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7 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

8 **COUNTY OF LOS ANGELES**

9 NINA JACKSON, individually and on
behalf of all others similarly situated,

10 Plaintiff,

11 vs.

12
13 QUANTUM BEHAVIORAL
SOLUTIONS, INC., a California
14 corporation; GEVORK G.
GEVOJANYAN, an individual; and
15 DOES 1 through 20, inclusive,

16 Defendants.
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FILED
Superior Court of California
County of Los Angeles
02/07/2023
David W. Slayton, Executive Officer / Clerk of Court
By: M. Miro Deputy

Case No. 21STCV12389

**SECOND AMENDED CLASS ACTION
COMPLAINT**

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Rest Periods;
- (4) Failure to Provide Meal Periods;
- (5) Failure to Reimburse Business Expenses;
- (6) Failure to Provide Accurate Wage Statements;
- (7) Failure to Pay Wages Timely During
Employment;
- (8) Failure to Pay Wages Timely at Separation;
- (9) Violations of the Unfair Competition Law; and
- (10) Civil Penalties Pursuant to California's Private
Attorneys General Act of 2004 (Labor Code §
2698, et seq.)

JURY TRIAL DEMANDED

1 Plaintiff Nina Jackson, on behalf of herself and a class of similarly situated individuals,
2 alleges upon personal knowledge as to her own actions and upon information and belief as to all
3 other matters, as follows:

4 **INTRODUCTION**

5 1. This is a class action brought pursuant to Code of Civil Procedure Section 382 to
6 recover wages and all other available relief on behalf of Plaintiff Nina Jackson (the “Plaintiff”) and
7 similarly situated current and former hourly-paid, non-exempt employees who worked for
8 Defendants in California at any time from four years prior to the commencement of this action until
9 judgment is rendered Plaintiff and similarly situated current and former hourly-paid, non-exempt
10 employees are referred to herein as “class members.”

11 2. On behalf of herself and other class members, Plaintiff seeks relief for Defendants’
12 systematic and uniform violations of the California Labor Code, California Business and Professions
13 Code, the applicable Wage Order issued by the California Industrial Welfare Commission (“IWC”),
14 IWC Wage Order No. 4–2001, Cal. Code Regs., tit. 8, § 11040, and related common law principles.

15 3. The acts complained of in this Complaint have occurred, are presently occurring and
16 are expected to continue occurring within the time period from four 4 years prior to the
17 commencement of this action until judgment is rendered.

18 4. This is also a non-class representative action under the Labor Code Private Attorneys
19 General Act of 2004, Labor Code Section 2698, *et seq.* to recover civil penalties and any other
20 available relief on behalf of the State of California, Plaintiff, and all other current and former
21 employees who worked for Defendants as non-exempt, hourly-paid employees in California, who
22 received at least one wage statement, and against whom one or more violations of any provision of
23 the Labor Code or any provision regulating hours and days of work, or establishing working
24 conditions, in IWC Wage Order No. 4-2001 were committed, as set forth in this Complaint.

25 **PARTIES**

26 5. Plaintiff Nina Jackson is and at all times relevant to this Complaint was an individual
27 residing in Los Angeles County, California.

28 6. Defendant Quantum Behavioral Solutions, Inc. (“Quantum Behavioral”) is and at all

1 times relevant to this Complaint was a California corporation that does business in Los Angeles
2 County, California.

3 7. Defendant Gevork G. Gevojanyan (“Mr. Gevojanyan”) is and at all time relevant to
4 this Complaint was an individual residing in Los Angeles County, California. Mr. Gevojanyan is and
5 at all time relevant to this Complaint was an owner, director, officer and/or managing agent of
6 Defendant Quantum Behavioral.¹

7 8. Plaintiff is unaware of the true names and capacities, whether individual, corporate,
8 associate, or otherwise of the defendants sued herein as Does 1 through 20. Plaintiff therefore sues
9 those defendants by fictitious names. Plaintiff will amend this Complaint to show the true names and
10 capacities of each Doe defendant when such information has been ascertained.

11 9. Except as otherwise noted, a reference to “Defendants” in this Complaint shall include
12 the names Defendants Quantum Behavioral and Mr. Gevojanyan, and the Doe defendants.

13 10. Upon information and belief, Defendants acted as the employers and/or joint
14 employers of Plaintiff, and directly or indirectly, or through actual agents, ostensible agents and/or
15 other persons, employed Plaintiff, and exercised control over her wages, hours, and working
16 conditions. Defendants’ control included, but was not limited to, the authority to hire and fire, assign
17 work tasks and to engage in day-to-day supervision.

18 11. Upon information and belief, at all relevant times, each of the Defendants is and was
19 the agent, partner, joint venturer, principal, alter ego, employee, co-conspirator, and/or aider or
20 abettor of each of the other Defendants, and in doing the things alleged was acting within the course
21 and scope of their agency or employment and with the knowledge and consent of each of the other
22 Defendants. Upon information and belief, the acts and conduct of each of the Defendants was known
23 to, and authorized and ratified by, the remaining Defendants, and each of the Defendants is jointly
24

25 ¹ Mr. Gevojanyan is also liable in their individual capacities for the civil penalties, attorneys’ fees
26 and litigation costs available pursuant to the Labor Code Private Attorneys General Act of 2004,
27 Labor Code Section 2698, *et seq.* See, e.g., *Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809, 824
28 (holding that “the language in both section 558(a) and section 1197.1(a) is broad enough to
unambiguously include [the owner and CEO of the defendant employer] as a person *other than the*
corporate employer subject to the civil penalties awarded by the trial court under those two statutes”)
(emphasis in original).

1 and severally responsible and liable for the damages alleged herein.

2 **JURISDICTION AND VENUE**

3 12. The California Superior Court has subject matter jurisdiction over all causes of action
4 alleged in this Complaint pursuant to the California Constitution, Article VI, Section 10, which grants
5 the Superior Court “original jurisdiction in all causes except those given by statute to other courts.”
6 Plaintiff’s claims arise under the laws of the State of California, and are not statutorily assigned to
7 any other trial court.

8 13. The amount in controversy under this Complaint exceeds the minimal jurisdictional
9 limit of the Superior Court and will be established according to proof at trial.

10 14. The Court has personal jurisdiction over the Defendants because they are residents of
11 and/or are doing business in the State of California.

12 15. Venue is proper in this Court pursuant to Code of Civil Procedure Sections 395 and
13 395.5 because the principal place of business of Defendants is located in Los Angeles County,
14 Defendants operate extensively in Los Angeles County, Plaintiff resides in Los Angeles County and
15 the liability for the alleged wrongs described herein arose in Los Angeles County.

16 16. Upon information and belief, this action may not be removed to the United States
17 District Court pursuant to the Class Action Fairness Act, 28 U.S.C. Section 1332(d) (“CAFA”),
18 because the local controversy exception applies. *See* 28 U.S.C. § 1332(d)(4). Additionally, because
19 this action is based exclusively on California statutes and law, including the California Labor Code,
20 IWC Wage Order No. 4–2001, Cal. Code Regs., tit. 8, § 11040 and California Business and
21 Professions Code, no federal question exists on which to base removal.

