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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SACRAMENTO**

10
11 JANET CADDEL, individually, and on behalf of
12 the State of California and Aggrieved Employees,
13 as a private attorney general,

14 Plaintiff,

15 vs.

16 ELITE WORKSHOP, INC., a California
Corporation; HRS PROPERTY
17 MANAGEMENT, LLC, a California Limited
Liability Company; HOUSTON DURAND,
18 individually; ROBERT FLANIGAN,
19 individually; and DOES 1 through 10, inclusive,

20 Defendants.
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FILED
Superior Court Of California,
Sacramento
08/10/2021
apenn
By _____, Deputy
Case Number:
34-2021-00305360

Case No.:

COMPLAINT FOR:

1. **FAILURE TO PAY MINIMUM [LAB. CODE § 1194];**
2. **FAILURE TO PAY OVERTIME [LAB. CODE §§ 1194 and 510]**
3. **FAILURE TO PROVIDE MEAL PERIODS [LAB. CODE §§ 226.7 and 512(a) and WAGE ORDERS];**
4. **FAILURE TO PROVIDE REST PERIODS [LAB. CODE § 226.7 and WAGE ORDERS];**
5. **FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT [LAB. CODE §§ 204 and 210];**
6. **FAILURE TO TIMELY PAY WAGES UPON SEPARATION [LAB. CODE §§ 201, 202 and 203];**
7. **NON-COMPLIANT WAGE STATEMENTS [LAB. CODE § 226(a)];**
8. **FAILURE TO KEEP ACCURATE PAYROLL RECORDS [LAB. CODE §§ 1174(d) and 1174.5]**
9. **VIOLATION OF LABOR CODE SECTION 232.5;**
10. **RETALIATION IN VIOLATION OF LABOR CODE SECTION**

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- 1102.5;
11. RETALIATION FOR COMPLAINT ABOUT LABOR CODE VIOLATIONS [LAB. CODE § 98.6];
12. COMMON LAW WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
13. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”) – LABOR CODE SECTION 2698 *ET SEQ.* FOR VIOLATIONS OF LABOR CODE SECTIONS 201, 202, 203, 204, 226(a), 226.3, 226.8, 226.7, 510, 512(a), 558, 558.1, 1174(d), 1194, 1198, 1198.5, 1199, 2800 and 2802

Plaintiff Janet Caddel, individually, and on behalf of the State of California, and as an aggrieved employee pursuant to Labor Code Section 2698 et seq. (“PAGA”) alleges against Defendants Elite Workshop, Inc., HRS Property Management, LLC, Houston Durand, Robert Flanagan and DOES 1 through 10 (collectively “Defendants”), and each of them as follows:

GIST OF THE ACTION

1. Defendants Elite Workshop, Inc. and HRS Property Management, LLC are cannabis companies doing business in Sacramento, California. Defendants hired Plaintiff Janett Caddel in November 2020 to work in their Sacramento facility. Defendants compelled Plaintiff to sign an independent contractor agreement. Defendants at all times treated Plaintiff and all other aggrieved employees as independent contractors, when they were actually employees. Defendants

1 collectively engaged in systematic labor code violations and subjected former employee, Plaintiff
2 Janet Caddel, and other aggrieved employees to a deprivation of rights owed under the California
3 Labor Code. Specifically, Defendants failed to pay Plaintiff, and other aggrieved employees for
4 all hours worked, denied them full compensation for time worked including overtime, failed to
5 provide compliant meal and rest breaks, failed to provide accurate wage statements
6 contemporaneous with pay day, failed to maintain accurate payroll records and hours worked,
7 failed to timely pay all aggrieved employees the full wages due and owing during employment and
8 post termination or post resignation, and failed to reimburse aggrieved employees all business
9 related expenses. When Plaintiff complained about these violations, she was retaliated against and
10 terminated.

11 **THE PARTIES**

12 2. Plaintiff Janet Caddel is, and at all times was, a resident of Sacramento County,
13 California. At all relevant times herein, Plaintiff was employed by Defendants. Plaintiff is, and
14 at all relevant times was, a “aggrieved employee” as that term is defined in California Labor Code
15 Section 2699, subdivision (c).

16 3. Defendant Elite Workshop, Inc. is a corporation authorized to do business in
17 California. It operates cannabis related facilities and operations in Sacramento, California.

