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IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

KURSTEN RUSH, an individual,

Plaintiff,

vs.

DONNEE PAR DIEU, MHER NIKOGHOSYAN
 and DOES 1 through 20 inclusive,

Defendants.

Case No. **21STCV09946**

COMPLAINT FOR:

1. Failure to Indemnify for Necessary Expenditures in Violation of Labor Code § 2802;
2. Failure to Pay Minimum Wage in Violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198;
3. Failure to Pay Overtime in Violation of Labor Code §§ 510 and 1198;
4. Failure to Furnish Compliant Wage Statements and Maintain Accurate Pay Records in violation of § 226, 1174 (d), and 1198;
5. Failure to Provide Meal Periods in Violation of §§ 226.7, 512 (a), and 1198;
6. Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and 1198;
7. Failure to Timely Pay Wages in Violation of Labor Code § 204;
8. Willful Failure to Pay Wages in Violation of Labor Code §§ 201-203;

9. Civil Penalties in Violation of Labor Code §§ 2698, et seq.;

10. Unfair Competition in Violation of Labor Code §§17200, et seq.

Jury Trial Demanded

1. Plaintiff KURSTEN RUSH is informed and believes and thereon alleges as follows:

PARTIES, VENUE AND JURISDICTION

2. Plaintiff KURSTEN RUSH was at all times relevant hereto a resident of La Crescenta, California.

3. At all relevant times herein, Defendant DONNEE PAR DIEU was a California Corporation with its principal place of business in Glendale, California.

4. Defendant MHER NIKOGOSYAN was at all times relevant herein the principal of DONNEE PAR DIEU.

5. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity of interest and ownership between DONNEE PAR DIEU, MHER NIKOGHOSYAN and DOES 1-20 that the individuality and separateness of defendants have ceased to exist.

6. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of purported corporate existence, DONNEE PAR DIEU, MHER NIKOGHOSYAN and DOES 1-20 are, in reality, one and the same.

7. DONNEE PAR DIEU, MHER NIKOGHOSYAN and DOES 1-20 do not comply with all requisite corporate formalities to maintain a legal and separate existence.

8. The business affairs of DONNEE PAR DIEU, MHER NIKOGHOSYAN and DOES 1-20 are, and at all times relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in inextricable confusion. DONNEE PAR DIEU is, and at all times relevant hereto was, used by DOES 1-20 and MHER NIKOGHOSYAN as a mere shell and conduit for the conduct of certain of Defendants' affairs, and is, and was, the alter ego of DOES 1-20. The recognition of the separate existence of DONNEE PAR DIEU would not promote justice, in that it would permit Defendants

1 to insulate themselves from liability to Plaintiff for violations of state law. The corporate existence of
2 DONNEE PAR DIEU and DOES 1-20 should be disregarded in equity and for the ends of justice because
3 such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

4 9. Accordingly, DONNEE PAR DIEU, MHER NIKOGHOSYAN and DOES 1-20 are the
5 alter egos of one another, and the fiction of their separate corporate existence must be disregarded.

6 10. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
7 thereon alleges that DONNEE PAR DIEU, MHER NIKOGHOSYAN and DOES 1-20 are joint employers
8 by virtue of a joint enterprise, and that the employees and agents of DONNEE PAR DIEU were also
9 employees of MHER NIKOGHOSYAN and DOES 1-20. DONNEE PAR DIEU employees performed
10 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all
11 Defendants shared control of them as employees, either directly or indirectly, and the manner in which
12 Defendants' business was and is conducted.

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

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

25 13. Plaintiff is informed and believes and based thereupon alleges, that Defendants, including
26 those defendants named as DOES 1-20 acted in concert with one another to commit the wrongful acts
27 alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the wrongful acts
28 alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and based thereupon

1 alleges, that Defendants, including those defendants named as DOES 1-20 formed and executed a
2 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein, with
3 all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and actually
4 causing Plaintiff's harm.

5 14. Whenever and wherever reference is made in this Complaint to any act or failure to act by
6 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts and/or
7 failures to act by each Defendant acting individually, jointly and severally.

8 **FACTUAL ALLEGATIONS**

9 15. On June 30, 2020, Plaintiff KURSTEN RUSH interviewed for a position as a Retail
10 Associate with Defendants, a retail clothing chain, at their Glendale location. She was hired by an associate
11 named Daayyanna and began work the same day at the Glendale location. Daayyanna told Plaintiff that
12 she would be paid \$12 per hour via Venmo.