22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23 17. On March 30, 2021, Plaintiff provided written notice by online filing to the Labor and
24 Workforce Development Agency (“LWDA”) and by certified mail to Defendant Quantum
25 Behavioral of the specific provisions of the Labor Code alleged to have been violated, including facts
26 and theories to support the alleged violations, in accordance with Labor Code Section 2699.3. A true
27 and correct copy of Plaintiff’s PAGA Notice is attached hereto as Exhibit 1.

28 18. As of the filing date of this Complaint, over 65 days have passed since Plaintiff sent

the March 30, 2021 LWDA Notice, and the LWDA has not responded that it intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

19. Plaintiff has thus satisfied the administrative prerequisites under Labor Code Sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in addition to other remedies, for violations of Labor Code Sections 226.7 and 512.

GENERAL ALLEGATIONS

20. Quantum Behavior provides counseling services to children with autism and their families.

21. Defendants employed Plaintiff as an hourly-paid, non-exempt employee in Los Angeles, California. Plaintiff worked for Defendants from October 2019 until approximately July 2021.

22. Upon information and belief, Defendants subjected Plaintiff and other current and former non-exempt class members to the same policies, practices and procedures governing the control and payment of wages and hours worked, the reimbursement of business expenses and uniformly denied Plaintiff and other class members the rights afforded to them under the Labor Code, IWC Wage Order No. 4–2001 and the California Business and Professions Code.

23. Upon information and belief, Defendants issued the same formatted wage statements to Plaintiff and other class members.

24. Upon information and belief, Defendants process payroll for all departing class members in the same manner, regardless of the manner in which each employee's employment ends.

25. Plaintiff generally worked five (5) shifts per week of eight (8) or more hours.

26. On information and belief, other class members worked, and continue to work, shifts of eight (8) or more hours.

A. Defendants' Failure to Pay Minimum Wage For All Hours Worked

27. Compensable work time is defined by the applicable IWC Wage Order No. 4 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, § 11040(2)(G) (defining "Hours Worked").

1 28. In 2018, the California Supreme Court held that “The relevant statutes and wage order
2 do not allow employers to require employees to routinely work for minutes off-the-clock without
3 compensation.” *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 848.

4 29. Upon information and belief, Defendants knew or should have known that Plaintiff
5 and other class members were entitled to receive at least minimum wages for all hours worked, and
6 that they were not receiving at least minimum wages for all hours worked.

7 30. Upon information and belief, Defendants’ compensation practices and policies
8 systematically failed to pay Plaintiff and other class members the applicable minimum wage for all
9 hours worked because Defendants required Plaintiff and other class members to work off-the-clock
10 without compensation in several ways. Defendants required Plaintiff and other class members to
11 work off the clock by responding to work-related emails and text messages while off the clock, by
12 conducting charting and other work-related activities off the clock, as well as by attending training
13 programs off the clock. In addition, Defendants required Plaintiff and other class members to work
14 off the clock by preparing for and waiting for clients who cancelled their sessions. When such clients
15 cancelled their sessions, Defendants would not pay Plaintiff and other class members for all hours
16 worked in connection with that client’s session.

17 **B. Defendants’ Failure to Pay Overtime Compensation**

18 31. Upon information and belief, Defendants knew or should have known that Plaintiff
19 and other class members were entitled to receive overtime compensation for hours worked in excess
20 of eight (8) hours in a day and forty (40) hours in a week, and that they were not receiving required
21 overtime compensation.

22 32. As detailed above, Defendants also knowingly required, suffered and permitted
23 Plaintiff and other class members to perform duties off-the-clock and failed to compensate them for
24 all hours worked, including all overtime hours worked. Because Plaintiff and other class members
25 worked shifts of eight (8) hours in a single day, in excess of eight (8) hours in a single day, and/or
26 close to and/or in excess of forty (40) hours in week, some of the off-the-clock work performed by
27 Plaintiff and other class members qualified as overtime, and should have been paid at the applicable
28 overtime rate.

1 **C. Defendants' Failure to Provide Off-Duty Rest Periods**

2 33. Upon information and belief, Defendants knew or should have known that Plaintiff
3 and other class members were entitled to receive all 10-minute rest periods in accordance with the
4 Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at
5 Plaintiff's and other class members' regular rates of pay when a compliant rest period was missed,
6 and that Plaintiff and other class members did not receive all rest periods or payment of one (1)
7 additional hour of pay at Plaintiff's and other class members' regular rates of pay when a compliant
8 rest period was missed.

9 34. During the relevant time period, Defendants' scheduling and staffing policies and
10 practices, or lack thereof, prevented Plaintiff and other class members from being relieved of all duty
11 in order to take compliant rest periods.

12 35. Notwithstanding any formal written policy to the contrary, Defendants' actual custom
13 and business practice was to undermine any formal policy of providing legally required rest periods
14 by pressuring employees to perform their duties in ways that omitted breaks, including, but not
15 limited to, scheduling a heavy workload that made taking rest periods extremely difficult,
16 maintaining an informal anti-rest-period policy enforced through pressure, failing to schedule rest
17 periods, failing to provide rest-period coverage, and otherwise discouraging employees from taking
18 legally protected rest periods. Plaintiff and other class members routinely worked through their shifts
19 without being able to take a legally complaint rest period.

20 36. Additionally, Defendants systematically failed to provide Plaintiff and other class
21 members one additional hour of compensation at their regular rate of pay for each workday that an
22 off-duty, uninterrupted 10-minute rest period was not provided.

23 37. Upon information and belief, Defendants failed to implement any practice or
24 procedure to pay rest period premiums when Plaintiff and other class members missed a required
25 rest period.

26 38. Defendants also failed to compensate Plaintiff and other class members for the time
27 they spent working instead of taking legally compliant rest periods.

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D. Defendants' Failure to Provide Compliant Off-Duty Meal Periods

39. Upon information and belief, Defendants knew or should have known that Plaintiff and other class members were entitled to meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods, and that Plaintiff and other class members were not provided with all required meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

40. Throughout the relevant period, Plaintiff and other class members routinely worked shifts of eight (8) or more hours, and were thus entitled to a timely, uninterrupted thirty (30) minute meal period prior to the end of their fifth hour of work.

41. During the relevant time period, Defendants' scheduling and staffing policies and practices, or lack thereof, prevented Plaintiff and other class members from being relieved of all duty in order to take compliant meal periods.

42. Notwithstanding any formal written policy to the contrary, Defendants' actual custom and business practice was to undermine any formal policy of providing legally required meal periods by pressuring employees to perform their duties in ways that omitted meal periods, including, but not limited to, scheduling a heavy workload that made taking meal periods extremely difficult, maintaining an informal anti-meal-period policy enforced through pressure, failing to schedule meal periods, failing to provide meal-period coverage, and otherwise discouraging employees from taking legally protected meal periods.

43. Additionally, Defendants had a uniform policy and/or practice that required and incentivized general managers and other managerial staff to edit non-exempt employees' clock-in and clock-out times to eliminate evidence of untimely or missed meal periods.

44. Upon information and belief, Plaintiff and other class members did not validly or legally waive their meal periods by mutual consent with Defendants or otherwise.

