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County of Riverside
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

Case No: CVSW2102108

SALVADOR PEREZ ESPINOZA,
individually and as a private attorney general;

Plaintiff,

vs.

MCGEE CONTRACTING INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

COMPLAINT FOR:

- (1) RETALIATION (CALIFORNIA
LABOR CODE § 98.6 AND 1102.5)
- (2) WRONGFUL TERMINATION
- (3) VIOLATION OF CALIFORNIA
LABOR CODE §§ 510 AND 1198
(UNPAID OVERTIME)
- (4) VIOLATION OF CALIFORNIA
LABOR CODE §§ 1194, 1197 AND
1197.1 (UNPAID MINIMUM
WAGES)
- (5) VIOLATION OF CALIFORNIA
LABOR CODE § 226.7 (UNPAID
REST PERIOD PREMIUMS)
- (6) VIOLATION OF CALIFORNIA
LABOR CODE §§ 226.7 AND
512(a) (UNPAID MEAL PERIOD
PREMIUMS)
- (7) VIOLATION OF CALIFORNIA
LABOR CODE § 226(a) (FAILURE
TO PROVIDE ACCURATE
WAGE STATEMENTS)
- (8) VIOLATION OF CALIFORNIA
LABOR CODE §§ 201, 202 AND
203 (FINAL WAGES NOT
TIMELY PAID)
- (9) VIOLATION OF CALIFORNIA
LABOR CODE § 1198.5 (FAILURE

TO PROVIDE PERSONNEL
RECORDS)
(10) VIOLATION OF CALIFORNIA
LABOR CODE §§ 2800 AND 2802
(FAILURE TO REIMBURSE
EXPENSES)
(11) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200, ET SEQ.
(12) PRIVATE ATTORNEY
GENERAL ACT, LABOR CODE
§2698 ET SEQ

DEMAND FOR TRIAL BY JURY

Plaintiff SALVADOR PEREZ ESPINOZA ("Plaintiff"), as an individual, and as a private attorney general alleges as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff is, and at all relevant times mentioned herein was, a resident of the County of Riverside, State of California.

2. Defendant MCGEE CONTRACTING INC. ("McGee Contracting"), and at all times mentioned herein was, a corporation organized and existing under the laws of the State of California, doing business in the County of Riverside, California.

3. McGee Contracting at all times herein mentioned was, (a) conducting business in the County of Riverside, State of California; (b) the employer of Plaintiff consistent with California Labor Code and Industrial Welfare Commission Wage Orders; and (c) Plaintiff's employer as defined under Government Code section 12926 subsection (c).

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

5. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. The Doe defendants may be individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-venturer, and/or co-conspirator of each of the other defendants and was at all times mentioned, acting within the scope, purpose, consent, knowledge, ratification and authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to

1 allege their true names and capacities when ascertained. Plaintiff is informed and believes and
2 thereon alleges that each of the fictitiously named Doe defendants is responsible in some manner
3 for the occurrences herein alleged, and that Plaintiff's damages as herein alleged was proximately
4 caused by its conduct. Doe Defendants 1 through 50 and McGee Contracting are herein
5 collectively referred to as "Defendants."

6 **GENERAL ALLEGATIONS**

7 6. Plaintiff was employed by Defendants from approximately November 2018 through
8 May 2020 as a laborer, foreman assistant, and customer service representative.

9 7. Plaintiff was scheduled to work at least five days a week and often six days a week and
10 required to work at least eight (8) hours per day and often work in excess of ten (10) hours per
11 day.

12 8. Plaintiff's responsibilities included, in part, general labor, construction, and customer
13 service.

14 9. Plaintiff and similarly aggrieved current and former non-exempt employees
15 ("Aggrieved Employees") were required to regularly work more than five (5) hours without being
16 provided a meal period and to work more than ten (10) hours without being provided with a second
17 meal period. In fact, Plaintiff was reprimanded for taking or attempting to take an uninterrupted
18 30-minute meal period. Further, Plaintiff and Aggrieved Employees were often required to wait
19 in a brief line to clock-in and clock-out for their purported meal periods. Further, Defendants
20 forced Plaintiff and Aggrieved employees to take their lunch after six (6) hours of working.

21 10. Plaintiff and Aggrieved Employees never waived their rights to a meal period when
22 they worked six (6) or more hours.

23 11. Plaintiff and Aggrieved Employees never received a second lunch period.

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

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

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

3 15. Plaintiff requested that his supervisors provide him with a ten (10) minute uninterrupted
4 rest break and/or a thirty (30) minute uninterrupted meal period, however such requests were
5 denied.