18 4. Defendant HRS Property Management, LLC is a California limited liability
19 company doing business in California and operating cannabis related facilities and operations in
20 Sacramento, California.

21 5. Defendants Elite Workshop, Inc., HRS Property Management, LLC, Houston
22 Durand, and Robert Flanagan were at all relevant times, Plaintiff’s employers within the meaning
23 of all applicable California state laws, regulations, and statutes. Specifically, Section 2 of the
24 applicable Industrial Wage Commission Wage Order defines employer as any person, including
25 any natural person, organization, and corporation, who directly or indirectly, or through an agent
26 or any other person, employs or exercises control over the wages, hours, or working conditions
27 of any person.
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1 6. Defendant Houston Durand is an individual doing business and/or residing in
2 Sacramento County, California.

3 7. Defendant Robert Flanigan is an individual doing business and/or residing in
4 Sacramento County, California.

5 8. The true names or capacities, whether individual, corporate, associate, or otherwise,
6 of Defendants DOES 1 – 10, inclusive, are presently unknown to Plaintiff, who therefore sues
7 such Defendants by such fictitious names. Plaintiff will seek leave of Court to amend this
8 Complaint to allege the true names and capacities when they are ascertained by Plaintiff.

9 **JURISDICTION AND VENUE**

10 9. Defendants have sufficient contacts with California or otherwise purposefully avail
11 themselves of the benefits in the State, so as to render the exercise of jurisdiction over each by a
12 California Court consistent with traditional notions of fair play and substantial justice.

13 10. Venue is proper in this Court because Plaintiff suffered injuries and damages
14 alleged herein in Sacramento County, California. Defendants transact business throughout
15 California and had at all relevant times a facility in Sacramento County, California

16 **PAGA EXHAUSTION**

17 11. Plaintiff met all jurisdictional requirements in order to exhaust administrative
18 remedies prior to filing her PAGA claim.

19 12. Specifically, she electronically filed a PAGA notice of her claims and theories of
20 Labor Code violations with the Labor and Workforce Development Agency (“LWDA”) at least
21 65 days prior to filing the instant action. Additionally, she sent the PAGA notice via certified
22 mail to the Defendants.

23 13. Plaintiff provided PAGA notices on March 17, 2021, and an amended notice on
24 April 22, 2021. The LWDA never expressed an interest in investigating the matter. Plaintiff
25 seeks PAGA remedies on behalf of all exempt or non-exempt employees of Defendants that were
26 willfully misclassified, denied wage statements, denied reimbursement of business expenses, and
27 denied timely pay by Defendants, and the non-exempt employees that were denied overtime and
28 minimum wage, meal and rest breaks, compliant wage statements.

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1 the aggrieved employees not to take rest breaks, and Plaintiff and the aggrieved employees were
2 punished if they took rest breaks.

3 20. In accordance with Labor Code Section 226(a) and 226.3, Defendants were required
4 to furnish Plaintiff and all aggrieved employees semimonthly or at the time of each payment of
5 wages, with an accurate and itemized statement in writing showing (a) gross wages earned; (b)
6 total hours worked; (c) all deductions to the pay; (d) the net wages earned; (e) inclusive dates of
7 the period for which the employee is paid; (f) the name of the employee and his or her last four
8 digits of their social security number or an employee ID; (g) the name and address of the legal
9 entity that is the employer; (h) all applicable hourly rates and the corresponding number of hours
10 worked for each applicable hourly rate in effect during the pay period. Defendants failed to provide
11 any wage statements at all to Plaintiff or any other aggrieved employee at the time of the payment
12 of wages.

13 21. Defendants knew or should have known that it had a duty to keep complete or
14 accurate payroll records and hours worked for Plaintiff and other aggrieved in accordance with
15 Labor Code Section 1174. Nonetheless, at all relevant times, Defendants failed to keep complete
16 or accurate payroll records for Plaintiff and the aggrieved employees.

17 22. Plaintiff and the other aggrieved employees were entitled to receive all wages due
18 and owing them during their employment with Defendants. However, because Defendants failed
19 to pay for all hours worked, including failure to compensate Plaintiff and other aggrieved
20 employees at the legal overtime rate, Defendants violated Labor Code Section 204 and 210.