45. Throughout the relevant time period, Defendants also systematically failed to provide Plaintiff and other class members with one additional hour of compensation at their regular rate of

1 pay for each work day that Defendants deprived Plaintiff and other class members of an off-duty,
2 uninterrupted 30-minute meal period.

3 46. Upon information and belief, Defendants failed to implement any practice or
4 procedure to pay meal period premiums when Plaintiff and other class members missed a required
5 meal period.

6 **E. Defendants' Failure To Reimburse Necessary Business Expenses**

7 47. Upon information and belief, Defendants knew or should have known that Plaintiff
8 and other class members were entitled to receive full reimbursement for all business-related expenses
9 and costs they incurred during the course and scope of their employment, and that they did not receive
10 full reimbursement of applicable business-related expenses and costs incurred.

11 48. Defendants systematically failed to reimburse Plaintiff and other class members for
12 necessary business expenses incurred at the direction of Defendants in at least two respects.

13 49. First, during the relevant time period, Quantum Behavioral had a consistent policy
14 and/or practice that required that Plaintiff and other class members utilize their own personal cell
15 phones, cell phone data, personal computers and Internet data plans to carry out their job duties, but
16 Quantum Behavioral failed to reimburse them for those costs.

17 50. Second, during the relevant time period, Defendants also had a consistent policy
18 and/or practice that required Plaintiff and other class members to use their personal vehicle, gas and
19 auto insurance to carry out her job duties for the benefit of Defendants, but Defendants failed to
20 reimburse Plaintiff and other class members for the reasonable costs of the use of their personal
21 vehicle, fuel, auto insurance, vehicle maintenance costs and other vehicle-related expenses.

22 **F. Inaccurate Wage Statements and Failure To Maintain Accurate Payroll Records**

23 51. Upon information and belief, Defendants knew or should have known that Plaintiff
24 and other class members were entitled to receive complete and accurate wage statements in
25 accordance with California law, and that Defendants were not providing Plaintiff and other class
26 members with complete and accurate wage statements.

27 52. Throughout the relevant time period, Defendants had a consistent policy and/or
28 practice of not providing accurate wage statements to Plaintiff and other class members. The wage

statement deficiencies include the following:

- a. failing to include the accurate amount of “gross wages,” “net wages” and “total hours worked by the employee” because Defendants failed to record all hours worked by Plaintiff and other class members when they worked off-the-clock;
- b. failing to include the accurate amount of “gross wages,” “net wages” and “total hours worked by the employee” because Defendants made numerous errors when creating Plaintiff’s and other class members’ wage statements;
- c. failing to include meal and rest period penalty wages when Defendants failed to provide lawful meal and rest periods;
- d. failing to include the accurate number of “total hours worked by the employee” because Defendants did not include time spent working during on-duty meal periods for which Plaintiff and other class members should have been compensated;
- e. failing to include the correct address of the legal entity that employed Plaintiff and class members; and
- f. failing to include the accurate amount of accrued paid sick leave on Plaintiff’s and other class members’ wage statements.

53. Because Defendants failed to provide Plaintiff and other class members with accurate, itemized wage statements, Plaintiff and other class members were never aware of what their true wages should have been, and how they should have been calculated.

54. Upon information and belief, Defendants also knew or should have known that they had a duty to maintain accurate and complete payroll records in accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

55. Throughout the relevant time period, Defendants also failed to maintain accurate payroll records showing the total hours worked daily by, and the wages paid to, Plaintiff and other class members. Because Defendants failed to record all hours worked, none of the Defendants’ payroll records pertaining to Plaintiff and other class members accurately reflect all regular hours worked, overtime hours worked, actual gross wages and net wages earned, and premium wages owed for denied lawful meal and rest periods. As a result of Defendants’ failure to maintain accurate

1 payroll records, Defendants prohibited Plaintiff and other class members from monitoring whether
2 Defendants compensated them correctly and lawfully.

3 **G. Failure To Timely Pay Wages During Employment and at Separation**

4 56. Upon information and belief, Defendants knew or should have known that Plaintiff
5 and other class members were entitled to timely payment of wages during their employment.

6 57. Nevertheless, in violation of the Labor Code, Defendants failed to timely pay Plaintiff
7 and other class members all earned wages during their employment, including but not limited to
8 minimum wages, overtime wages, and meal and rest period premium wages.

9 58. Upon information and belief, Defendants knew or should have known that Plaintiff
10 and other class members were entitled to timely payment of all wages earned when they resigned or
11 were terminated from employment.

12 59. Nevertheless, in violation of the Labor Code, Defendants failed to timely pay Plaintiff
13 and other class members all their earned wages when they resigned or were terminated from
14 employment, including, but not limited to, minimum wages, overtime wages, and meal and rest
15 period premium wages.

16 **CLASS ACTION ALLEGATIONS**

17 60. Plaintiff brings this action on behalf of herself and the following class and subclass
18 pursuant to Code of Civil Procedure Section 382:

19 Class: All persons who worked for Defendants as hourly-paid, non-
20 exempt employees in California at any time from four (4) years prior
21 to the commencement of this action until judgment is entered (the
"Class").

22 61. Excluded from the Class and Subclass are Defendants' legal representatives, officers,
23 directors, assigns, and successors, or any individual who has, or who at any time during the class
24 period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and
25 any member of the Judge(s)' immediate family; and all persons who submit timely and otherwise
26 proper requests for exclusion from the Classes.

27 62. Members of the Class and Subclass are referred to herein as "class members."

28 63. Reservation of Rights. Plaintiff reserves the right to amend or modify the Class and

Subclass definitions with greater specificity and to add additional subclasses as appropriate based on further investigation and discovery. Plaintiff also reserves the right to pursue the cause of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 in a representative capacity without complying with Code of Civil Procedure Section 382.

64. Ascertainable Class. The proposed Class and Subclass may be readily ascertained by a review of Defendants' payroll and personnel records.

65. Numerosity. Both the Class and Subclass are so numerous that joinder of all members is unfeasible and not practicable. While the precise number of Class and Subclass members has not been determined at this time, Plaintiff is informed and believe that more than one hundred (100) class members have worked for Defendants as non-exempt employees in California during the relevant time period. The quantity and identity of such membership is readily ascertainable by a review of Defendants' payroll and personnel records.