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

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

12 18. Plaintiff and Aggrieved Employees incurred business expenses in the discharge of
13 their duties for Defendants and in obedience to Defendants' instructions, which includes the use
14 of their personal cell phones and personal vehicles.

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

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

23 21. On numerous occasions, Plaintiff requested that his supervisors provide him with his
24 ten (10) minute uninterrupted rest break and/or a thirty (30) minute uninterrupted meal period, and
25 reimbursement of personal expenses, however such complaints were denied and met with hostile
26 retaliation.

27 22. In direct response to Plaintiff's requests and complaints, Defendants retaliated against
28 Plaintiff and terminated Plaintiff in approximately May 2020.

23. On or about August 7, 2021, Plaintiff's counsel sent a letter to Defendants, pursuant to California Labor Code sections 226, 432, 1174 and 1198.5, requesting Plaintiff's personnel file and other documents enumerated in aforementioned code sections. Defendants were required to produce these documents within twenty-one (21) days and thirty (30) from the date of the request respectively and failed to do so.

24. On or about January 8, 2021, Plaintiff notified Defendants via certified mail and filed an online PAGA claim notice with the California Labor and Workforce Development Agency (“LWDA”) identifying Defendants’ violations of the California Labor Code identified in this Complaint and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code section 2698 et seq.

FIRST CAUSE OF ACTION

(Retaliation)

(Against All Defendants)

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

26. Defendants, by and through their managing agents and supervisors, retaliated against Plaintiff for engaging in protected activity of disclosing, or potentially disclosing information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance.

27. Such conduct violates California Labor Code section 98.6(a) which provides that “[n]o person shall discharge an employee or in any manner discriminate against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter.”

28. Such conduct also violates Labor Code section 1102.5, subd. (b) which provides that “[a]n employer . . . shall not retaliate against an employee for disclosing information , or because the employer believes that the employee disclosed or may disclose information . . . to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to

1 believe that the information discloses a violation of state or federal statute, or a violation of or
2 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
3 the information is part of the employee's job duties."

4 29. Pursuant to California Labor Code section 1105, Plaintiff is entitled to recover damages
5 from Defendants for injury suffered as a result of the foregoing retaliation.

6 30. During his employment, Plaintiff complained to Defendants that he was forced to work
7 without receiving his uninterrupted thirty (30) minute meal periods and uninterrupted ten (10)
8 minute rest breaks, in addition to working off the clock, not receiving reimbursement for necessary
9 business expenses, and accordingly was not receiving his proper compensation. Plaintiff's
10 complaints are protected from retaliation by statute, including California's Labor Code.

11 31. In violation of his statutory rights, and, in part, on the basis of Plaintiff's
12 aforementioned legally protected rights, Defendants, and each of them, retaliated against Plaintiff
13 by terminating Plaintiff's employment.

14 32. Plaintiff alleges that Defendants, and each of them, were motivated to retaliate against
15 Plaintiff, in part, for his protected actions.

16 33. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been
17 directly and legally caused to suffer actual damages including, but not limited to, substantial losses
18 in earnings, other employment benefits, and future earning capacity, and other pecuniary loss not
19 presently ascertained, in an amount according to proof at the time of trial.

20 34. As a further direct and legal result of the acts and conducts of Defendants, and each of
21 them, Plaintiff has been caused to and did suffer severe emotional and mental distress, anguish,
22 humiliation, embarrassment, fright, mental and physical pain, discomfort and anxiety, all to his
23 damage in an amount according to proof at the time of trial. Plaintiff does not know at this time
24 the exact duration or permanence of said injuries.

25 35. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
26 them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts,
27 engaged in willful, malicious, intentional, oppressive, fraudulent and despicable conduct.
28

1 36. Defendants, and each of them, also acted in willful and conscious disregard of the
2 rights, welfare and safety of Plaintiff thereby justifying the award of punitive and exemplary
3 damages in an amount according to proof at the time of trial.

4 37. Plaintiff is also entitled to recover reasonable attorneys' fees and costs.

5 **SECOND CAUSE OF ACTION**

6 **(Wrongful Termination)**

7 **(Against All Defendants)**

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

10 39. Defendants terminated Plaintiff's employment in retaliation for complaints and refusals
11 to engage in unlawful conduct, as discussed above, in violation of California Labor Code sections
12 1102.5 which is in violation of fundamental, substantial, and well-grounded public policies.

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

16 41. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has
17 sustained and continues to sustain severe emotional pain and suffering, including but not limited
18 to anguish, humiliation, anger, tension, anxiety, depression, and lowered self-esteem, according to
19 proof at trial.

