by California Labor Code § 512 and the Wage Order.

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

27 92. As a result of Defendants' unlawful conduct, Plaintiff and the Class have suffered
28 damages in amounts subject to proof to the extent they were not paid additional wages owed for
all meal periods not provided to them.

93. By reason of the above, Plaintiff and the members of the Class are entitled to
premium wages for workdays in which one or more meal periods were not provided to them



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pursuant to California Labor Code § 226.7.

SIXTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198, 2800, and 2802)

(By Plaintiff and the Class against all Defendants)

94. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

95. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 1198, 2802, and the Wage Order.

96. Labor Code section 2800 states, “An employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

97. In pertinent part, California Labor Code section 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.”

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

(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.

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

100. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties, including the losses caused by the Defendants want of ordinary care. Defendants instructed Plaintiff and the Class Members 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 Class Members for this time spent working while clocked out. Further, Defendants failed to reimburse Plaintiff and the Class Members for mobile phone charges, nor did they offer them a free



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1 alternative to such personal phone use. Defendants also failed to offer an alternative for checking
2 work schedules. Defendants also required Plaintiff and the Class Members to use their personal
3 vehicles to make bank deposits and pick up necessary supplies. Defendants did not reimburse
4 Plaintiff and the Class Members for such mileage expenses. Additionally, Defendants required
5 Plaintiff and the Class Members to supply their own protective gear, work equipment such as
6 gloves and knives, auto insurance, use of personal vehicles, cleaning supplies, uniform
7 maintenance, maintenance and repair of vehicles, and costs for hotel rooms when travelling for
8 work. With regard to uniforms, Defendants provided only two shirts and a sweater free of charge
9 and required Class Members to purchase other apparel if they needed additional uniform items.
10 With regard to travel, defendants require Plaintiffs and the Class Members to travel in their
11 personal vehicles to purchase office supplies. Defendants refuse to reimburse Plaintiffs and the
12 Class Members for such mileage.

13 101. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
14 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
15 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
16 during the course of performing their duties.

17 102. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class
18 Members are entitled to reimbursement for all necessary expenditures and losses and interest
19 thereon, due and owing to them within four years of the date of the filing of the Complaint until
20 the entry of judgment.

21 103. Accordingly, with respect to this cause of action, on behalf of herself and the Class,
22 Plaintiff prays for the above stated relief, costs, and all reasonable attorneys' fees pursuant to
23 Labor Code § 2802(c) and as otherwise permitted by law.

24 **SEVENTH CAUSE OF ACTION**

25 **UNLAWFUL TIP COLLECTION**

26 **(Lab. Code § 351)**

27 **(By Plaintiffs and the Class against all Defendants)**

28 104. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

105. In relevant part, California Labor Code § 350(e) provides as follows:

(e) "Gratuity" includes any tip, gratuity, money, or part thereof that has been paid
or given to or left for an employee by a patron of a business over and above the



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1 actual amount due the business for services rendered or for goods, food, drink, or
2 articles sold or served to the patron.

3 106. In relevant part, California Labor Code § 351 states:

4 No employer or agent shall collect, take, or receive any gratuity or a part thereof
5 that is paid, given to, or left for an employee by a patron, or deduct any amount
6 from wages due an employee on account of a gratuity, or require an employee to
7 credit the amount, or any part thereof, of a gratuity against and as a part of the
8 wages due the employee from the employer. Every gratuity is hereby declared to
9 be the sole property of the employee or employees to whom it was paid, given, or
10 left for.

11 107. During all times relevant herein, Defendants forced the Class Members to share
12 their monetary tips with Defendants' supervisors and managers, in violation of Labor Code § 351.

13 108. Therefore, Class Members demand return of all tips unlawfully collected from
14 them within four years of the filing of this complaint until the date of entry of judgment after trial.

15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

17 **(Lab. Code § 226)**

18 **(By Plaintiff and the Class against all Defendants)**

19 109. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 110. At all relevant times during the applicable limitations period, Plaintiff and the
21 Class have been employees of Defendants and entitled to the benefits and protections of California
22 Labor Code § 226.

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

28 112. Pursuant to California Labor Code section 226(e), 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:



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1 A. The amount of the gross wages or net wages paid to the employee during
2 the pay period or any of the other information required to be provided on the itemized wage
3 statement pursuant to California Labor Code § 226(a);

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

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

12 113. “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.