21 23. Plaintiff and other aggrieved employees were entitled to receive their final pay no
22 later than 72 hours of resignation, or immediately upon termination. Defendants failed to pay
23 Plaintiff and other aggrieved employees their final wages owed upon termination or resignation in
24 violation of Labor Code Sections 201, 202, and 203.

25 24. Labor Code Sections 2800 and 2802 require employers to reimburse employees for
26 all necessary business expenses incurred in direct consequence of the discharge of their duties to
27 employer. Plaintiff and other aggrieved employees were required to use their personal cell phones
28 to upload the homebase application required by Defendants. Defendants never reimbursed
Plaintiff or the aggrieved employees.

1 25. Labor Code Section 558 subjects any employer or person acting on behalf of an
2 employer who violates, or causes to be violated, a section of Part 2, Chapter 1 of the Labor Code
3 or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty for
4 each violation for each pay period in which an employee is underpaid.

5 26. Labor Code Section 558.1 states that any employer or other person acting on behalf
6 of an employer who violates or causes to be violated, any provision regulating minimum wages or
7 hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes
8 to be violated, Sections 203, 226, 226.7 . . . 1194, or 2802, may be held liable as the employer.

9 27. Labor Code Section 1197.1 states that any employer or other person acting either
10 individually or as an officer, agent, or employee of another person, which pays or causes to be
11 paid, any employee a wage less than the minimum fixed by an order of the commission shall be
12 subject to a civil penalty.

13 28. Many of the foregoing statutory Labor Code violations also resulted in violations
14 of various provisions of the Industrial Welfare Commission (“IWC”) Wage Orders. Pursuant to
15 California Business and Professions Code Section 26065, the relevant IWC Wage Order No. 4-
16 2001, rather than No. 14-2001 for employees in the cannabis space.

17 29. By January 2021, Plaintiff was disturbed by Defendants’ failure to adhere to labor
18 code. In one instance, her supervisor began shouting everybody need to “fucking step it up” and
19 that whoever had the “least fucking amount of leaves” in the bucket by the end of the day “would
20 be fucking fired” and if anyone had a “fucking problem with it, they could fuck off”. Plaintiff
21 complained to her supervisor that shouting and cussing at the employees was unprofessional. She
22 said she was not going to put up with that type of abuse and that she was leaving for the day.

23 30. The next day another supervisor told Plaintiff to just take a few days off until things
24 would cool off. After a few days, Plaintiff checked to see if she was on the schedule. She was not.
25 She contacted her supervisor that had the rageful outburst to inquire why she was not on the
26 schedule. He informed her it was because she was taking too many breaks. She replied that the
27 only breaks she was taking were her lunch break and her two ten-minute breaks per hour hours.

28 31. One Saturday she appeared on the schedule to work. When she went Defendants’
facility, no one was around. She called her supervisor and he told her she was not need it was a

1 mistake. She was then told to come pick up her final check at Defendants' location later the next
2 week. When she arrived, she was informed she had been terminated.

3 **ALTER-EGO ALLEGATIONS**

4 32. Based on information and belief, individual Defendants Flanigan and Durand
5 maintain such a unity of interest, domination and control, and ownership in Defendant Elite, that
6 the separate personalities of the corporation Defendant Elite on the one hand, and the individual
7 shareholders, Defendants Flanigan and Durand on the other hand, have ceased. Based on
8 information and belief, Defendants Flanigan and Durand treated the assets of the corporation as
9 their own; failed to issue stock certificates and failed to maintain corporate records and minutes
10 or hold elections; commingled assets of Defendant Elite with Defendant HRS.

11 33. Based on information and belief, if the acts of Defendant Elite herein are treated as
12 those of the corporation alone, an inequitable result will follow because individual shareholders
13 will be able to use the corporate form to run roughshod over the California Labor Code and cheat
14 the State of California and Federal government out of massive amounts of payroll taxes and
15 workers' compensation premiums by misclassifying Plaintiff and other aggrieved employees as
16 independent contractors.