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

23 **THIRD CAUSE OF ACTION**

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

25 **(Against All Defendants)**

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

28 44. California Labor Code section 1198 makes it illegal to employ an employee under

1 conditions of labor that are prohibited by the applicable wage order. California Labor Code section
2 1198 requires that "...the standard conditions of labor fixed by the commission shall be the
3 ...standard conditions of labor for employees. The employment of any employee ...under
4 conditions of labor prohibited by the order is unlawful."

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

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

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

16 48. California Labor Code section 510 codifies the right to overtime compensation at one-
17 and one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
18 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
19 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
20 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day.

21 49. During the relevant time period, Plaintiff worked in excess of eight (8) hours in a day,
22 in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week. Although
23 Plaintiff regularly worked off-the-clock that should have been compensated at an overtime rate.

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

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

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1 shall require an employee to work during any rest period mandated by an applicable order of the
2 California IWC.

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

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

12 62. Defendants had no policy and/or practice to pay premiums for missed rest breaks and
13 thus failed to pay Plaintiff the full rest period premium due pursuant to California Labor Code
14 section 226.7.

15 63. Defendants’ conduct violates the applicable IWC Wage Orders and California Labor
16 Code section 226.7.

17 64. Pursuant to the applicable IWC Wage Order and California Labor Code section
18 226.7(b), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at
19 Plaintiff’s regular hourly rate of compensation for each work day that the rest period was not
20 provided.

21 **SIXTH CAUSE OF ACTION**

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

23 **(Against All Defendants)**

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

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

28 67. At all relevant times herein set forth, California Labor Code section 226.7 provides that

no employer shall require an employee to work during any meal period mandated by the applicable IWC Wage Order.

68. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

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

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

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

SEVENTH CAUSE OF ACTION

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

(Against All Defendants)

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

73. Labor Code § 226(a) requires employers, including Defendants, to furnish employees accurate itemized wage statements in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made

on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

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

75. Defendants' failure to furnish Plaintiff with complete and accurate itemized wage statements resulted in actual injury, as said failures lead to, among other things, the non-payment of all Plaintiff's wages, and deprived Plaintiff of the information necessary to, among other things, identify the discrepancies in Defendants' reported data, and to know, understand and question the rate of pay and hours Defendants used to calculate their wages.

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

EIGHTH CAUSE OF ACTION

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

(Against All Defendants)

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

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

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

11 80. Defendants' failure to pay Plaintiff his wages earned and unpaid at the time of
12 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of
13 California Labor Code sections 201 and 202.

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

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

21 **NINTH CAUSE OF ACTION**
22 **(Violation of California Labor Code § 1198.5)**
23 **(Against All Defendants)**

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

26 84. Pursuant to California Labor Code section 1198.5(b) "the employer shall make the
27 contents of those personnel records available for inspection to the current or former employee, or
28 his or her representative, at reasonable intervals and at reasonable times, but not later than 30

1 calendar days from the date the employer receives a written request, unless the current or former
2 employee, or his or her representative, and the employer, agree in to a date beyond the 30 calendar
3 days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the
4 employer's receipt of the written request."

5 85. Further, pursuant to Subsection (k) of Labor Code section 1198.5 "[i]f an employer
6 fails to permit a current or former employee, or his or her representative, to inspect or copy
7 personnel records within the times specified in this section, or times agreed to by mutual agreement
8 as provided in this section, the current or former employee or the Labor Commissioner may recover
9 a penalty of seven hundred fifty dollars (\$750) from the employer."

10 86. Defendants intentionally and willfully failed to provide Plaintiff with a copy of records
11 pursuant to California Labor Code section 1198.5 within 30 calendar days from the date of the
12 request.

13 87. Pursuant to California Labor Code section 1198.5, Plaintiff is entitled to damages in
14 the amount of \$750.00 plus attorneys' fees and costs.

15 **TENTH CAUSE OF ACTION**

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

17 **(Against All Defendants)**

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

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

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

1 interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which
2 the employee incurred the necessary expenditure or loss.”

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

6 92. Based on Plaintiff’s employment with Defendants, Plaintiff incurred business
7 expenses in the discharge of his duties for Defendants and in obedience to Defendants’
8 instructions, which includes the use of his own personal cell phone, personal tools, and personal
9 vehicle.

10 93. As a direct and proximate cause of Defendants’ wrongful conduct, Plaintiff has
11 sustained and will continue to sustain damages in the amount of unreimbursed expenditures and
12 losses, together with interest thereon, attorney’s fees and costs of suit. Plaintiff is entitled to an
13 unpaid balance of expenses owed, penalties plus interest and reasonable attorney’s fees and costs
14 of suit, in an amount to be determined at trial according to proof.