66. Commonality and Predominance. There are questions of law and fact common to all class members, which predominate over any questions affecting only individual class members. The principal common issues include:

- a. Whether Defendants required, suffered or permitted class members to perform certain work-related duties without compensation equal to at least the applicable California minimum wages;
- b. Whether Defendants required class members to work over eight (8) hours per day, or over forty (40) hours per week, without paying class members all legally required overtime compensation;
- c. Whether Defendants required, suffered or permitted class members to work while clocked out for their meal periods;
- d. Whether Defendants required, suffered or permitted class members to work during rest periods;
- e. Whether Defendants violated Labor Code Sections 1182.12, 1194, 1197 and 1198 and IWC Wage Order 4-2001, Section 4 by failing to pay class members the applicable minimum wage for all hours worked;

- 1 f. Whether Defendants violated Labor Code Sections 510 and IWC Wage Order 4-2001,
- 2 Section 3 by failing to pay class members the applicable overtime wage for all
- 3 overtime hours worked;
- 4 g. Whether Defendants failed to provide class members with compliant, off-duty meal
- 5 periods and meal period premium wages in violation of Labor Code Sections 226.7,
- 6 512 and IWC Wage Order 4-2001, Section 11;
- 7 h. Whether Defendants failed to provide class members with rest periods and rest period
- 8 premium wages in violation of Labor Code Sections 226.7 and IWC Wage Order 4-
- 9 2001, Section 12;
- 10 i. Whether Defendants knowingly and intentionally failed to provide class members
- 11 with accurate wage statements, as required by Labor Code Section 226 and IWC
- 12 Wage Order 4-2001, Section 7;
- 13 j. Whether Defendants violated Labor Code Section 1174 and IWC Wage Order No. 4-
- 14 2001, Section 7 by failing to maintain documentation of the actual hours worked each
- 15 day by Plaintiff and other class members;
- 16 k. Whether Defendant violated Labor Code Sections 201 and 202 by failing timely to
- 17 pay all earned wages due to Class members at the time of termination or resignation;
- 18 l. Whether Defendants failed to reimburse class members for all business-related
- 19 expenditures and/or losses incurred by class members at Defendants' direction for
- 20 work purposes;
- 21 m. Whether Defendants violated Labor Code Section 204 by failing timely to pay all
- 22 earned wages due to class members during their employment;
- 23 n. Whether Defendants engaged in unlawful and unfair business practices in violation
- 24 of California Business & Professions Code sections 17200, *et seq.*; and
- 25 o. Whether class members are entitled to liquidated damages from Defendants for
- 26 unpaid minimum wages under Labor Code Section 1194.2;
- 27 p. Whether class members are entitled to injunctive relief;
- 28 q. Whether class members are entitled to restitution;

1 r. Whether class members are entitled to prejudgment interest;

2 s. Whether class members are entitled to attorneys' fees and costs;

3 t. Whether class members and the State of California are entitled to civil penalties
4 pursuant to Labor Code Section 2968, *et seq.*;

5 u. The appropriate amount of damages, restitution, and monetary penalties resulting
6 from Defendants' violations of California law.

7 67. Typicality. Plaintiff's claims are typical of the claims of the Class and Subclass that
8 they seek to represent. Plaintiff and other class members sustained the same types of injuries and
9 damages arising out of and caused by Defendants' common course of unlawful conduct.

10 68. Adequacy of Representation. Plaintiff will fairly and adequately represent and
11 protect the interests of all class members, and have no interests antagonistic to the other class
12 members. There are no material conflicts between the Plaintiff's claims and the claims of the other
13 class members that would make class certification inappropriate. Plaintiff has retained counsel
14 experienced in handling complex class actions and wage and hour claims.

15 69. Superiority of Class Action. A class action is superior to other available means for
16 fair and efficient adjudication of class members' claims, and offers significant benefits to the parties
17 and the Court. A class action will allow a large number of similarly situated persons to
18 simultaneously and efficiently prosecute their common claims in a single forum without the
19 unnecessary duplication of effort and expense that numerous individual actions would entail.
20 Additionally, because the monetary amounts due to many individual class members are likely to be
21 relatively small, it would make it difficult, if not impossible, for individual class members to both
22 seek and obtain relief. Moreover, a class action will serve important public interests by enabling the
23 statutory rights of class members to be effectively asserted and fundamental public policies to be
24 vindicated in one proceeding. A class action will also provide a means for vindicating the rights of
25 current employees who are less likely to come forward to assert those rights based on fears of
26 employer reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory
27 judgments inherent in individual litigation.

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FIRST CAUSE OF ACTION

Failure to Pay Minimum Wages

(Labor Code §§ 1182.12, 1194, 1197 and 1198)

(Against all Defendants)

70. Plaintiff incorporates all preceding allegations as if fully set forth herein.

71. Labor Code Sections 1182.12, 1194, 1197 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.

72. Compensable work time is defined in IWC Wage Order No. 4-2001 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, § 11040(2)(K) (defining “Hours Worked”).

73. Defendants employed Plaintiff and other class members as non-exempt employees who were entitled to the protections of Labor Code Sections 1182.12, 1194, 1197 and 1198 and IWC Wage Order 4-2001.

74. As set forth above, in violation of Labor Code Sections 1182.12, 1194, 1197 and 1198 and IWC Wage Order 4-2001, Defendants failed to pay Plaintiff and other class members the applicable minimum wage for all hours worked because Defendants failed to pay Plaintiff and other class members the applicable minimum wages for the time that Defendants required, permitted or suffered Plaintiff and other class members to work off-the-clock.

75. Labor Code Section 1194(a) provides that “Notwithstanding any agreement to work for a lesser wage, an 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.”

76. Labor Code Section 1194.2(a) provides that “In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated

1 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

2 77. Labor Code Section 218.5(a) provides that “In any action brought for the nonpayment
3 of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award
4 reasonable attorney’s fees and costs to the prevailing party if any party to the action requests
5 attorney’s fees and costs upon the initiation of the action.”

6 78. As a direct and proximate result of Defendants’ conduct, Plaintiff and other class
7 members have suffered damages in amounts to be proven at trial and are entitled to recover and
8 hereby seek all appropriate remedies provided by the Labor Code and IWC Wage Orders, including
9 unpaid wages in an amount to be determined at trial, pre-judgment interest, liquidated damages,
10 attorneys’ fees and costs of suit.

11 **SECOND CAUSE OF ACTION**

12 **Failure to Pay Overtime Wages**

13 **(Labor Code §§ 510, 1194, 1198)**

14 **(Against all Defendants)**

15 79. Plaintiff incorporates all preceding allegations as if fully set forth herein.

16 80. Labor Code Section 510 provides that “Any work in excess of eight hours in one
17 workday and any work in excess of 40 hours in any one workweek . . . shall be compensated at the
18 rate of no less than one and one-half times the regular rate of pay for an employee.”

19 81. An employee’s regular rate of pay includes all remuneration for employment paid to,
20 or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

21 82. Labor Code Section 1198 provides that it is unlawful to employ persons for longer
22 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
23 applicable IWC Wage Order.

24 83. Section 3 of IWC Wage Order No. 4-2001 provides in pertinent part that:

25 [E]mployees shall not be employed more than eight (8) hours in any
26 workday or more than 40 hours in any workweek unless the employee
27 receives one and one-half (1½) times such employee’s regular rate of
28 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 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.

84. Defendants employed Plaintiff and other class members as non-exempt employees who were entitled to the protections of Labor Code Sections 510, 1194, 1198 and IWC Wage Order 4-2001.

85. As noted above, Defendants failed to compensate Plaintiff and other class members for all overtime hours worked pursuant to Labor Code Sections 510, 1194, 1198 and IWC Wage Order 4-2001.

86. As set forth above, in violation of Labor Code Sections 510, 1194, 1198 and IWC Wage Order 4-2001, Defendants failed to pay Plaintiff and other class members for all overtime hours worked because Defendants required, permitted or suffered Plaintiff and other class members to work off-the-clock.