13 16. A few days into her employment, Plaintiff asked Daayyanna if she needed her social
14 security number and was told, "No, you'll be getting paid via Venmo like everyone else."

15 17. Plaintiff's job duties included working the cash register, unpacking boxes, putting clothing
16 on racks and occasionally driving to other store locations to pick-up packages.

17 18. Plaintiff worked seven days per week during her employment for Defendants except for
18 two days, from the hours of 11:00 a.m. to 7:00 p.m.

19 19. During her employment, Plaintiff opened and closed the Glendale store. She worked alone
20 in the store with no other employees present. However, once per week, an employee might come to the
21 store for 10 minutes or so. Plaintiff would receive a call or text the evening before her shift, or the morning
22 before her shift, from either Daayyanna or an employee named Maria to confirm that she was scheduled
23 to work at 11:00 a.m.

24 20. During her employment, Plaintiff was not authorized or permitted to take meal or rest
25 periods because she worked in the store alone, and there was therefore no other person to relieve her of
26 her duties.

27 21. Plaintiff incurred approximately 70 unreimbursed miles during her employment in direct
28 consequence of her obedience to the directions of Defendants to retrieve merchandise from other stores,

1 as well as trips to the post office.

2 22. On July 20, 2020, Defendant MHER NIKOGHOSYAN came into the Glendale store.
3 Plaintiff then asked when she would receive her first payment, to which he replied, “We don’t discuss the
4 money.”

5 23. After July 20, 2020, Plaintiff stopped received texts or calls from the company scheduling
6 her to come into work.

7 24. Plaintiff was never paid any compensation whatsoever for any of the work she performed
8 for Defendants.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO INDEMNIFY FOR NECESSARY EXPENDITURES**

11 **IN VIOLATION OF LABOR CODE § 2802**

12 **(AGAINST ALL DEFENDANTS)**

13 25. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
14 fully set forth herein.

15 26. An employer shall indemnify his or her employee for all necessary expenditures or losses
16 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
17 obedience to the directions of the employer.

18 27. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an
19 employer, who violates, or causes to be violated, Labor Code section 2802, may be held liable as the
20 employer for such violation. The term ‘other person acting on behalf of an employer’ is limited to a natural
21 person who is an owner, director, officer, or managing agent of the employer.

22 28. During her employment, Plaintiff incurred unreimbursed business expenses.

23 29. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants
24 have maintained a policy, practice, or a lack of policy, which resulted in their failure to indemnify Plaintiff
25 for the reasonable expenses she incurred in the course of performing her duties.

26 30. As a result of the foregoing, Plaintiff is entitled to recover all sums incurred by her for the
27 purchase of the tools that were necessary for the performance of her job and which she was required to
28 purchase in an amount according to proof at trial.

31. As a result of the foregoing, Plaintiff is further entitled to an award of interest at the same rate as judgments in civil actions, accruing from the date on which Plaintiff incurred the necessary expenditures or loses and all reasonable costs, including attorney's fees incurred by her enforcing the rights granted by Labor Code § 2802.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGE

IN VIOLATION OF LABOR CODE § 1197

(AGAINST ALL DEFENDANTS)

32. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

33. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined by the applicable wage order 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.” Cal. Code. Regs. tit. 8, § 11010(2)(G).

34. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, may be held liable as the employer for such violation.

35. At all times relevant to this suit, the minimum wage applicable to Plaintiff was \$13 per hour.

36. At all relevant times, Defendants failed and refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Industrial Welfare Commission Order No. 4-2001 and California Labor Code §§ 1182.12, 1194, 1194.2 and 1197 by virtue of not paying her any wages whatsoever for any of the work that she performed for them.

37. Further, due to Defendants' company-wide scheduling practices and policies, Plaintiff was forced to forego meal periods and/or have her meal periods interrupted by work, and was not relieved of

1 all duties for unpaid meal periods, in order to meet her deadlines and handle her workload. Defendants
2 did not pay minimum wages for meal periods Plaintiff worked through that qualified for premium
3 payment. Defendants did not pay Plaintiff for the time she continued to perform her duties during her
4 meal periods.

5 38. Defendants had no policy and/or practice for scheduling second meal periods for
6 employees or for authorizing and permitting employees to take second 30-minute meal periods on days
7 they worked in excess of 10 hours in one day. As a result, Defendants did not provide employees with
8 all second 30-minute meal periods to which they were entitled.

9 39. Defendants failure to pay the legal minimum wage to Plaintiff as alleged herein is unlawful
10 and creates entitlement, pursuant to Labor Code §1194, to recovery by Plaintiff in a civil action for the
11 unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between the
12 straight time compensation paid and applicable minimum wage, including interest thereon.

