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13 *and Aggrieved Employees*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF RIVERSIDE**

16 DAWN BABBE, individually, and on
17 behalf of other members of the general
18 public similarly situated and as an
19 aggrieved employee pursuant to the Private
20 Attorneys General Act ("PAGA"),

21 Plaintiff,

22 vs.

23 MFI RECOVERY CENTER, a California
24 non-profit corporation; and DOES 1
25 through 10, inclusive,

26 Defendants.

Case No.: CVRI2103146

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

Judge: Honorable Sunshine Sykes
Dept.: 6

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7 & 512(a) (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code § 226.7 (Failure to Provide Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d) and 1198 (Non-Compliant Wage Statements and Failure to Maintain Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 2802

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- (Unreimbursed Business Expenses);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq*;
- (9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices).

Jury Trial Demanded

1 Plaintiff DAWN BABBE, individually, and on behalf of all other members of the
2 public similarly situated and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action and state enforcement action is brought pursuant to California
6 Code of Civil Procedure section 382 and California Labor Code sections 2698 *et seq.*
7 (“PAGA”) to recover damages, statutory penalties, civil penalties and any other available
8 relief on behalf of Plaintiff, the State of California, and other current and former employees
9 who worked for Defendants in California as non-exempt, hourly-paid employees who received
10 at least one physical wage statement and against whom one or more violations of any
11 provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours
12 and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were
13 committed, as set forth in this complaint. The monetary damages, penalties, and restitution
14 sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be
15 established according to proof at trial.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statutes under which this action is brought do not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice.

24 4. Venue is proper in this Court because Defendants employ persons in this
25 county and employed Plaintiff in this county, and thus a substantial portion of the transactions
26 and occurrences related to this action occurred in this county.

27 5. California Labor Code sections 2698 *et seq.*, the “Labor Code Private Attorneys
28 General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys

1 general their current or former employers for various civil penalties for violations of various
2 provisions in the California Labor Code.

3 THE PARTIES

4 6. Plaintiff DAWN BABBE, at all times relevant to the claims asserted herein,
5 was a resident of Riverside, in Riverside County, California. Defendants employed Plaintiff
6 as an hourly, non-exempt employee from on or about May 18, 2020 to on or about October 14,
7 2020. Plaintiff initially started working for MFI RECOVERY CENTER (“MFI” or
8 “DEFENDANT”) as a human resources specialist who performed her work in Riverside,
9 California. During her employment, Plaintiff typically worked approximately eight and a half
10 (8.5) to nine (9) hours per day, five (5) days per week, and approximately forty-five (45) or
11 more hours per week. Her job duties included, without limitation, performing administrative
12 duties including completing paperwork for newly hired and terminated employees, and
13 attending meetings and trainings.

14 7. Defendant MFI was and is, upon information and belief, a California non-profit
15 corporation doing business in California, with its principal place of business in Riverside, CA,
16 and at all times hereinafter mentioned, an employer whose employees are engaged throughout
17 this county, the State of California, or the various states of the United States of America.

18 8. Plaintiff is unaware of the true names or capacities of the Defendants sued
19 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
20 amend the complaint and serve such fictitiously named Defendants once their names and
21 capacities become known.

22 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
23 are the partners, agents, owners, shareholders, managers, or employees of MFI at all relevant
24 times.

25 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
26 acts and omissions alleged herein was performed by, or is attributable to, MFI; and/or DOES 1
27 through 10 (collectively “DEFENDANTS” or “Defendants”), each acting as the agent,
28 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-

1 Defendants and was acting within the course and scope of such agency, employment, joint
2 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
3 and all Defendants were in accordance with, and represent, the official policy of Defendants.

4 11. At all relevant times, Defendants, and each of them, ratified each and every act
5 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
6 and abetted the acts and omissions of each and all the other Defendants in proximately causing
7 the damages herein alleged.

8 12. Plaintiff is informed and believes, and thereon alleges, that each of said
9 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
10 omissions, occurrences, and transactions alleged herein.

11 13. Under California law, Defendants are jointly and severally liable as employers
12 for the violations alleged herein because they have each exercised sufficient control over the
13 wages, hours, working conditions, and employment status of Plaintiff and class members.
14 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
15 controlled their work schedule and/or conditions of employment, determined their rate of pay,
16 and maintained their employment records. Defendants suffered or permitted Plaintiff and
17 class members to work and/or "engaged" Plaintiff and class members so as to create a
18 common-law employment relationship. As joint employers of Plaintiff and class members,
19 Defendants are jointly and severally liable for the civil penalties and all other relief available
20 to Plaintiff and class members under the law.