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

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

24 116. As a result of being provided with inaccurate wage statements by Defendants,
25 Plaintiff and the Class Members have suffered an injury. Their legal rights to receive accurate
26 wage statements were violated and they were misled about the amount of wages they had actually
27 earned and were owed. In addition, the absence of accurate information on their wage statements
28 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 agencies. Further, Plaintiff



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1 and the Class Members were not able to ascertain from the wage statements whether Defendants
2 complied with their obligations under California Labor Code section 226(a).

3 117. Pursuant to California Labor Code § 226(e), Plaintiff and the Class are entitled to
4 recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period
5 in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each
6 violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an
7 aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are also entitled to an
8 award of costs and reasonable attorneys' fees.

9 **NINTH CAUSE OF ACTION**

10 **WAITING TIME PENALTIES**

11 **(Lab. Code §§ 201, 201.5, 202, and 203)**

12 **(By Plaintiff and the Class against all Defendants)**

13 118. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 119. At all relevant times during the applicable limitations period, Plaintiff and the
15 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
16 of California Labor Code §§ 201-203, and the Wage Order.

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

19 121. Under Labor Code § 201.5, the payment of wages to employees may be mailed to
20 the employee or made available to the employee at a location specified by the employer in the
21 county where the employee was hired or performed labor. The payment shall be deemed to have
22 been made on the date that the employee's wages are mailed to the employee or made available
23 to the employee at the location specified by the employer, whichever is earlier.

24 122. Labor Code § 202 provides that all earned and unpaid wages of an employee who
25 quits after providing at least 72-hours notice before quitting are due and payable at the time of
26 quitting and that all earned and unpaid wages of an employee who quits without providing at least
27 72-hours notice before quitting are due and payable within 72 hours.

28 123. By failing to pay Plaintiff and the Class Members earned minimum, overtime, and
double time wages, Defendants failed to timely pay them all earned and unpaid wages in violation
of Labor Code § 201, 201.5, or § 202.

124. Labor Code § 203 provides that the wages of an employee continue on a daily



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1 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
2 unpaid wages to the employee in accordance with Labor Code § 201, 201.5, or § 202.

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

8 126. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
9 herself and the Class Members, in amounts subject to proof not to exceed 30 days of waiting time
10 penalties for each Class Member.

11 **TENTH CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

13 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

14 **(By Plaintiff and the Class against all Defendants)**

15 127. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

16 128. At all relevant times during the applicable limitations period, Plaintiff and the
17 Class have been employees of Defendants and entitled to the benefits and protections of the
18 Business and Professions Code §§ 17200, *et seq.*

19 129. Defendants engaged in unfair competition by failing to: 1) pay employees for all
20 hours worked at the correct rates of pay; 2) pay their employees premium wages for workdays
21 during which one or more meal or rest periods were not provided, and 3) unlawfully collecting
22 the Class Members' monetary tips. Moreover, Defendants engaged in unfair competition by
23 requiring Plaintiff and the Class to incur, without reimbursement, business expenses in the course
24 of performing their duties including unreimbursed mileage, uniform purchases, and mobile
25 phones. Furthermore, Defendants withheld vacation and sick pay that Plaintiff and the Class
26 Members earned and accrued but did not use.

27 130. The unlawful conduct of Defendants alleged herein amount to and constitutes
28 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
gained a competitive advantage over other comparable companies doing business in California
that comply with their legal obligations to compensate employees for all earned wages.



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1 131. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
2 Class have suffered injuries in fact and lost money or property. Plaintiff and the Class were
3 deprived of wages for all rest and meal periods not provided to them, for hours worked for which
4 they did not receive wages at the correct rates of pay, for vacation and sick pay they earned and
5 did not use, for tips unlawfully collected from them, and reimbursement for expenses that Plaintiff
6 and the Class incurred in the course of performing their duties.

7 132. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
8 Class are entitled to restitution of all monies rightfully belonging to them that Defendants did not
9 pay them or otherwise retained by means of their unlawful and unfair business practices.

10 133. Plaintiff and the Class are entitled to reasonable attorneys' fees in connection with
11 their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the
12 substantial benefit doctrine and/or the common fund doctrine.

13 134. Accordingly, with respect to this cause of action, on behalf of herself and the Class,
14 Plaintiff prays for the herein stated relief, and an award of all reasonable costs and attorneys' fees,
15 including interest thereon, as permitted by law, all in amounts subject to proof.