17 34. Based on information and belief, individual Defendants Flanigan and Durand
18 maintain such a unity of interest, domination and control, and ownership in Defendant HRS, that
19 the separate personalities of the limited liability company Defendant HRS on the one hand, and
20 the individual members, Defendants Flanigan and Durand on the other hand, have ceased. Based
21 on information and belief, Defendants Flanigan and Durand treated the assets of the limited
22 liability company as their own; failed to issue membership interests and failed to maintain
23 company records and minutes or hold elections; commingled assets of Defendant Elite with
24 Defendant HRS.

25 35. Based on information and belief, if the acts of Defendant HRS herein are treated as
26 those of the corporation alone, an inequitable result will follow because individual members will
27 be able to use the corporate form to run roughshod over the California Labor Code and cheat the
28 State of California and Federal government out of massive amounts of payroll taxes and workers'

1 compensation premiums by misclassifying Plaintiff and other aggrieved employees as
2 independent contractors.

3 36. Based on information and belief, Defendants Flanigan and Durand used entity
4 Defendants HRS and Elite as a single enterprise whereas both companies were in the same
5 business; whereas employees of HRS believed they were employed by Defendant Elite; whereas
6 the employees of Defendant HRS reported to a location identified as that of Defendant Elite;
7 whereas the same individuals acting as officers and managers of Defendant Elite are the same as
8 Defendant HRS; whereas the Defendants HRS and Elite use the same law firm, accountant and
9 other professionals. Thus, each entity Defendant is merely an instrumentality or conduit of the
10 other in the furtherance of a single enterprise, and they are the alter ego of each other.

11 **FIRST CAUSE OF ACTION**

12 **(Non-Payment of Minimum Wage and Failure to Pay For All Time Worked) – Labor Code**
13 **Section 1194, 1198, 200, and IWC Orders)**

14 **(Plaintiff Against Defendants)**

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16 37. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
17 though fully set forth herein.

18 38. Labor Code Section 1194(a) provides that notwithstanding any agreement to work
19 for a lesser wage, any employee receiving less than the legal minimum wage or the legal
20 overtime compensation applicable to the employee is entitled to recover in a civil action the
21 unpaid balance of the full amount of this minimum wage or overtime compensation, including
22 interest thereon, reasonable attorneys' fees, and costs of suit.

23 39. Labor Code Section 200 defines wages as all amounts for labor performed by
24 employees of every description, whether the amount is fixed or ascertained by the standard of
25 time, task, piece, commission basis, or other method of calculation.

26 40. Labor Code Section 1198 makes it unlawful for employers to employ employees
27 under conditions that violate the Wage Orders. The relevant wage order defines hours worked
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1 as the time during which an employee is subject to the control of an employer, and includes all
2 the time the employee is suffered or permitted to work, whether or not required to do so.

3 41. Plaintiff performed work for Defendants.

4 42. Plaintiff was paid less than the minimum wage and her hourly rate by Defendants
5 for hours worked off the clock.

6 43. As a proximate result of the aforementioned violations, Plaintiff has been
7 damaged in an amount according to proof at the time of trial, including liquidated damages
8 under Section 1194.2 and penalties under Section 1197.1.

9 **SECOND CAUSE OF ACTION**

10 **(Non-Payment of Overtime Wage – Labor Code Sections 1194, 1198, 510 and IWC**
11 **Orders)**

12 **(Plaintiff Against Defendants)**

13 44. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
14 though fully set forth herein.

15 45. Plaintiff performed work for Defendants and worked overtime hours.

16 46. Defendants knew, or should have known that Plaintiff worked overtime, and that
17 Plaintiff was not paid for the overtime. Specifically, that she was working off the clock time and
18 also was working in excess of eight hours a day without overtime compensation.

19 47. Plaintiff is also entitled to liquidated damages, fines and penalties under Labor
20 Code Section 1194.2.

21 **THIRD CAUSE OF ACTION**

22 **(Failure to Provide Meal Breaks – Labor Code Sections 226.7 and 512(a) and IWC Wage**
23 **Order)**

24 **(Plaintiff Against Defendants)**

25 48. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
26 though fully set forth herein.

27 49. At all relevant times, the IWC Order and Labor Code Sections 226.7 and 512(a)
28 were in effect and applicable to Defendants.

50. At all relevant times, Defendants failed to provide Plaintiff with duty free meal periods in accordance with Labor Code Sections 226.7 and 512(a) and the IWC Order. In some instances, she was interrupted during her meals, while in other instances, she was given meal period beyond the time window provided by law – not before the end of the fifth hour.