21 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
22 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
23 class members because Defendants have:

24 (a) jointly exercised meaningful control over the work performed by
25 Plaintiff and class members;

26 (b) jointly exercised meaningful control over Plaintiff and class members'
27 wages, hours, and working conditions, including the quantity, quality
28 standards, speed, scheduling, and operative details of the tasks

- 1 performed by Plaintiff and class members;
- 2 (c) jointly required that Plaintiff and class members perform work which is
- 3 an integral part of Defendants' businesses; and
- 4 (d) jointly exercised control over Plaintiff and class members as a matter of
- 5 economic reality in that Plaintiff and class members were dependent on
- 6 Defendants, who shared the power to set the wages of Plaintiff and class
- 7 members and determined their working conditions, and who jointly
- 8 reaped the benefits from the underpayment of their wages and
- 9 noncompliance with other statutory provisions governing their
- 10 employment.

11 15. Plaintiff is informed and believes, and further alleges, that at all relevant times

12 there has existed a unity of interest and ownership between Defendants such that any

13 individuality and separateness between the entities has ceased.

14 16. MFI and DOES 1 through 10 are therefore alter egos of each other.

15 17. Adherence to the fiction of the separate existence of Defendants would permit

16 an abuse of the corporate privilege, and would promote injustice by protecting Defendants

17 from liability for the wrongful acts committed by them under the name MFI.

18 **CLASS ACTION ALLEGATIONS**

19 18. Plaintiff brings this action on her own behalf, as well as on behalf of each and

20 all other persons similarly situated, and thus seeks class certification under California Code of

21 Civil Procedure section 382.

22 19. All claims alleged herein arise under California law for which Plaintiff seeks

23 relief authorized by California law.

24 20. Plaintiff's proposed class consists of and is defined as follows:

25 All persons who are or were employed by Defendants as

26 nonexempt, hourly-paid employees in California within four years

27 prior to the filing of this complaint until the date of trial ("Class").

28 21. Plaintiff's proposed subclass consists of and is defined as follows:

1 All persons who are or were employed by Defendants as
2 nonexempt, hourly-paid employees in California within one year
3 prior to the filing of this complaint until the date of trial who
4 received a wage statement from Defendants (“Subclass”).

5 22. Members of the Class and Subclass will hereinafter be referred to as “class
6 members.”

7 23. Plaintiff reserves the right to redefine the Class and Subclass and to add
8 additional subclasses as appropriate based on further investigation, discovery, and specific
9 theories of liability.

10 24. There are common questions of law and fact as to class members that
11 predominate over questions affecting only individual members, including, but not limited to:

- 12 (a) Whether Defendants required Plaintiff and class members to work off-
13 the-clock without payment;
- 14 (b) Whether Defendants required Plaintiff and class members to work over
15 eight (8) hours per day, over twelve (12) hours per day, or over forty
16 (40) hours per week and failed to pay all legally required overtime
17 compensation to Plaintiff and class members;
- 18 (c) Whether Defendants failed to pay at least minimum wages for all hours
19 worked by Plaintiff and class members;
- 20 (d) Whether Defendants failed to provide Plaintiff and class members with
21 meal periods;
- 22 (e) Whether Defendants failed to provide Plaintiff and class members with
23 rest periods;
- 24 (f) Whether Defendants provided Plaintiff and class members with
25 complete and accurate wage statements as required by California Labor
26 Code section 226(a);
- 27 (g) Whether Defendants maintained accurate payroll records as required by
28 California Labor Code section 1174(d);

- 1 (h) Whether Defendants failed to pay earned overtime wages, minimum
2 wages, and meal and rest period premiums due to Plaintiff and class
3 members upon their discharge;
- 4 (i) Whether Defendants failed timely to pay overtime wages, minimum
5 wages, and meal and rest period premiums to Plaintiff and class
6 members during their employment;
- 7 (j) Whether Defendants reimbursed Plaintiff and class members for
8 business-related expenses they incurred as a result of their employment;
- 9 (k) Whether Defendants engaged in unfair business practices in violation of
10 California Business & Professions Code sections 17200, *et seq.*; and
- 11 (l) The appropriate amount of damages, restitution, or monetary penalties
12 resulting from Defendants' violations of California law.

13 25. There is a well-defined community of interest in the litigation and the class
14 members are readily ascertainable:

- 15 (a) Numerosity: The class members are so numerous that joinder of all
16 members would be unfeasible and impractical. The membership of the
17 entire class is unknown to Plaintiff at this time; however, the class is
18 estimated to be greater than one hundred (100) individuals and the
19 identity of such membership is readily ascertainable by inspection of
20 Defendants' employment records.
- 21 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
22 protect the interests of each class member with whom she has a well-
23 defined community of interest, and Plaintiff's claims (or defenses, if
24 any) are typical of all class members as demonstrated herein.
- 25 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
26 protect the interests of each class member with whom she has a well-
27 defined community of interest and typicality of claims, as demonstrated
28 herein. Plaintiff acknowledges that she has an obligation to make

1 known to the Court any relationship, conflicts or differences with any
2 class member. Plaintiff's attorneys, the proposed class counsel, are
3 versed in the rules governing class action discovery, certification, and
4 settlement. Plaintiff has incurred, and throughout the duration of this
5 action, will continue to incur costs and attorneys' fees that have been,
6 are, and will be necessarily expended for the prosecution of this action
7 for the substantial benefit of each class member.