15 **ELEVENTH CAUSE OF ACTION**

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

17 **(Against All Defendants)**

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

20 95. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
21 competition, which includes any “*unlawful, unfair or fraudulent business act or practice....*”

22 96. Defendants have engaged and continue to engage in unfair and/or unlawful business
23 practices in California in violation of California Business and Professions Code § 17200, *et seq.*,
24 by engaging in the conduct alleged herein, including, but not limited to, (1) failing to pay Plaintiff
25 all overtime and minimum wages owed; (2) failing to pay Plaintiff an additional hour of premium
26 pay for meal period violations; (3) failing to pay Plaintiff an additional hour of premium pay for
27 rest period violations; (4) willfully failing to timely pay Plaintiff all wages during and at the end
28

1 of employment; and (5) knowingly failing to furnish Plaintiff with accurate and complete wage
2 statements.

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

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

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

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

18 **TWELFTH CAUSE OF ACTION**

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

20 **(Against All Defendants)**

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

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

26 103. On or about January 8, 2021, Plaintiff notified Defendants via certified mail and filed
27 an online PAGA claim notice with the California Labor and Workforce Development Agency
28 ("LWDA") identifying Defendants' violations of the California Labor Code identified in this

1 Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code
2 section 2698 et seq. The LWDA assigned Plaintiff's case number LWDA-CM-818208-21.
3 Plaintiff also submitted a filing fee of seventy-five (\$75.00) to the LWDA in accordance with
4 Labor Code section 2699.3(a)(1)(B). Sixty-five days have passed from the date of Plaintiff's
5 notice to the LWDA, and thus Plaintiff has exhausted her administrative remedies, thereby
6 allowing Plaintiff to commence a civil action against Defendants pursuant to Labor Code section
7 2699.

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

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

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

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

22 108. In addition, Defendants failed to provide Plaintiff and Aggrieved Employees with
23 properly itemized wage statements including because Defendants failed to include the gross wages
24 earned, total hours worked by the employee, net wages earned, the inclusive dates of the pay
25 period, the name of Plaintiff and Aggrieved Employees' and his or her social security number, the
26 name and address of the legal entity that is the employer, and all applicable hourly rates in effect
27 during the pay period and the corresponding number of hours worked at each hourly rate by
28 Plaintiff and Aggrieved Employees and the failure to include premium pay for missed and/or

1 interrupted rest and meal breaks.

2 109. In addition, Defendants failed to reimburse Plaintiff and Aggrieved Employees for
3 incurred business expenses in the discharge of their duties for Defendants and in obedience to
4 Defendants' instructions, which includes the use of their personal cell phones and personal
5 vehicles.

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

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

- 18 a. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
19 minimum wage compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*;
- 20 b. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
21 overtime compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et*
22 *seq.*;
- 23 c. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
24 of premium pay for meal period violations in violation of Labor Code §§ 226.7 and
25 512;
- 26 d. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
27 of premium pay for rest period violations in violation of Labor Code §§ 226.7 and
28 512;

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For general and compensatory damages including but not limited to, lost wages and benefits and damages for emotional distress normally associated retaliation, wrongful termination, humiliation, and loss of reputation;
2. For punitive and exemplary damages according to proof;
3. For statutory attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5; and Labor Code sections 226, 226.8, 1194, 1198, 1198.5, 2800, 2802, 2669, *et seq.*, and as allowed by law and according to proof;

1 4. For statutory civil penalties pursuant to Labor Code section 2698, *et seq.*, and as
2 allowed by law and according to proof;

3 5. For unpaid wages and overtime;

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

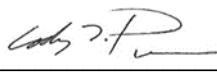
6 7. For costs of suit incurred herein;

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

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

10 DATED: March 16, 2021

PAYNE NGUYEN, LLP

11
12 By: 

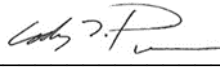
13 Cody Payne
14 Kim Nguyen
15 Attorneys for Plaintiff
16 SALVADOR PEREZ ESPINOZA
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PLAINTIFF'S DEMAND FOR A JURY TRIAL

Plaintiff SALVADOR PEREZ ESPINOZA hereby demands a trial by jury.

DATED: March 16, 2021

PAYNE NGUYEN, LLP

By: 

Cody Payne
Kim Nguyen
Attorneys for Plaintiff
SALVADOR PEREZ ESPINOZA