51. At all relevant times, Defendants intentionally and willfully failed to compensate Plaintiff with one additional hour of pay at her normal regular rate of pay for meal periods that were not provided in accordance with California Labor Code Sections 226.7 and 512(a) and applicable IWC Order.

52. Defendants' conduct violates the applicable IWC Order and California Labor Code Sections 226.7 and 512(a), and Plaintiff is thus entitled to recover from Defendants one additional hour of pay at his regular rate for each workday that a compliant meal period was not provided.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Breaks – Labor Code Section 226.7 and IWC Wage Order)
(Plaintiff Against Defendants)

53. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though fully set forth herein.

54. Labor Code Section 226.7 and the applicable IWC Wage Order provide that every employer shall authorize and permit all employees to take rest breaks, which in so far 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 of ten (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 hours.

55. At all relevant times, Defendants regularly failed to authorize and permit Plaintiff to take duty-free rest periods in accordance with California Labor Code Section 226.7 and the applicable IWC Wage Order. In particular, Defendants required Plaintiff to work four or more hours without authorizing or permitting a ten-minute rest period per each four-hour period or major fraction thereof worked.

56. Further, at all relevant times, Defendants failed to compensate Plaintiff premium pay of one additional hour of pay at their regular pay rate for rest periods that were not provided in accordance with Labor Code Section 226.7 and the applicable IWC Wage Orders.

57. Defendants' conduct violates the applicable IWC Wage Order and Labor Code Section 226.7. Consequently, pursuant to the IWC Order and Labor Code Section 226.7, Plaintiff is entitled to recover from Defendants one additional hour of pay at his regular rate of pay for each workday that a rest period was not provided.

FIFTH CAUSE OF ACTION

(Wages Not Timely Paid During Employment – Labor Code Sections 204 and 210)

(Plaintiff Against Defendants)

58. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though fully set forth herein.

59. Labor Code Section 204 provides that all wages earned by an employee for labor performed between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and 26th day of the month during which the work was performed. Section 204 also provides that all wages earned by any employee for labor performed between the 16th day 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 1st day and 10th day of the following month. The section further provides that all wages earned for labor in excess of the normal week period shall be paid no later than the payday for the next regular payroll period.

60. Defendants intentionally and willfully failed to pay Plaintiff all wages earned and due to her, within the time permitted under Labor Code Section 204.

61. Labor Code Section 210 authorizes the following civil penalties for violation of Labor Code Section 204, which are in addition to, and entirely independent and apart from, any other civil or criminal penalties: “(1) for any initial violation, or any willful or intentional violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars for each failure

1 to pay each employee, plus 25 percent of the amount unlawfully withheld.” The penalties
2 enumerated in Labor Code Section 210 may be recovered in a private civil action. California
3 Labor Code Section 210(b). Thus, Plaintiff is therefore entitled to recover civil penalties pursuant
4 to Labor Code Sections 210 and 218 and all other remedies available for Defendants’ violating
5 Labor Code Section 204.

6 **SIXTH CAUSE OF ACTION**

7 **(Final Wages Not Timely Paid – Labor Code Sections 201, 202 and 203)**

8 **(Plaintiff Against Defendants)**

9 62. Plaintiff realleges and incorporate by reference all the preceding paragraphs as
10 though fully set forth herein.

11 63. California Labor Code Sections 201 and 202 provide that if an employer
12 discharges an employee, the wages earned and unpaid at the time of the discharge are due and
13 payable immediately, and if an employee quits his or her employment, his or her wages shall
14 become due and payable not later than seventy-two (72) hours thereafter, unless the employee
15 has given seventy-two (72) hours’ notice of his or her intention to quit, in which case the
16 employee is entitled to his or her wages at the time of quitting.

17 64. At all relevant times, Defendants intentionally and willfully failed to pay Plaintiff
18 all her earned and unpaid wages at the time she was terminated, in violation of California Labor
19 Code Sections 201 and 202.

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

24 66. Accordingly, Plaintiff is entitled to recover from Defendants the statutory penalty
25 wages for each day she was not paid, up to a thirty (30) day maximum pursuant to Section 203.