13 40. Pursuant to Labor Code §1194, Plaintiff is entitled to an award of reasonable attorneys'
14 fees and costs incurred in this action.

15 41. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
16 damages in an amount equal to the minimum wages unlawfully unpaid in the amount according to proof
17 at trial.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME WAGE**

20 **IN VIOLATION OF LABOR CODE § 510**

21 **(AGAINST ALL DEFENDANTS)**

22 42. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
23 fully set forth herein.

24 43. Labor Code § 1198 makes it unlawful to employ an employee under conditions of labor
25 that are prohibited by the applicable wage order. California Labor Code § 1198 requires that "the standard
26 conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees.
27 The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

28 44. Labor Code § 510 and the applicable IWC Wage Order required Defendants to pay

1 employees a rate of time and one-half for all hours worked in excess of 8 hours in a day or 40 hours in a
2 workweek. Labor Code § 510 and the applicable IWC Wage Order further required Defendants to pay
3 employees working more than 12 hours in a day, overtime compensation at a rate of 2 times their regular
4 rate of pay, and 2 times their regular rate of pay for all hours worked in excess of 8 hours on the seventh
5 consecutive day of a work in a workweek.

6 45. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an
7 employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and
8 days of work in any order of the Industrial Welfare Commission, may be held liable as the employer for
9 such violation.

10 46. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
11 Code §510, 8 Code Regulations §§11010-11160, and the applicable IWC Wage Order.

12 47. At all relevant times, Defendants willfully failed to pay all overtime wages owed to
13 Plaintiff. At all relevant times, Plaintiff was not paid overtime premiums for any of the hours she worked
14 in excess of 8 hours in a day and/or in excess of 40 hours in a week.

15 48. At all relevant times herein, Defendants had, and continue to have, a company-wide policy
16 of failing to implement any policies to authorize and permit employees to take compliant meal periods
17 and, instead, engaged in a practice of discouraging and impeding employees from taking meal periods by
18 assigning them a heavy workload and understaffing their facilities.

19 49. Additionally, Defendants, on a company-wide basis, failed to schedule meal periods even
20 though they are aware that employees are entitled to such meal periods. As a result of this company-wide
21 understaffing of its facilities and failure to schedule meal periods, Plaintiff was not always authorized
22 and permitted to take uninterrupted 30-minute meal periods during shifts to which she was entitled to
23 receive a meal period.

24 50. At all relevant times, Defendants had no policy for scheduling second meal periods and no
25 practice of permitting Plaintiff to take second 30-minute meal periods. As a result, on days that employees
26 worked in excess of 10 hours, they were not provided with second 30-minute meal periods.

27 51. Defendants knew or should have known that, as a result of their policies and practices,
28 Plaintiff was performing some of her assigned duties during unpaid meal periods, and was suffered or

1 permitted to perform work for which she was not paid. Because Plaintiff worked shifts in excess of 8
2 hours a day or more and 40 hours a week or more, much of this work qualified for overtime premium
3 pay. Therefore, Plaintiff was not paid overtime wages for all of the overtime hours she actually worked.

4 52. Defendants' failure to pay Plaintiff the balance of overtime compensation, as required by
5 California law, violates the provisions of California Labor Code §§ 510 and 1198. Pursuant to California
6 Labor Code § 1194, Plaintiff is entitled to recover her unpaid overtime compensation, as well as interest,
7 costs, and attorneys' fees.

8 53. Labor Code §558 (a) requires that any person acting on behalf of an employer who violates,
9 or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each underpaid
10 employee for each pay period in which the employee was underpaid in addition to an amount sufficient to
11 recover underpaid wages. Also, Labor Code §558 (a) for each subsequent violation, the person acting on
12 behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period
13 for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages

14 54. In addition to the above withheld overtime wages, Plaintiff is entitled to civil penalties in
15 this amount stated above based upon Defendants' underpayment of overtime wages. Defendants violated
16 Labor Code §558 on each of the past pay periods within the one-year preceding the filing of this complaint,
17 the first of which Defendants are penalized \$50.00, and the remainder of which Defendants are penalized
18 \$100.00 each, for a total due in Labor Code §558 penalties in an amount to be proven at trial.

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

21 **IN VIOLATION OF LABOR CODE §§ 226, 1174 and 1198**

22 **(AGAINST ALL DEFENDANTS)**

23 55. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
24 fully set forth herein.