16 **ELEVENTH CAUSE OF ACTION**

17 **CIVIL PENALTIES**

18 **(Lab. Code §§ 2698, et seq.)**

19 **(By Plaintiff and the Class against all Defendants)**

20 135. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21 136. "Aggrieved Employees" Definition: The "Aggrieved Employees" are all persons
22 Defendants employed in California as hourly employees, including assistant managers, managers,
23 inventory managers, budtenders, receptionists, fillers, fulfillment, and in similar positions, during
24 the period of September 21, 2019 and entry of judgment ("the PAGA Period").

25 137. Labor Code § 204 states:

- 26 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
27 or 204.2, earned by any person in any employment are due and payable
28 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



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1 calendar month, shall be paid for between the 1st and 10th day of the
2 following month.

3 ...

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

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

15 (b) However, when employees are covered by a collective bargaining
16 agreement that provides different pay arrangements, those arrangements
17 shall apply to the covered employees.

18 The requirements of this section shall be deemed satisfied by the payment of wages for weekly,
19 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
20 following the close of the payroll period.

21 138. Defendants paid wages to employees on regular intervals. Defendants failed to
22 pay Plaintiff on such intervals for all wages earned and all hours worked. On information and
23 belief Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
24 intervals for all wages earned and all hours worked. Defendants did not allow Plaintiff and the
25 Class Members to receive their wages by direct deposit. On multiple occasions, Defendants sent
26 to the Plaintiff and Class Members' paychecks to the wrong worksites. Defendants prohibited
27 Plaintiff and the Class Members from retrieving their paychecks from these sites and, instead,
28 required them to wait until Defendants made arrangements to have their paychecks delivered to
the worksite they had assigned Plaintiff in the Class Members to.

139. Labor Code § 226 states

(b) An employer that is required by this code or any regulation adopted
pursuant to this code to keep the information required by subdivision (a)



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1 shall afford current and former employees the right to inspect or copy
2 records pertaining to their employment, upon reasonable request to the
3 employer. The employer may take reasonable steps to ensure the identity
4 of a current or former employee. If the employer provides copies of the
5 records, the actual cost of reproduction may be charged to the current or
6 former employee.

7 Plaintiff and Class Members requested Defendants to produce or allow inspection of records
8 pertaining to their employment. Defendants have yet to provide such records or permit inspection
9 of them. Therefore, Defendants are in violation of Labor Code § 226.

10 140. Labor Code § 432 states, "If an employee or applicant signs any instrument
11 relating to the obtaining or holding of employment, he shall be given a copy of the instrument
12 upon request."

13 141. Before filing suit, Plaintiff and the Class Members requested that Defendants
14 provide a copy of any instrument they signed relating to the obtaining or holding of employment.
15 Defendants have yet to provide all such copies.

16 142. The Wage Order states that:

17 Every employer shall keep accurate information with respect to
18 each employee including the following:

- 19 (1) Full name, home address, occupation and social security number.
- 20 (2) Birth date, if under 18 years, and designation as a minor.
- 21 (3) Time records showing when the employee begins and ends each
22 work period. Meal periods, split shift intervals and total daily hours
23 worked shall also be recorded. Meal periods during which
24 operations cease and authorized rest periods need not be recorded.
- 25 (4) Total wages paid each payroll period, including value of board,
26 lodging, or other compensation actually furnished to the employee.
- 27 (5) Total hours worked in the payroll period and applicable rates of
28 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



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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.

Before filing suit, Plaintiff and the Class Members requested that Defendants allow them to inspect or copy such records pertaining to their employment. Defendants have yet to permit them to inspect all such records.

143. Labor Code § 226 states,

An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

Before filing suit, Plaintiff and the Class Members requested that Defendants allow them to inspect or copy their records pertaining to their employment. Defendants have yet to permit them to inspect all such records.

144. Labor Code § 1198 states that

"The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than



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those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Before filing suit, Plaintiff and the Class Members requested that Defendants allow them to inspect their records. Defendants have yet to permit them to inspect all such records.

145. Labor Code § 353 states,

Every employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all reasonable hours by the department.

Before filing suit, Plaintiff and the Class Members requested that Defendants provide them with an opportunity to inspect records of their gratuities. Defendants have not done so.

146. Labor Code § 1198.5 states,

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) (1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the employer receives the request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to produce a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Except as provided in paragraph (2) of subdivision (c), the employer is not required to make those personnel records or a copy thereof available at a time when the employee is actually required to render service to the employer, if the requester is the employee.

(2)(A) For purposes of this section, a request to inspect or receive a copy of personnel records shall be made in either of the following ways:



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(i) Written and submitted by the current or former employee or his or her representative.