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1 **SEVENTH CAUSE OF ACTION**

2 **(Non-Compliant Wage Statements – Labor Code Sections 226(a) and 226.3)**

3 **(Plaintiff Against Defendants)**

4 67. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
5 though fully set forth herein.

6 68. California Labor Code Section 226(a) provides that every employer shall furnish
7 each employee an accurate itemized statement in writing showing: (1) gross wages earned; (2)
8 total hours worked by the employee; (3) the number of piece-rate unites earned and any
9 applicable piece rate if the employee is paid on a basis; (4) all deductions, provided that all
10 deductions made on written orders of the employee may be aggregated and shown as one item;
11 (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7)
12 the name of the employee and his or her social security number; (8) the name and address of the
13 legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period
14 and the corresponding number of hours worked at each hourly rate by the employee. The
15 deductions made from payments of wages shall be recorded in ink or other indelible form,
16 properly dated, showing the month, day, and year and a copy of the statement or a record of the
17 deductions shall be kept on file by the employer for at least three years at the place of
18 employment or at a central location within the State of California.

19 69. At all relevant times, Defendants intentionally and willfully failed to provide
20 Plaintiffs with complete and accurate wage statements as required by Labor Code Section 226,
21 and failed to provide wage statements whatsoever at the time of paying wages.

22 70. As a result of Defendants' violations of California Labor Code Section 226(a),
23 Plaintiff suffered injuries and damages, including confusion over whether she received all wages
24 earned and owed, difficulty and expense involved in reconstructing pay records, and forcing her
25 to make mathematical computations to analyze whether the wages paid in fact properly
26 compensated her.

71. Accordingly, Plaintiff is entitled to recover from Defendants the greater of her actual damages caused by Defendants' failure to comply with Section 226(a), or an aggregate penalty not exceeding \$4,000 and other penalties and fines.

EIGHTH CAUSE OF ACTION

(Failure to Keep Accurate Payroll Records – Labor Code Sections 1174(d) and 1174.5)
(Plaintiff Against Defendants)

72. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though fully set forth herein.

73. Pursuant to California Labor Code Section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by, and the wages paid to employees employed at the respective plants or establishments. These records shall be kept on file for not less than two years. And Section 1174(d) also states that an employer shall not prohibit an employee from maintaining a personal record of hours worked.

74. At all relevant times, Defendants intentionally and willfully failed to keep accurate and complete payroll records showing the actual daily hours worked and the proper wages to be paid to Plaintiff.

75. As a result of Defendants' violation of California Labor Code Section 1174(d), Plaintiff has suffered injuries and damages, including confusion over whether she received all wages earned and owed to her, difficulty and expense involved in reconstructing pay records, and forcing her to make mathematical computations to analyze the wages paid were accurate. Additionally, Plaintiff has been injured by Defendants' intentional and willful violation of California Labor Code Section 1174(d) because she was denied both the legal right to receive, and the protected interest in receiving, accurate payroll records pursuant to Labor Code Section 1174(d).

76. Labor Code Section 1174.5 provides that any person employing labor who willfully fails to maintain accurate and complete records as required by Labor Code Section 1174(d) shall be subject to a civil penalty in the amount of \$500.

1 77. Accordingly, Plaintiff is entitled to recover a civil penalty in the amount of \$500
2 pursuant to Labor Code Section 1174.5 and all other remedies.

3 **NINTH CAUSE OF ACTION**

4 **(Retaliation – Labor Code Section 232.5)**

5 **(Plaintiff Against Defendants)**

6 78. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
7 though fully set forth herein.

8 79. Defendants were prohibited from discharging, formally disciplining, or
9 discriminating against Plaintiff for disclosing information about Defendants’ working
10 conditions. Plaintiff disclosed information about Defendants’ working conditions, including but
11 not limited such information as: (a) Defendants’ failure to pay Plaintiff and other employees for
12 all hours worked, including overtime; (b) Defendants’ lack of concern or empathy for employees,
13 including subjecting Plaintiff and others to verbally abusive tirades; (c) Defendants’ pressure to
14 not take breaks entitled under Labor Code without fear of retribution, discipline, lack of hours.

15 80. As a result of Plaintiff disclosing information about Defendants’ working
16 conditions, Defendants retaliated against her, formally disciplined her, discriminated against her,
17 and discharged her.