87. When Plaintiff and other class members worked eight or more hours on-the-clock, the off-clock work clearly constituted work in excess of eight hours in workday and should have been paid at the applicable overtime rate. When Plaintiff's and other class members' time records indicate that they worked close to eight hours in a workday on the clock—e.g., when their time cards reflect that they worked 7.9 or 7.93 total hours—the off-the-clock work also caused Plaintiff's and class member's total hours worked to exceed eight (8) hours on such a workday and, likewise, should have been paid at the applicable overtime rate.

88. As a direct and proximate result of Defendants' conduct, Plaintiff and other class members have suffered damages in amounts to be proven at trial and are entitled to recover and hereby seek all appropriate remedies provided by the Labor Code and IWC Wage Orders, including unpaid wages, interest, attorneys' fees and costs of suit.

THIRD CAUSE OF ACTION

Failure to Provide Rest Periods

(Labor Code §§ 226.7 and 1198)

(Against all Defendants)

89. Plaintiff incorporates all preceding allegations as if fully set forth herein.

90. At all relevant times, IWC Wage Order No. 4–2001 and Labor Code Sections 226.7 and 1198 were applicable to Plaintiff’s and other class members’ employment by Defendants.

91. IWC Wage Order No. 4–2001 provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “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” unless the total daily work time is less than three and one-half (3½) hours.

92. Labor Code Section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to provide rest periods under Labor Code Section 226.7 and the applicable IWC wage order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties - including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269-270.

93. Upon information and belief, Plaintiff and other class members were subject to the same policies, practices and procedures governing the provision of rest periods.

94. Plaintiff and other class members regularly worked shifts of more than four (4) hours and were entitled to an uninterrupted, off-duty rest period of not less than ten (10) minutes. Plaintiff and other class members also regularly worked eight (8) hours per shift, or more, and were entitled to at least a second uninterrupted, off-duty rest period of not less than ten (10) minutes.

95. Nevertheless, as detailed above, Defendants engaged in a company-wide practice and/or policy of failing to provide Plaintiff and other class members with uninterrupted, off-duty rest periods when required. Because Defendants required that Plaintiff and other class members remain

on-duty at all times, and/or because they did not provide them with rest period coverage, Plaintiff and other class members were subject to Defendants' control and required, permitted and suffered to work during rest periods.

96. Defendants have also engaged in a company-wide practice and/or policy of not paying rest periods premium wages owed when compliant rest periods are not provided. As a result, Plaintiff and other class members were denied rest periods and Defendants failed to pay Plaintiff and other class members the full rest period premiums due, in violation of Labor Code Section 226.7 and IWC Wage Order No. 4-2001.

97. As a direct and proximate result of Defendants' conduct, Plaintiff and other class members have been damaged in an amount to be determined at trial, and hereby seek one additional hour of pay at their regular rate of compensation for each day that a compliant rest period was not provided in a cumulative amount to be determined at trial, plus pre-judgment interest.

FOURTH CAUSE OF ACTION

Failure to Provide Meal Periods

(Labor Code §§ 226.7, 512(a) and 1198)

(Against all Defendants)

98. Plaintiff incorporates all preceding allegations as if fully set forth herein.

99. Labor Code Section 512(a) provides in pertinent part that:

An employer shall 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 shall 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.

100. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1041-1042.

101. Labor Code Section 226.7 provides in pertinent part that:

(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 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.

102. Labor Code Section 1198 provides that it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the applicable IWC Wage Order.

103. IWC Wage Order No. 4-2001, Section 11 provides, in pertinent part:

(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.

104. Upon information and belief, Plaintiff and other class members were subject to the same policies, practices and procedures governing the provision of meal periods.

105. Plaintiff and other class members regularly worked more than five (5) hours per shift and were entitled to an uninterrupted, off-duty meal period of not less than thirty (30) minutes.

106. Nevertheless, as detailed above, Defendants engaged in a company-wide practice and/or policy of failing to provide Plaintiff and other class members with uninterrupted, off-duty meal periods when required.

107. Upon information and belief, Plaintiff and other class members did not validly or legally waive their first meal periods by mutual consent with Defendants or otherwise.

108. Upon information and belief, Plaintiff and other class members did not enter into any written agreement with Defendants agreeing to an on-the-job paid meal period.

109. Thus, Defendants failed to provide Plaintiff and other class members with meal periods as required by Labor Code Sections 226.7 and 512, and IWC Wage Order No. 4–2001.

110. Defendants have also engaged in a company-wide practice and/or policy of not paying rest periods premium wages owed when compliant rest periods are not provided. As a result, Plaintiff and other class members were denied meal periods and Defendants failed to pay Plaintiff and other class members the meal period premiums due, in violation of Labor Code Sections 226.7 and 512, and IWC Wage Order No. 4–2001.

111. As a direct and proximate result of Defendants’ conduct, Plaintiff and other class members have been damaged in an amount to be determined at trial, and hereby seek one additional hour of pay at their regular rate of compensation for each day that a compliant meal period was not provided in a cumulative amount to be determined at trial, plus pre-judgment interest, penalties and costs of suit.

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FIFTH CAUSE OF ACTION

Failure To Reimburse Business Expenditures

(Labor Code § 2802)

(Against all Defendants)

112. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

113. Labor Code Section 2802(a) provides that an employer “shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

114. The purpose of Labor Code Section 2802 is to prevent employers from passing off their costs of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1144.

115. Labor Code Section 2802(b) provides that “All awards made by a court . . . for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions” and that “Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

116. Labor Code Section 2802(c) provides that, “[f]or the purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

117. Labor Code Section 1198 provides that it is unlawful to employ persons under conditions prohibited by the applicable IWC Wage Order.

118. IWC Wage Order No. 4-2001, Section 9 provides in pertinent part:

(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...

119. Defendants had and, on information and belief, continue to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred.

120. As detailed above, Defendants as a matter of practice and/or policy violated Labor Code Section 2802 by denying Plaintiff and other class members reimbursement for necessary expenditures that they incurred as a result of discharging their duties and/or obeying the directions

of Defendants. Plaintiff and other class members were required to incur numerous out-of-pocket expenses, including, *inter alia*, (a) expenses to obtain and maintain a personal cell phone and the data usage that were used at Defendants' direction for work purposes; (b) expenses to obtain and maintain a personal computer and personal Internet data plan that were used at Defendants' direction for work purposes; and (c) expenses incurred by Plaintiff and other class members for the use of their personal vehicles, gas and auto insurance that were used at Defendants' direction for work purposes.

121. Defendants could have provided Plaintiff and other class members with the actual tools required for use on the job, including company phones, computers and Internet data plans for use when working remotely. Defendants also could have provided Plaintiff and other class members with a company car to use for business-related purposes. Defendants also could have reimbursed Plaintiff and other class members for the costs they incurred in maintaining a personal cell phone and cellular data plan, in maintaining a personal computer and Internet data plan, and in using their personal vehicle, gas and auto insurance instead of a company car for work purposes. Instead, Defendants passed those operating costs off onto Plaintiff and other class members in violation Labor Code Section 2802.

122. As a direct and proximate result of Defendants' conduct, Plaintiff and other class members are entitled to recover, and hereby seek, their business-related expenses incurred during the course of their employment in a total, cumulative amount to be determined at trial, plus pre-judgment interest from the dates on which Plaintiff and other class members incurred the necessary business-related expenses, plus reasonable attorneys' fees and costs.