25 56. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
26 exempt employees with accurate itemized statements showing total hours worked, hourly wages, gross
27 wages, total deductions net wages earned and name of the employer. An employer who violates these code
28 sections is liable to its employees for the greater of actual damages suffered by the employee, or \$50.00

1 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per employee for
2 each subsequent pay period, up to a statutory maximum of \$4,000.00.

3 57. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an
4 employer, who violates, or causes to be violated, Labor Code section 226, may be held liable as the
5 employer for such violation.

6 58. At all relevant times, Defendants have knowingly and intentionally furnished their
7 employees with uniform, incomplete, and inaccurate wage statements.

8 59. Defendants failed to furnish Plaintiff with any wage statements whatsoever in violation of
9 Labor Code § 226.

10 60. Further, because Defendants failed to document and deducted time worked from
11 employees' wage statements and employment records for meal periods they did not actually receive,
12 Defendants unlawfully deducted wages earned and meal period premiums that should have been paid.
13 Thus, Defendants did not furnish wage statements to employees containing the correct amount of gross
14 wages earned in violation of Labor Code § 226 (a) (1), accurate total hours worked in violation of Labor
15 Code § 226 (a) (2), correct amount of net wages earned in violation of Labor Code § 226 (a) (5), or
16 accurate number of hours worked at each corresponding hourly rate in violation of Labor Code § 226 (a)
17 (9).

18 61. To the extent that Defendants paid any meal break premium and/or rest break premium
19 payments, Defendants failed to identify such payments on employees' wage statements and employment
20 records, and Defendants otherwise failed to provide information on the wage statements sufficient to
21 identify how many premium payments were paid during each pay period, the specific dates worked giving
22 rise to the premium payments owed, or to determine whether such premium payments adequately and/or
23 accurately compensated employees for any and all premiums owed.

24 62. Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time
25 records showing when the employee begins and ends each work period and meal period, as well as the
26 total daily hours worked, total wages paid each payroll period, total hours worked in the payroll period
27 and applicable rates of pay.

28 63. California Labor Code section 1174 (d) provides that "every person employing labor in

1 this state shall ... keep a record showing the names and addresses of all employees employed and the ages
2 of all minors” and “keep, at a central location in the state or at the plants or establishments at which
3 employees are employed, payroll records showing the hours worked daily by and the wages paid to, and
4 the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the
5 respective plants or establishments...”

6 64. At all relevant times, Defendants willfully failed to keep records of meal period start and
7 stop times, shift start and stop times, total hours worked in the payroll period and applicable hourly rates
8 of pay for Plaintiff as a result of failing to record hours she worked during her unpaid meal and rest periods
9 in violation of section 1198 and 1174 (d).

10 65. Plaintiff is entitled to recover from Defendants the greater of her actual damages caused by
11 Defendants’ failure to comply with California Labor Code section 226 (a), or an aggregate penalty not
12 exceeding \$4,000 as well as attorneys’ fees and costs.

13 **FIFTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL PERIODS**

15 **LABOR CODE §§ 226.7, 512 (a) and 1198**

16 **(AGAINST ALL DEFENDANTS)**

17 66. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
18 fully set forth herein.

19 67. “An employer shall not employ an employee for a work period of more than five hours per
20 day without providing the employee with a meal period of not less than 30 minutes, except that if the total
21 work period per day of the employee is no more than six hours, the meal period may be waived by mutual
22 consent of both the employer and employee. An employer shall not employ an employee for a work period
23 of more than 10 hours per day without providing the employee with a second meal period of not less than
24 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may
25 be waived by mutual consent of the employer and the employee only if the first meal period was not
26 waived.” Lab. Code § 512; IWC Wage Order Nos. 1–2001 to 16–2001, § 11; IWC Wage Order No. 17–
27 2001, § 9; 8 Cal Code Regs §§ 11010-11160, § 11; 8 Cal Code Regs § 11170, § 9.

28 68. “An employer shall not require an employee to work during a meal ... period mandated

1 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
2 Commission If an employer fails to provide an employee a meal ... period in accordance with a state
3 law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the
4 Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the
5 employee's regular rate of compensation for each workday that the meal ... period is not provided.” Lab.
6 Code § 226.7 (b) & (c).

7 69. At all relevant times herein, Defendants had, and continue to have, a company-wide policy
8 and/or practice of understaffing their locations while simultaneously assigning demanding workloads,
9 which had the combined effect of preventing employees from taking all timely, uninterrupted meal
10 periods to which they were entitled. Additionally, Defendants had no policy and/or practice of scheduling
11 meal periods for employees. As a result of Defendants’ policies and/or practices, employees had to work
12 through some or all of their meal periods, have their meal periods interrupted to return to work, and/or
13 wait extended periods of time before taking meal periods.