18 81. Defendants’ wrongful termination of Plaintiff was a substantial factor in causing
19 Plaintiff economic damages and lost wages, both past and future, and suffering emotion and
20 mental distress, all in a sum to be proven and determined at trial.

21 82. Defendants’ conduct described herein in was intended to cause injury to Plaintiff
22 to send a message to other employees that they too would be terminated for complaining and
23 voicing concern about Defendants’ various legal violations. Defendants’ conduct was willful and
24 consciously disregarded Plaintiff’s rights and subjected her to unjust hardship so as to constitute
25 malice, oppression or fraud under California Civil Code Section 3294, thereby entitling Plaintiff
26 to punitive and exemplary damages in an amount appropriate to punish or set an example of
27 Defendants.

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1 **ELEVENTH CAUSE OF ACTION**

2 **(Retaliation – Labor Code Section 98.6)**

3 **(Plaintiff Against Defendants)**

4 89. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
5 though fully set forth herein.

6 90. At all relevant times, Labor Code Section 98.6 was in effect and binding upon
7 Defendants. Labor Code Section 98.6 prohibits any person from retaliating, discriminating, or
8 taking any adverse action against an employee for, among other activities, making a written or
9 oral complaint that he or she is owed back wages, or exercising other rights under the Labor
10 Code.

11 91. At all relevant times, Defendants engaged in prohibited and illegal practices that
12 affected Plaintiff's employment. Defendants failed to pay overtime for work over eight hours a
13 day, and failed to provide compliant meal and rest breaks, failed to maintain accurate time and
14 payroll records, and would verbally abuse Plaintiff and other employees if their production was
15 not to Defendants' liking and whim.

16 92. When Plaintiff complained to Defendants about such abusive and illegal
17 employment practices, they terminated her.

18 93. As a result of Defendants' discrimination and retaliation and harassment, Plaintiff
19 has suffered, and continues to suffer economic damages, including past and continuing loss of
20 wages, and non-economic damages, including pain and suffering and emotional and mental
21 distress, in a sum to be determined at trial.

22 94. Plaintiff is also entitled to recover statutory civil penalties of \$10,000 per violation
23 in accordance with Labor Code Section 98.6. Plaintiff is also entitled to be reinstated and to go
24 back to work for Defendants.

25 95. Defendants' conduct described herein was intended to cause injury to Plaintiff to
26 send a message to other employees that they would be terminated and harassed for complaining
27 and voicing concern about Defendants' illegal and unethical business practices. Defendants'
28 conduct was willful and consciously disregarded Plaintiff's rights and subjected her to unjust

1 hardship so as to constitute malice, oppression or fraud under California Civil Code Section
2 3294, thereby entitling Plaintiff to punitive and exemplary damages in an amount appropriate to
3 punish or set an example of Defendants.

4 **TWELFTH CAUSE OF ACTION**

5 **(Wrongful Termination In Violation Of Public Policy)**

6 **(Plaintiff Against Defendants)**

7 96. Plaintiff hereby incorporates by reference the allegations in the above paragraphs
8 of this Complaint as though fully set forth herein.

9 97. Defendants employed Plaintiff at all relevant times.

10 98. Defendants terminated Plaintiff's employment in violation of public policy. A
11 substantial motivating factor in Defendants' termination of Plaintiff was: (a) complaining that
12 verbal tirades and abusive profanity laced tirades were violating the FEHA; (e) complaining
13 about the failure to receive overtime pay, working conditions, illegal conduct and Labor Code
14 violations under Labor Code Section 232.5 and 1102.5 and 98.6.

15 99. Defendants' wrongful termination of Plaintiff was a substantial factor in causing
16 Plaintiff economic damages and lost wages, both past and future, and suffering emotion and
17 mental distress, all in a sum to be proven and determined at trial.

18 100. Defendants' conduct described herein in was intended to cause injury to Plaintiff
19 to send a message to other employees that they too would be terminated for complaining and
20 voicing concern about Defendants' illegal and unethical business practices. Defendants' conduct
21 was willful and consciously disregarded Plaintiff's rights and subjected her to unjust hardship so
22 as to constitute malice, oppression or fraud under California Civil Code Section 3294, thereby
23 entitling Plaintiff to punitive and exemplary damages in an amount appropriate to punish or set
24 an example of Defendants.