(ii) Written and submitted by the current or former employee or his or her representative by completing an employer-provided form.

(B) An employer-provided form shall be made available to the employee or his or her representative upon verbal request to the employee's supervisor or, if known to the employee or his or her representative at the time of the request, to the individual the employer designates under this section to receive a verbal request for the form.

(c) The employer shall do all of the following:

(1) With regard to all employees, maintain a copy of each employee's personnel records for a period of not less than three years after termination of employment.

(2) With regard to current employees, make a current employee's personnel records available for inspection, and, if requested by the employee or his or her representative, provide a copy thereof, at the place where the employee reports to work, or at another location agreeable to the employer and the requester. If the employee is required to inspect or receive a copy at a location other than the place where he or she reports to work, no loss of compensation to the employee is permitted.

(3)(A) With regard to former employees, make a former employee's personnel records available for inspection, and, if requested by the employee or his or her representative, provide a copy thereof, at the location where the employer stores the records, unless the parties mutually agree in writing to a different location. A former employee may receive a copy by mail if he or she reimburses the employer for actual postal expenses.

Before filing suit, Plaintiff and the Class Members requested in writing that Defendants provide them with their personnel files. Defendants have not done so. Therefore, Defendants are in violation of Labor Code § 1198.5.

147. Labor Code § 2804 states,

Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall



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not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.

Defendants impliedly required Plaintiff and the Class Members to agree to waive their rights to reimbursement for the work-related expenses specified above.

148. Labor Code § 6400 states, “Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.” Labor Code § 6401 states,

Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code § 6402 states, “No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.” Labor Code § 6403 states,

No employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Defendants failed to provide Plaintiff and the Class Members with employment and a place of employment that was safe and healthful. Additionally, Defendants failed to furnish to Plaintiff and the Class Members safety devices and safeguards adequate to render employment and place of employment safe and healthful. Defendants permitted Plaintiff and the Class Members to be in place of employment which was not safe and healthful. Furthermore, Defendants failed to use methods and processes reasonably adequate to render employment and the place of employment of the Plaintiff and Class Members safe. The Defendants also failed to implement COVID-19 safety measures, including temperature checks, social distancing, and masks.

149. Section 1198.5 states that



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(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

150. Section 14 of the Wage Order states as follows:

Seats.

A. All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

B. When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

The nature of the work the Defendants expected Plaintiff and all of the other Class Members to perform reasonably permits the use of seats. However, the Defendants, in violation of the Wage Order and Labor Code § 1198, did not provide Plaintiff and all of the other Class Members with an adequate number of suitable seats. Additionally, the Defendants did not place an adequate number of suitable seats in reasonable proximity to their work area, nor did they permit Plaintiff and all of the other Class Members to use such seats when it did not interfere with the performance of their duties. Defendants required Plaintiff and the other Aggrieved Employees to stand or sit on the floor when their duties reasonably permitted the use of seating.

151. California Labor Code § 2350 states:

“Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated..”

152. In relevant part, § 13 of the Wage Order states:



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(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

153. In relevant part, § 15 of the Wage Order states, "A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use."

154. At all relevant times during the applicable limitations period, Defendants failed to provide any working toilet facilities for use by the Aggrieved Employees within reasonable access. Defendants also failed to provide lockers, closets, storage facilities, and changing rooms for use by the Aggrieved Employees. Moreover, Defendants failed to provide acceptable temperatures for the work areas they expected the Aggrieved Employees to perform their job duties in.

155. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to provide the Aggrieved Employees with toilet and storage facilities, lockers, change rooms, and acceptable work temperatures.

156. During the applicable time period, Defendants violated California Labor Code sections 201, 201.5, 202, 203, 204, 226, 226.7, 227.3, 233, 246, 246.5, 248, 351, 353, 432, 510, 512, 1174, 1182.11, 1182.12, 1194, 1197, 1198, 1198.5, 2350, 2800, 2802, 2804, 2810.5, 6300, 6400, 6401, 6402, and 6403.

157. California Labor Code section 2699, subdivisions (a) and (g) authorize an



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1 aggrieved employee, on behalf of themselves and other current or former employees, to bring a
2 civil action to recover civil penalties pursuant to the procedures specified in California Labor
3 Code section 2699.3.