14 70. At all relevant times, Plaintiff regularly worked more than five hours per day, and was
15 thereby entitled to take uninterrupted 30-minute meal periods on each day of work.

16 71. At all relevant times, Defendants failed and refused to provide Plaintiff with uninterrupted
17 meal periods during her work shifts, and failed to compensate her for missed meal periods, as required by
18 Labor Code §§ 226.7, 512, and 1198 as well as the applicable sections of the Code of Regulations and
19 Industrial Welfare Commission Orders.

20 72. Defendants did not provide employees with second 30-minute meal periods on days that
21 they worked in excess of 10 hours in one day.

22 73. Plaintiff is also informed and believe that Defendants engaged in a systematic, company-
23 wide practice and/or policy of not paying meal period premiums to employees regardless of whether they
24 were able to take a compliant meal break, in violation of the applicable IWC Wage Order and Labor Code
25 sections 226.7 and 512 (a). As a result, Defendants failed to provide Plaintiff compliant meal periods in
26 violation of California Labor Code sections 226.7 and 512 and failed to pay the full meal period premiums
27 due.

28 74. As alleged herein, Plaintiff is not exempt from the meal period requirements of the

1 applicable Code of Regulations and Industrial Welfare Commission Orders. Consequently, Plaintiff is
2 owed one hour of pay at her regular hourly rate for each day that she was denied such meal periods.

3 75. At all relevant times, Defendants failed to provide Plaintiff with the statutory meal period
4 for those days on which she worked at least five hours. Consequently, Plaintiff is owed one hour of pay
5 at her regularly hourly rate then in effect for each day that she was denied such a meal period pursuant to
6 Labor Code §§ 226.7 and 512, plus interest thereon and costs of suit in an amount subject to proof at trial.

7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REST PERIODS**

9 **LABOR CODE §§ 226.7 and 1198**

10 **(AGAINST ALL DEFENDANTS)**

11 76. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
12 fully set forth herein.

13 77. At all times relevant herein, Labor Code §§ 226.7, 1198 and applicable IWC Wage Orders
14 were applicable to Plaintiff's employment with Defendants.

15 78. At all relevant times, Labor Code §§ 226.7, 1198 and the applicable IWC Wage Order
16 provided that employees must be given 10-minute net rest periods for every 4 hours of work, to be taken
17 in the middle of each 4-hour period insofar as practicable. However, a rest period need not be provided
18 for employees whose total daily work is less than 3.5 hours. Thus, employees are entitled to one 10-minute
19 net rest period for shifts from 3.5 to 6 hours in length, two for shifts of more than 6 hours up to 10 hours,
20 and three for shifts of more than 10 hours up to 14 hours, and so on. *Brinker Restaurant Corp. v Superior*
21 *Court*, 53 Cal.4th 1004, 1029 (2012); Wage Order Nos. 1–2001 to 16–2001, §§11–12 (A); 8 Cal Code
22 Regs §§11010-11160.

23 79. To comply with its obligation to provide rest periods under California Labor Code section
24 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees
25 spend their break time, and relieve their employees of all duties — including the obligation that an
26 employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security*
27 *Services, Inc.*, 2 Cal. 5th 257, 269-70 (2016).

28 80. “An employer shall not require an employee to work during a rest ... period mandated

1 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
2 Commission If an employer fails to provide an employee a rest ... period in accordance with a state
3 law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the
4 Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the
5 employee's regular rate of compensation for each workday that the rest ... period is not provided." Lab.
6 Code § 226.7 (b)-(c).

7 81. Defendants' company-wide policy and practice of understaffing while simultaneously
8 assigning demanding workloads, prevented employees from being relieved of all duty in order to take
9 compliant rest periods.

10 82. Defendants also had a uniform policy of failing to schedule rest breaks. As a result,
11 employees missed their rest breaks, would be required to take them late, or would have their rest breaks
12 interrupted. Employees were prevented from being relieved of all duty in order to take compliant rest
13 periods and instead would be required to continue working.

14 83. Plaintiff worked shifts in excess of 3 ½ hours, in excess of 6 hours, and/or in excess of 10
15 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled.

16 84. Defendants have also engaged in a systematic, company-wide practice and/or policy of not
17 paying rest period premiums owed when rest periods are not authorized or permitted. Thus, Defendants
18 denied Plaintiff rest periods and failed to pay her rest period premium wages due, in violation of Labor
19 Code section 226.7 and the applicable IWC Wage Order.