SIXTH CAUSE OF ACTION

Failure to Provide Accurate Wage Statements

(Labor Code § 226(a))

(Against all Defendants)

123. Plaintiff incorporates all preceding allegations as if fully set forth herein.

124. Labor Code Section 226(a) provides in pertinent part:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or their employee, either as a detachable part of the

1 check, draft, or voucher paying the employee's wages, or separately if
2 wages are paid by personal check or cash, an accurate itemized
3 statement in writing showing (1) gross wages earned, (2) total hours
4 worked by the employee . . . , (3) the number of piece-rate units earned
5 and any applicable piece rate if the employee is paid on a piece-rate
6 basis, (4) all deductions, provided that all deductions made on written
7 orders of the employee may be aggregated and shown as one item, (5)
8 net wages earned, (6) the inclusive dates of the period for which the
9 employee is paid, (7) the name of the employee and only the last four
10 digits of his or their social security number or an employee
11 identification number other than a social security number, (8) the name
12 and address of the legal entity that is the employer . . . , and (9) all
13 applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate by the
15 employee

16 125. During the relevant time period, Defendants have knowingly and intentionally
17 provided Plaintiff and other class members with uniform incomplete and inaccurate wage statements
18 as follows:

- 19 a. Defendants violated Labor Code Sections 226(a)(1), 2267(a)(2) and 226(a)(5) and
20 226(a)(9) by failing to include the accurate amount of "gross wages," "net wages"
21 and "total hours worked" because Defendants failed to record and compensate
22 Plaintiff and other class members for all off-the-clock work;
- 23 b. Defendants also violated Labor Code Sections 226(a)(1) and 226(a)(5) by failing to
24 include the accurate amount of "gross wages" and "net wages" because Defendants
25 failed to provide Plaintiff and other class members with required meal and rest period
26 premium wages; and
- 27 c. Defendants violated Labor Code Section 226(a)(2) by failing to include the accurate
28 number of "total hours worked by the employee" because Defendants did not include
time spent working during on-duty meal periods for which Plaintiff and other class
members should have been compensated.
- d. Defendants violated Labor Code Section 226(a)(8) by failing to include the address
of the legal entity that employed Plaintiff and class members.
- e. Defendants violated Labor Code Section 226(a) by failing to include the accurate
amount of accrued paid sick leave on Plaintiff's and other class members' wage

1 statements.

2 126. Labor Code Section 226(e)(1) provides in pertinent part that “An employee suffering
3 injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a)
4 is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
5 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
6 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is
7 entitled to an award of costs and reasonable attorney’s fees.”

8 127. Labor Code Section 226(e)(2) provides that an employee suffers injury if the
9 employer fails to provide accurate and complete information as required by any one or more items
10 listed in Labor Code Section 226(a) and the employee cannot promptly and easily ascertain requisite
11 information without reference to other documents or information.

12 128. As a result of Defendants’ failure to comply with Labor Code Section 226(a),
13 Plaintiff and other class members suffered injuries because they could not promptly and easily
14 ascertain the information required by Labor Code Section 226(a) without reference to other
15 documents or information. In addition, Plaintiff and other class members suffered injuries because
16 they were not aware of what their true wages should have been and how they were calculated, and
17 because Plaintiff and other class members suffered economic loss in the form of lower wages and
18 lost compensation.

19 129. As a direct and proximate result of Defendants’ conduct, Plaintiff and other class
20 members are entitled to recover from Defendants, and hereby seek, the greater of their actual
21 damages caused by Defendants’ failure to comply with Labor Code Section 226(a), or an aggregate
22 penalty not exceeding four thousand dollars (\$4,000) per employee.

23 130. Plaintiff and other class members also seek preliminary and permanent injunctive
24 relief and an award of attorneys’ fees and costs pursuant to Labor Code Section 226(h).

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SEVENTH CAUSE OF ACTION
Failure To Pay Wages Timely at Termination
(Labor Code §§ 201, 202, 203)
(Against all Defendants)

131. Plaintiff incorporates all preceding allegations as if fully set forth herein.

132. Labor Code Section 201 provides that, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

133. Labor Code Section 202 provides that if an employee voluntarily leaves his or their employment, the employee's wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or their intention to quit, in which case the employee is entitled to his or their wages at the time of quitting.

134. Labor Code Section 203 provides that if an employer willfully fails to pay compensation as required by Sections 201 and 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to thirty work days.

135. As detailed above, during the class period, Defendants willfully failed to pay Plaintiff and other class members all their earned wages, including, but not limited to minimum wages, overtime wages, and rest and meal period premium wages, either at the time of their discharge, or within seventy-two (72) hours after their resignation.

136. Defendants' failure to pay Plaintiffs and other class members their earned and unpaid wages at the time of discharge, or within seventy-two (72) hours after their resignation, violates Labor Code Sections 201 and 202.

137. As a direct and proximate result of Defendants' conduct, Plaintiff and other class members are therefore entitled to recover from Defendants, and hereby seek, waiting time penalties for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to Labor Code Section 203 in a total, cumulative amount to be determined at trial.

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EIGHTH CAUSE OF ACTION

Failure To Pay Wages Timely During Employment

(Labor Code § 204)

(Against all Defendants)

138. Plaintiff incorporates all preceding allegations as if fully set forth herein.

139. Labor Code Section provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

140. Labor Code Section 204 also provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

141. In addition, Labor Code Section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, Labor Code Section 204 provides that its requirements are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

142. At all relevant times, Defendants willfully failed to pay Plaintiff and other class members all wages due including, but not limited to, minimum wages, separate rest period wages, separate non-productive time wages, and meal and rest period premium wages, within the time periods specified by Labor Code Section 204, and therefore violated Labor Code Section 204.

143. Labor Code Section 210 provides in pertinent part, “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections . . . 204. . . , shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully

1 withheld.”

2 144. As a direct and proximate result of Defendants’ conduct, Plaintiff and other class
3 members are therefore entitled to recover from Defendants, and hereby seek, penalties pursuant to
4 Labor Code Section 204 in a total, cumulative amount to be determined at trial.

5 **NINTH CAUSE OF ACTION**

6 **Violations of Unfair Competition Law**

7 **(Business & Professions Code § 17200, *et seq.*)**

8 **(Against all Defendants)**

9 145. Plaintiff incorporates all preceding allegations as if fully set forth herein.

10 146. The California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
11 (“UCL”), prohibits unfair competition. The UCL defines unfair competition to include any
12 “unlawful,” “unfair,” or “fraudulent” business act or practice. Cal. Bus. & Prof. Code § 17200.

13 147. A business act or practice is “unlawful” under the UCL if it violates any other law or
14 regulation.

15 148. As detailed above, throughout the relevant time period, Defendants as a matter of
16 practice and/or policy violated Labor Code Sections 204, 226, 226.7, 510, 512, 1182.12, 1194,
17 1194.2, 1197, 1197.1, 1198, 2802, and Cal. Code Regs. tit. 8, § 11040. Based on those violations,
18 Defendants engaged in unlawful business practices in violation of the UCL throughout the relevant
19 time period.