4 158. Pursuant to California Labor Code section 2699, subdivisions (a) and (f), Plaintiff
5 and the Class Members are entitled to recover civil penalties for each of Defendants' violations
6 of California Labor Code sections 201, 201.5, 202, 203, 204, 226, 226.7, 227.3, 233, 246, 246.5,
7 248, 351, 353, 432, 510, 512, 1174, 1182.11, 1182.12, 1194, 1197, 1198, 1198.5, 2350, 2800,
8 2802, 2804, 2810.5, 6300, 6400, 6401, 6402, and 6403 during the applicable limitations period
in the following amounts:

9 A. For violations of California Labor Code section 204, one hundred dollars
10 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
11 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
12 (penalty amounts established by California Labor Code section 210).

13 B. For violations of California Labor Code section 226(a), two hundred fifty
14 dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
15 employee for each subsequent violation (penalty amounts established by California Labor Code
section 226.3).

16 C. For violations of California Labor Code sections 510 and 512, fifty dollars
17 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
18 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
19 each pay period for which the employee was underpaid (penalty amounts established by
20 California Labor Code § 558).

21 D. For violations of California Labor Code section 1197, one hundred dollars
22 (\$100.00) for each aggrieved employee for each initial and intentional violation per pay period
23 (regardless of whether the initial violations were intentionally committed) and two hundred fifty
24 dollars (\$250.00) for each aggrieved employee for each subsequent violation per pay period
(regardless of whether the initial violations were intentionally committed).

25 E. For violations of California Labor Code sections 201, 201.5, 202, 203,
26 226.7, 227.3, 233, 246, 246.5, 248, 432, 1182.11, 1182.12, 1194, 1198, 1198.5, 2350, 2800, 2802,
27 2804, 2810.5, 6300, 6400, 6401, 6402, and 6403, one hundred dollars (\$100.00) for each
28 aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00)



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1 for each aggrieved employee per pay period for each subsequent violation (penalty amounts
2 established by California Labor Code section 2699(f)(2)).

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

6 G. For the violations of California Labor Code section 1198.5, \$750 for each
7 aggrieved employee for each violation of California Labor Code section 1198.5 (penalty amounts
8 established by California Labor Code § 1198.5(k)).

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

16 160. Pursuant to California Labor Code section 2699(g), Plaintiff and the Class
17 Members are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
18 connection with their claims for civil penalties.

19 **PRAYER FOR RELIEF**

20 161. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, pray for
21 relief and judgment against Defendants as follows:

- 22 A. An order that the action be certified as a class action;
- 23 B. An order that Plaintiff be appointed class representative;
- 24 C. An order that counsel for Plaintiff be appointed class counsel;
- 25 D. Unpaid wages;
- 26 E. Actual damages;
- 27 F. Statutory damages;
- 28 G. Civil Penalties
- H. Liquidated damages;
- I. Restitution, including expense reimbursement;
- J. Declaratory relief;



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- 1 K. Equitable relief;
2 L. Statutory penalties;
3 M. Pre-judgment and post-judgment interest;
4 N. Costs of suit;
5 O. Interest;
6 P. Reasonable attorneys' fees; and
7 Q. Such other relief as the Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on
10 all issues so triable.

11 Respectfully submitted,

THE SPIVAK LAW FIRM

12 Dated: May 10, 2022

By: 

DAVID SPIVAK
MAYA CHEATANI, Attorneys for Plaintiff
KASSANDRA MENDIVIL, and all others
similarly situated



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EXHIBIT A



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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,



David Spivak, Esq.
david@spivaklaw.com

cc: Kassandra Mendivil
Walter Haines, Esq.

John Malone, Esq., General Counsel – Shryne Group, Inc.
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c/o Legalinc Registered Agents, Inc., agent for service of process
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Frisco TX 75033

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 15303 Ventura Blvd., Suite 900, Sherman Oaks, CA 91403.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Wednesday, October 26, 2022, I caused to have electronically served the following document described as **[PROPOSED] FIRST AMENDED COMPLAINT** on interested parties with the email listed below:

Christopher Chaplin, Esq.
Todd Scherwin, Esq.
Fisher & Phillips LLP
444 South Flower Street
Suite 1500
Los Angeles, CA 90071
cchaplin@fisherphillips.com
tscherwin@fisherphillips.com

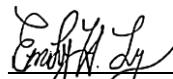
XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address emily@spivaklaw.com.

____ (BY ELECTRONIC SERVICE) I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service ONLINELEGALCOURIER.

EXECUTED on Wednesday, October 26, 2022, at Los Angeles, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



EMILY HUNG LY