20 85. As alleged herein, Plaintiff is not exempt from the rest period requirements of the
21 applicable Code of Regulations and Industrial Welfare Commission Orders. Consequently, Plaintiff is
22 owed one hour of pay at her regularly hourly rate then in effect for each day that she was denied such a
23 rest period pursuant to Labor Code §§ 226.7, plus interest thereon and costs of suit in an amount subject
24 to proof at trial.

25 **SEVENTH CAUSE OF ACTION**

26 **FAILURE TO TIMELY PAY WAGES**

27 **IN VIOLATION OF LABOR CODE § 204**

28 86. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though

1 fully set forth herein.

2 87. "All wages ... earned by any person in any employment are due and payable twice during
3 each calendar month, on days designated in advance by the employer as the regular paydays ... (d) The
4 requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or
5 semimonthly payroll if the wages are paid not more than seven calendar days following the close of the
6 payroll period." Lab. Code § 204.

7 88. "In addition to, and entirely independent and apart from, any other penalty provided in this
8 article, every person who fails to pay the wages of each employee as provided in Sections ... 204 ... shall
9 be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure
10 to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two
11 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
12 withheld." Lab. Code § 210.

13 89. At all times relevant herein, Defendants engaged in a practice of failing to pay Plaintiff by
14 the seventh calendar day following the close of the payroll period. Indeed, as discussed above, Plaintiff is
15 owed wages for unpaid minimum wage, meal periods and unreimbursed business expenses. At no time
16 during her employment were these outstanding sums ever paid to her. Instead, these outstanding sums
17 continued to accumulate every pay period. Therefore, Plaintiff was not paid all wages earned by the
18 seventh calendar day following the close of her pay periods.

19 90. As a direct and proximate result of Defendants' failure to timely pay wages, Plaintiff is
20 entitled to penalties under Labor Code § 210 in an amount subject to proof at trial.

21 **EIGHTH CAUSE OF ACTION**

22 **WILLFUL FAILURE TO PAY WAGES**

23 **IN VIOLATION OF LABOR CODE §§ 201-203**

24 91. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
25 fully set forth herein.

26 92. "If an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately." Lab. Code § 201.

28 93. "If an employee not having a written contract for a definite period quits his or her

1 employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the
2 employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is
3 entitled to his or her wages at the time of quitting.” Lab. Code § 202.

4 94. “If an employer willfully fails to pay any wages of an employee who is discharged or who
5 quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate
6 until paid or until an action therefor is commenced.” Lab. Code § 203.

7 95. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an
8 employer, who violates, or causes to be violated, Labor Code section 203, may be held liable as the
9 employer for such violation.

10 96. Plaintiff was not exempt from the requirements of Labor Code §§ 201-203.

11 97. At no time since Plaintiff's separation of employment did Defendants pay her wait-time
12 penalties as required by Labor Code § 203.

13 98. As a direct and proximate result of Defendants’ willful failure to pay Plaintiff’s wages upon
14 her separation of employment, Plaintiff incurred wait-time penalties in an amount equal to her daily rate
15 of pay over the period that the wages were not paid in an amount subject to proof at trial.

16 **NINTH CAUSE OF ACTION**

17 **CIVIL PENALTIES IN VIOLATION OF**

18 **LABOR CODE § 2699, ET SEQ.**

19 **(AGAINST ALL DEFENDANTS)**

20 99. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
21 fully set forth herein.

22 100. Under Labor Code §2698, et seq., Plaintiff, as a aggrieved employee, may bring an action
23 against Defendants, on behalf of herself and other current or former employees, seeking civil penalties for
24 defendants’ violations of the California Labor Code.

25 101. Plaintiff was an aggrieved employee within the meaning of Labor Code §2698, et seq. by
26 virtue of the numerous Labor Code violations she was subjected to as plead herein.

27 102. Defendants also subjected the aggrieved employees on whose behalf Plaintiff brings this
28 enforcement action to all of the Labor Code violations plead herein, including failing to reimburse for

1 necessary business expenditures in violation of Labor Code § 2802, failing to pay minimum wages in
2 violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198, failing to pay overtime in violation
3 Labor Code §§ 510 and 1198, failing to furnish compliant wage statements, or in many cases, no wage
4 statements whatsoever, and maintain accurate pay records in violation of § 226, 1174 (d), and 1198, failing
5 to provide meal periods in violation of §§ 226.7, 512 (a), and 1198, failing to provide rest periods in
6 violation of Labor Code §§ 226.7 and 1198, failure to timely pay wages in violation of Labor Code § 204
7 and willful failure to pay wages in violation of Labor Code § 201-203.