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THIRTEENTH CAUSE OF ACTION

**(Violation Labor Code Section 2698, *et seq.* California Private Attorneys General Act –
 (“PAGA”)
 (Against all Defendants))**

101. Plaintiff hereby incorporates by reference the allegations in the above paragraphs of this Complaint as though fully set forth herein.

102. PAGA permits an “aggrieved employee” to bring a civil action on behalf of him or herself and on behalf of all other aggrieved employees to recover civil penalties for an employer’s violation of sections enumerated in Labor Code Section 2699.5. An “aggrieved employee” is defined in Labor Code Section 2699, subdivision (c), as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

103. Plaintiff and other aggrieved employees are “aggrieved employees” as defined by California Labor Code Section 2699, subdivision (c) because they are all current or former employees of Defendants and were subject to Defendants’ violations of various labor code sections.

104. Plaintiff satisfied the requirements of Labor Code Section 2699.3 (a)(1)(A) and (a)(1)(B). Additionally, the LWDA provided no notice it was investigating the violations within 65 days of postmark date of the notice provided in Section 2699.3 (a)(1)(A).

105. Plaintiff and other aggrieved employees were subject to violations of the following Labor Code Sections, entitling them to penalties under PAGA: Labor Code Sections 201, 202, 203, 204, 226(a), 226.3, 226.8, 226.7, 510, 512(a), 558, 558.1, 1174(d), 1194, 1198, 1198.5, 1199, and 2802. In particular, Defendants’ unlawful policies, practice, and procedures comprising the violations include:

- a. Defendants’ willful misclassification of both exempt and non-exempt aggrieved employees and Plaintiff as independent contractors in violation of Labor Code Section 226.8;

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b. Defendants' failure to pay legally required overtime, contract wages, or overtime to Plaintiff and other non-exempt aggrieved employees in violation of Labor Code Sections 510, 1194 and 1198 and the IWC Wage Orders;

c. Defendants' failure to provide Plaintiff and other non-exempt aggrieved employees with meal and rest periods compliant with Labor Code Sections 226.7 and 512, or pay premium rates for non-compliant or missed meal or rest breaks;

d. Defendants' failure to provide complete and accurate wage statements at the time of payment of wages to Plaintiff and the exempt and non-exempt aggrieved employees in violation of Labor Code Section 226(a) and 226.3;

e. Defendants' failure to keep complete and accurate payroll records relating to Plaintiff and other non-exempt aggrieved employees, in violation of Labor Code Section 1174 (d);

f. Defendants' failure to pay Plaintiff and other non-exempt aggrieved employees all wages due and earned during employment and at the time of their resignations or termination in violation of Labor Code Sections 201, 202, 203, and 204;

g. Defendants' failure to reimburse necessary business-related expenses and costs to Plaintiff and the other exempt and non-exempt employees in violation of Labor Code Sections 2800 and 2802;

h. Defendants' violating Labor Code Section 1198, 1199, and 558, and 558.1 as to Plaintiff and other non-exempt aggrieved employees by violating certain labor code sections and the IWC Wage Orders.

106. Accordingly, Plaintiff and the aggrieved employees are entitled to penalties against Defendants under Labor Code Section 2699 (f) as well as attorneys' fees and costs pursuant to Labor Code Section 2699 (g) and Code of Civil Procedure Section 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For general and special damages according to proof but not less than \$300,000;
2. For pre-judgment interest as permitted by law including Labor Code Section 218.6 and Civil Code 3287;
3. For all penalties and liquidated damages permitted under the California Labor Code, including but not limited to Sections 203, 210, 226, 226.3, 226.8, 1174.5, 1194.2 and 1197.1, 1102.5, 98.6, and 2699 (f);
4. For exemplary, and punitive damages;
5. For attorney's fees under at least the following statutes: Labor Code Sections 218.5, 226, 1174, 1174.5, 1198.5, 1194, 226.7, 1102.5, 2699 (g), and Code of Civil Procedure Section 1021.5;
6. For the costs of the suit herein;
7. Reinstatement of Plaintiff's employment; and
8. For such other and further relief as this Court may deem just and proper.

DATED: August 6, 2021

SHALCHI BURCH LLP

By: 

Travis J. Burch, Esq.
Attorneys for Plaintiff Janet Caddel