20 149. Throughout the relevant time period, Defendants as a matter of practice and/or policy
21 also engaged in unlawful business practices by violating Labor Code Sections 204 and 1174(d), as
22 follows:

23 150. Defendants also violated Labor Code Sections 201 and 202. Labor Code Section 201
24 provides that, if an employer discharges an employee, the wages earned and unpaid at the time of
25 discharge are due and payable immediately.

26 151. Labor Code Section 202 provides that if an employee voluntarily leaves his or their
27 employment, the employee’s wages shall become due and payable not later than seventy-two (72)
28 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or their

1 intention to quit, in which case the employee is entitled to his or their wages at the time of quitting.

2 152. Labor Code Section 203 provides that if an employer willfully fails to pay
3 compensation as required by Sections 201 and 202, then the employer is liable for waiting time
4 penalties in the form of continued compensation of up to thirty work days.

5 153. As detailed above, during the class period, Defendants willfully failed to pay class
6 members who separated from Defendants all their earned wages, including, but not limited to
7 minimum wages, overtime wages, and rest and meal period premium wages, either at the time of
8 their discharge, or within seventy-two (72) hours after their resignation.

9 154. Defendants' failure to pay class members who separated from Defendants their earned
10 and unpaid wages at the time of discharge, or within seventy-two (72) hours after their resignation,
11 violates Labor Code Sections 201 and 202.

12 155. Defendants also violated Labor Code Section 1174(d). Pursuant to Labor Code
13 Section 1174(d), every employer in the state shall: "Keep, at a central location in the state or at the
14 plants or establishments at which employees are employed, payroll records showing the hours
15 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
16 applicable piece rate paid to, employees employed at the respective plants or establishments." These
17 records must be kept in accordance with rules established for this purpose by Labor Commissioner,
18 but in any case shall be kept on file for not less than three years.

19 156. At all relevant times, Defendants violated Labor Code Section 1174 by failing to
20 maintain an accurate record of Plaintiff's and other class members' total hours worked because,
21 among other reasons, Defendants did not include in total hours worked the time spent by Plaintiff
22 and other class members during on-duty meal periods.

23 157. A business act or practice is "unfair" under the UCL if the reasons, justifications, and
24 motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

25 158. Defendants also committed "unfair" business acts or practices by, among other things:
26 (a) engaging in conduct where the utility of the conduct, if any, is outweighed by the gravity of the
27 consequences to Plaintiff and other class members; (b) engaging in conduct that is immoral,
28 unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and other class members;

1 and (c) engaging in conduct that undermines and violates the stated policies underlying the Labor
2 Code and applicable IWC Wage Order, which seeks to protect employees against unfair and sharp
3 business practices.

4 159. As a result of Defendants' unlawful and unfair business practices, Plaintiff and other
5 class members have suffered injury in fact and lost money or property including but not limited to
6 the loss of earned wages.

7 160. As a result of the violations of California law herein described, Defendants unlawfully
8 gained an unfair advantage over other businesses.

9 161. Pursuant to Business & Professions Code Sections 17200, *et seq.*, Plaintiff and other
10 class members are entitled to, and hereby seek, (a) restitution of the wages and other monies withheld
11 and retained by Defendants during a period that commences four years prior to the filing of the initial
12 complaint in this action; (b) a permanent injunction requiring Defendants to pay all outstanding
13 wages due to Plaintiff and other class members; (c) a permanent injunction prohibiting Defendants
14 from engaging in the acts complained of in the operative Complaint; and (d) an award of attorneys'
15 fees and costs pursuant to Code of Civil Procedure Section 1021.5 and/or other applicable laws.

16 **TENTH CAUSE OF ACTION**

17 **For Civil Penalties, Pursuant to Labor Code § 2698, *et seq.***

18 **(By Plaintiff on Behalf of the State of California and Aggrieved Employees Against All**
19 **Defendants)**

20 162. Plaintiff incorporates all preceding allegations as if fully set forth herein.

21 163. This is a representative action brought on behalf of the State of California and the
22 following individuals:

23 All current and former non-exempt employees who worked one or
24 more pay periods for Defendant Quantum Behavioral Solutions, Inc.
25 in the State of California at any time during the PAGA Period
("Aggrieved Employees").

26 164. The PAGA Period is defined as the period of time beginning on March 30, 2020, the
27 date that is one year prior to the date of Plaintiff's notice letter to the LWDA, and continuing to the
28 present.

165. Plaintiff and all other current and former non-exempt employees who worked one or more pay periods for Defendant Quantum Behavioral Solutions, Inc. in the State of California at any time during the PAGA Period are “aggrieved employees” within the meaning of Labor Code Section 2699, et seq. See Labor Code § 2699(c).

166. As detailed above, Defendants violated Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1198 and 2802.

167. Labor Code Section 2698, et seq. (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5. Section 2699.5 enumerates Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198 and 2802. Labor Code Section 2699.3(c) permits aggrieved employees, including Plaintiffs Del Prado and Dorn, to recover civil penalties for violations of those Labor Code Sections not found in Section 2699.5, including Sections 1182.12.

168. As detailed above, Plaintiff has complied with the PAGA notice provision set forth in Labor Code Section 2699.3, and has exhausted any administrative remedy required by PAGA.

169. Pursuant to Labor Code Section 2699(a) and (f), Plaintiff may recover civil penalties on behalf of herself and all other aggrieved current and former employees for Defendants’ violations of Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1198 and 2802 in the following amounts:

a. For violations of Labor Code Sections 201, 202, 203, 226.7, 1182.82, 1194, 1198 and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by Labor Code Sections 2699(f)(2));

b. For violations of Labor Code Section 1197, one hundred dollars (\$100.00) for each aggrieved employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by Labor Code § 1197.1).

- c. For violations of Labor Code Section 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation, and two hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by Labor Code § 210);
- d. For violations of Labor Code Sections 226(a), two hundred fifty dollars (\$250.00) for each aggrieved employee for each initial violation and one thousand dollars (\$1,000.00) for each aggrieved employee for each subsequent violation (penalty amounts established by Labor Code § 226.3);
- e. For violations of Labor Code Sections 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for initial violation and one hundred dollars (\$100.00) for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalty amounts established by Labor Code § 558); and
- f. For violations of Labor Code Section 1174, a civil penalty of \$500 per employee (penalties set by Labor Code § 1174.5).

170. Pursuant to California Labor Code Section 2699(i), seventy-five percent (75%) of the civil penalties obtained shall be allocated to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities, and twenty-five percent (25%) shall be allocated to the aggrieved employees.