8 103. On November 11, 2020, Plaintiff provided written notice by online filing with the Labor
9 and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the
10 Labor Code alleged to have been violated, including the facts and theories to support the alleged violation,
11 as required by Labor Code § 2699.3 (a) (1) (A).

12 104. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and
13 Workforce Development Agency of its intent to pursue an action against Defendants.

14 105. As a direct and proximate result of Defendants' California Labor Code violations as set
15 forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for
16 the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation,
17 pursuant to Labor Code §2699 (f), for those Labor Code sections not expressly providing for a penalty,
18 and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty.

19 106. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
20 civil penalties.

21 **TENTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION IN VIOLATION OF**
23 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**
24 **(AGAINST ALL DEFENDANTS)**

25 107. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though
26 fully set forth herein.

27 108. Defendants are a "person" as defined by California Business & Professions Code sections
28 17201.

109. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

110. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law.

111. Defendants' failure to obey the wage and hour laws plead herein, including violations of the Labor Code, Code of Regulations and Wage Orders, constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.

112. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff and members of the public.

113. Pursuant to California Business & Professions Code sections 17200 *et seq.* Plaintiff is entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and aggrieved employees; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

PRAYER FOR RELIEF

Plaintiff prays for relief and judgment against Defendants as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of \$25,000, exclusive of interest and costs.

As to the First Cause of Action

(Unreimbursed Business Expenses)

2. That the Court adjudge, declare and decree that Defendants violated Labor Code § 2802 by willfully failing to reimburse business expenses incurred by Plaintiff and the Class;

3. For unreimbursed business expenses and for all actual, consequential, and incidental losses and damages, according to proof;

4. For interest at the same rate as judgments in civil actions, accruing from the date on which Plaintiff and the Class incurred the necessary expenditures or losses pursuant to Labor Code § 2802;

1 5. For all reasonable costs and attorney's fees incurred by Plaintiff's enforcement of the rights
2 granted by Labor Code § 2802 pursuant to Labor Code § 2802 (c); and

3 6. For such other relief that the Court deems just and appropriate.

4 **As to the Second Cause of Action**

5 **(Unpaid Minimum Wages)**

6 7. That the Court adjudge, declare and decree that Defendants violated Labor Code §§
7 1182.12, 1194, 1197, 1197.1, 1198, applicable Wage Orders and Codes of Regulation by willfully failing
8 to pay minimum wages to Plaintiff and class members;

9 8. For payment of unpaid wages in an amount subject to proof;

10 9. For liquidated damages pursuant to Labor Code §1194.2 in an amount subject to proof,
11 plus interest;

12 10. For prejudgment interest at the legal rate from the date the obligation became due through
13 the date of judgment in this matter;

14 11. For all reasonable costs and attorney's fees incurred by Plaintiff's enforcement of the rights
15 granted by Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 pursuant to Labor Code § 1194 (a); and

16 12. For such other relief that the Court deems just and appropriate.

17 **As to the Third Cause of Action**

18 **(Unpaid Overtime)**

19 13. That the Court adjudge, declare and decree that Defendants violated Labor Code §§ 510
20 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay overtime
21 wages to Plaintiff;

22 14. For payment of unpaid overtime wages in an amount subject to proof;

23 15. For prejudgment interest at the legal rate from the date the obligation became due through
24 the date of judgment in this matter;

25 16. For all reasonable costs and attorney's fees incurred by Plaintiff's enforcement of the rights
26 granted by Labor Code §§ 510 and 1198 pursuant to Labor Code § 1194 (a); and

27 17. For such other relief that the Court deems just and appropriate.

1 **As to the Fourth Cause of Action**

2 **(Noncompliant Wage Statements and Payroll Records)**

3 18. That the Court adjudge, declare and decree that Defendants violated Labor Code §§ 226
4 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to furnished
5 compliant, accurate itemized wage statements to Plaintiff and for failure to keep accurate payroll records;

6 19. For consequential and incidental losses and damages according to proof;

7 20. For injunctive relief pursuant to Labor Code § 226 (h);

8 21. For statutory penalties pursuant to Labor Code § 226 (e);

9 22. For all reasonable costs and attorney's fees incurred by Plaintiff's enforcement of the rights
10 granted by Labor Code §§ 226 pursuant to Labor Code § 226 (e) (1); and

11 23. For such other relief that the Court deems just and appropriate.

12 **As to the Fifth Cause of Action**

13 **(Failure to Provide Meal Periods)**

14 24. That the Court declare, adjudge, and decree that Defendants violated California Labor
15 Code §§ 226.7, 512 (a), 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing
16 to provide all meal periods to Plaintiff;

17 25. That the Court make an award to the Plaintiff of one hour of pay at her regular rate of pay
18 for each workday that a meal period was not provided;

19 26. For all actual, consequential, and incidental losses and damages, according to proof;

20 27. For premiums pursuant to California Labor Code section 226.7 (b);

21 28. For pre-judgment interest on any unpaid meal period premiums from the date such amounts
22 were due, or as otherwise provided by law;

23 29. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as
24 otherwise provided by law; and

25 30. For such other relief that the Court deems just and appropriate.

26 **As to the Sixth Cause of Action**

27 **(Failure to Provide Rest Periods)**

28 31. That the Court declare, adjudge, and decree that Defendants violated California Labor

1 Code §§ 226.7, 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to
2 provide all rest periods to Plaintiff;

3 32. That the Court make an award to Plaintiff of one hour of pay at her regular rate of pay for
4 each workday that a rest period was not provided;

5 33. For all actual, consequential, and incidental losses and damages, according to proof;

6 34. For premiums pursuant to California Labor Code section 226.7 (b);

7 35. For pre-judgment interest on any unpaid rest period premiums from the date such amounts
8 were due, or as otherwise provided by law;

9 36. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as
10 otherwise provided by law; and

11 37. For such other relief that the Court deems just and appropriate.

12 **As to the Seventh Cause of Action**

13 **(Failure to Timely Pay Wages)**

14 38. That the Court declare, adjudge, and decree that Defendants violated California Labor
15 Code § 204, applicable IWC Wage Orders and Codes of Regulation by willfully failing to timely pay
16 wages to Plaintiff and class members;

17 39. For penalties pursuant to Labor Code § 210, plus 25 percent of amounts unlawfully
18 withheld from Plaintiff and class members;

19 40. For all actual, consequential, and incidental losses and damages, according to proof;

20 41. For pre-judgment interest on any unpaid wages from the date such amounts were due, or
21 as otherwise provided by law;

22 42. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as
23 otherwise provided by law; and

24 43. For such other relief that the Court deems just and appropriate.

25 **As to the Eighth Cause of Action**

26 **(Willful Failure to Pay Wages)**

27 44. That the Court declare, adjudge, and decree that Defendants violated California Labor
28 Code § 201-203, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay

1 minimum wages, overtime wages, and meal and rest premiums owed to Plaintiff either upon discharge or
2 within 72 hours of their resignation;

3 45. For wait time penalties pursuant to Labor Code § 203;

4 46. For all actual, consequential, and incidental losses and damages, according to proof;

5 47. For pre-judgment interest on any unpaid wages from the date such amounts were due, or
6 as otherwise provided by law;

7 48. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as
8 otherwise provided by law; and

9 49. For such other relief that the Court deems just and appropriate.

10 **As to the Ninth Cause of Action**

11 **(Civil Penalties under the PAGA)**

12 50. That the Court declare, adjudge, and decree that Defendants violated all California Labor
13 Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12,
14 1194, 1197, 1197.1, 1198 and 2802;

15 51. For civil penalties pursuant to 210, 226.3, 256, 558, 1174.5, 1197.1, 2699 (a) and/or 2699
16 (a), (f) and (g), for violations of all California Labor Code sections plead herein, including Labor Code §§
17 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

18 52. For attorneys' fees and costs pursuant to California Labor Code § 2699 (g) (1), and any
19 and all other relevant statutes, for Defendants' violations of all California Labor Code sections plead
20 herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1,
21 1198 and 2802;

22 53. For pre-judgment and post-judgment interest as provided by law; and

23 54. For such other and further relief as the Court deems just and appropriate.

24 **As to the Tenth Cause of Action**

25 **(Unfair Competition)**

26 55. That the employment practices engaged in by Defendant as plead herein, including
27 violations of the Labor Code sections, Code of Regulations and Wage Orders, constitute unfair business
28 practices in violation of Business & Professions Code §§17200, et seq.;

56. For restitution of unpaid wages to Plaintiff and prejudgment interest from the day such amounts were due and payable;

57. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, et seq.;

58. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5; and

59. For such other and further relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues.

PIMENTEL LAW, P.C.

Dated: March 14, 2021

By: 

 Gabriel J. Pimentel, Esq.
 Rochelle R. De Golier, Esq.
 Attorneys for Plaintiff