171. Plaintiff is also entitled to seek and hereby seek reasonable attorneys' fees and costs pursuant to Labor Code Section 2699(g)(1) and any other applicable statute.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

Class Certification

1. For an order certifying the class(es) and subclass(es) as a class action;
2. For an order appointing the Plaintiff as the class representative of the class(es) and subclass(es);

3. For an order appointing Counsel for Plaintiff as Class Counsel;

On the First Cause of Action

(Failure to Pay Minimum Wages)

4. For compensatory damages in the amount of all unpaid wages owed to the Plaintiff and other class members in an amount to be determined at trial;

5. For liquidated damages in the amount of unpaid minimum wages not paid to the Plaintiff and other class members pursuant to Labor Code Section 1194.2;

6. For reasonable attorneys' fees and costs pursuant to Labor Code Sections 218.5 and 1194, and/or any other basis;

7. For prejudgment interest on any unpaid minimum wage compensation from the date such amounts were due, or as otherwise provided by law; and

8. For such other and further relief as the Court deems just and proper.

On the Second Cause of Action

(Failure To Pay Overtime Wages)

9. For unpaid overtime wages owed to the Plaintiff and other class members in an amount to be determined at trial;

10. For reasonable attorneys' fees and costs pursuant to Labor Code Sections 218.5 and 1194, and/or any other basis;

11. For prejudgment interest on any unpaid minimum wage compensation from the date such amounts were due, or as otherwise provided by law; and

12. For such other and further relief as the Court deems just and proper.

On the Third Cause of Action

(Failure To Provide Rest Periods)

13. For one (1) hour of pay at the regular rate of compensation for the Plaintiff and each class member for each workday that a required rest period was not provided;

14. For prejudgment interest on any unpaid rest period premium wages from the date such amounts were due, or as otherwise provided by law;

15. For reasonable attorneys' fees and costs pursuant to California Code of Civil

Procedure Section 1021.5, and/or as otherwise provided by law; and

16. For such other and further relief as the Court deems just and proper.

On the Fourth Cause of Action

(Failure To Provide Meal Periods)

17. For one (1) hour of pay at the regular rate of compensation for the Plaintiff and each class member for each workday that a required meal period was not provided;

18. For prejudgment interest on any unpaid meal period premium wages from the date such amounts were due, or as otherwise provided by law;

19. For reasonable attorneys' fees and costs pursuant to California Code of Civil Procedure Section 1021.5, or as otherwise provided by law; and

20. For such other and further relief as the Court deems just and proper.

On the Fifth Cause of Action

(Failure to Reimburse Business Expenses)

21. For an award of unreimbursed business expenses incurred by the Plaintiff and other class members in an amount to be determined at trial;

22. For pre-judgment interest on the unreimbursed business expenses from the date such expenses were incurred by the Plaintiff and other class members pursuant to Labor Code Section 2802(b), or as otherwise provided by law;

23. For reasonable attorneys' fees and costs pursuant to Labor Code Section 2802(c) and/or as otherwise provided by law; and

24. For such other and further relief as the Court deems just and proper.

On the Sixth Cause of Action

(Failure to Provide Accurate Wage Statements)

25. For statutory penalties pursuant to Labor Code Section 226(e);

26. For injunctive relief pursuant to Labor Code Section 226(h);

27. For attorneys' fees and costs pursuant to Labor Code Section 226(e)(1) and (h); or as otherwise provided by law; and

28. For such other and further relief as the Court deems just and proper.

On the Seventh Cause of Action

(Failure to Timely Pay Wages at Termination)

29. For waiting time penalties pursuant to Labor Code Sections 201, 202 and 203;

30. For prejudgment interest on any unpaid wages from the date such amounts were due,
or as otherwise provided by law;

31. For reasonable attorneys' fees and costs pursuant to California Code of Civil
Procedure Section 1021.5, or as otherwise provided by law; and

32. For such other and further relief as the Court deems just and proper.

On the Eighth Cause of Action

(Failure to Timely Pay Wages During Employment)

33. For statutory penalties pursuant to Labor Code Section 210;

34. For reasonable attorneys' fees and costs pursuant to California Code of Civil
Procedure Section 1021.5, or as otherwise provided by law; and

35. For such other and further relief as the Court deems just and proper.

On the Ninth Cause of Action

(Violations of Unfair Competition Law)

36. For an order requiring Defendants to provide restitution of all unpaid wages and other
monies wrongfully withheld and retained by Defendants from the Plaintiff and other class members;

37. For an order entering a permanent injunction prohibiting Defendants from engaging
in the unlawful conduct complained of in this Complaint;

38. For prejudgment interest on all amounts claimed from the day that such amounts were
due;

39. For reasonable attorneys' fees and costs pursuant to Code of Civil Procedure Section
1021.5; and/or as otherwise provided by law; and

40. For such other and further relief as the Court deems just and proper.

On the Tenth Cause of Action

(For Civil Penalties Pursuant to Labor Code § 2698, *et seq.*)

41. That the Court declare, adjudge and decree that Defendants violated the following

Labor Code provisions as to the PAGA Plaintiffs and other aggrieved employees: 1182.12, 1194, 1197 and 1198 (by failing to pay at least minimum wages for all hours worked); 510 and 1198 (by failing to pay all overtime compensation); 226.7, 512 and 1198 (by failing to provide all meal periods); 226(a) (by failing to provide accurate wage statements); 201, 202, 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 1197(d) (for failure to maintain accurate payroll records); and 2802 (for failing to reimburse business expenses).

42. For civil penalties, pursuant to Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of Labor Code Sections 201, 202, 203, 204, 226, 226.7, 512(a), 1174(d), 1182.12, 1194, 1197, 1198 and 2802;

43. For attorneys' fees and costs pursuant to Labor Code Section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of Labor Code Sections 201, 202, 203, 204, 226, 226.7, 512(a), 1174(d), 1182.12, 1194, 1197, 1198 and 2802;

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

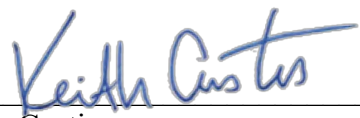
45. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury of all claims triable by jury.

CUSTIS LAW, P.C.

Dated: February 7, 2023

By: 

Keith Custis

CUSTIS LAW, P.C.

1999 Avenue of the Stars, Suite 1100

Los Angeles, California 90067

Telephone: (213) 863-4276

Facsimile: (213) 863-4277

Counsel for Plaintiff and the Proposed Classes

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I 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 1999 Avenue of the Stars, Suite 110, Los Angeles, California 90067.

On February 7, 2023, I served the foregoing document(s) described as:

SECOND AMENDED CLASS ACTION COMPLAINT

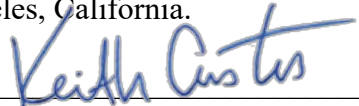
on the interested parties in this action,

Thomas F. Nowland
Daniel A. Brodnax
Scott Ezzati
LAW OFFICES OF THOMAS F. NOWLAND
20241 SW Birch Street, Suite 203
Newport Beach, California 92660

by sending a true copy thereof to the other interested parties as follows:

- ☐ **(BY PERSONAL SERVICE)** By causing to be delivered the document(s) listed above to the person(s) at the address(es) set forth above.
- ☒ **(BY ELECTRONIC TRANSMISSION THROUGH CASE ANYWHERE):** I caused the foregoing document(s) to be sent to the parties listed on the Electronic Service List maintained by Case Anywhere.
- ☒ **(BY EMAIL)** By electronically mailing a true and correct copy through Custis Law, P.C.'s electronic mail system from kcustis@custislawpc.com to the email addresses set forth above pursuant Code of Civil Procedure Section 1010.6(e) and Rule 2.251 of the California Rules of Court.
- ☐ **BY OVERNIGHT DELIVERY:** I am readily familiar with the practice of Custis Law, P.C. for collection and processing of correspondence for overnight delivery and know that the document described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 7, 2023 in Los Angeles, California.



Keith Custis