8 (d) Superiority: The nature of this action makes the use of class action
9 adjudication superior to other methods. A class action will achieve
10 economies of time, effort, and expense as compared with separate
11 lawsuits, and will avoid inconsistent outcomes because the same issues
12 can be adjudicated in the same manner and at the same time for the
13 entire class.

14 (e) Public Policy Considerations: Employers in the State of California
15 violate employment and labor laws every day. Current employees are
16 often afraid to assert their rights out of fear of direct or indirect
17 retaliation. Former employees are fearful of bringing actions because
18 they believe their former employers might damage their future
19 endeavors through negative references and/or other means. Class
20 actions provide the class members who are not named in the complaint
21 with a type of anonymity that allows for the vindication of their rights
22 while simultaneously protecting their privacy.

23 **GENERAL ALLEGATIONS**

24 26. Defendants are a California non-profit corporation providing alcohol and drug
25 rehabilitation services in Riverside, CA. Within California, Defendants are estimated to
26 employ over 100 persons.

27 27. Upon information and belief, Defendants maintain a single, centralized Human
28 Resources department in Riverside, California, which is responsible for collecting and

1 processing all new hire paperwork, and communicating and implementing Defendants'
2 company-wide policies, including timekeeping policies and meal and rest break policies, to
3 employees throughout California.

4 28. In particular, Plaintiff and class members, on information and belief, received
5 the same standardized documents and/or written policies. Upon information and belief, the
6 usage of standardized documents and/or written policies, including new hire documents,
7 indicate that Defendants dictated policies at the corporate level and implemented them
8 company-wide, regardless of their employees' assigned locations or positions. Upon
9 information and belief, Defendants set forth uniform policies and procedures in several
10 documents provided at an employee's time of hire.

11 29. On information and belief, all transactions regarding hiring, terminations,
12 promotions, pay increases, and employee transfers, etc., relating to Defendants' California
13 employees were submitted to and processed by Defendants' HR department in Riverside,
14 California. Additionally, on information and belief, Defendants' corporate records, business
15 records, data, and other information related to Defendants, including, in particular, HR records
16 pertaining to Defendants' California employees, are also maintained at Defendants' corporate
17 headquarters in Riverside, California.

18 30. Upon information and belief, Defendants maintain a centralized Payroll
19 department in Riverside, California, which processes payroll for all non-exempt, hourly-paid
20 employees working for Defendants at their various locations in California, including Plaintiff
21 and class members. Based upon information and belief, Defendants issued the same formatted
22 wage statements to all non-exempt employees in California, irrespective of their work
23 location. Upon information and belief, Defendants process payroll for departing employees in
24 the same manner throughout the State of California, regardless of the manner in which each
25 employee's employment ends.

26 31. Defendants continue to employ non-exempt, hourly-paid employees within
27 California.

28 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein

mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

33. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class members were not paid for all hours worked because all hours worked were not recorded.

34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and class members were not paid at least minimum wages for work done off-the-clock.

36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and 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 class members were not provided with all 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.

37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with a compliant rest period and that Plaintiff and class members were not provided compliant rest periods or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided a compliant rest period.

1 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive complete and
3 accurate wage statements in accordance with California law. In violation of the California
4 Labor Code, Plaintiff and class members were not provided complete and accurate wage
5 statements.

6 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that they had a duty to maintain accurate and complete payroll records in
8 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
9 and intentionally failed to do so.

10 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to timely payment of all
12 wages earned upon termination of employment. In violation of the California Labor Code,
13 Plaintiff and class members did not receive payment of all wages due, including, but not
14 limited to, overtime wages, minimum wages, and meal and rest period premiums, within
15 permissible time periods.

16 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to timely payment of wages
18 during their employment. In violation of the California Labor Code, Plaintiff and class
19 members did not receive payment of all wages, including, but not limited to, overtime wages,
20 minimum wages, and meal and rest period premiums, within permissible time periods.

21 42. Plaintiff is informed and believes, and thereon alleges that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive reimbursement
23 for all business-related expenses and costs they incurred during the course and scope of their
24 employment, and that they did not receive reimbursement of applicable business-related
25 expenses and costs they incurred.

26 43. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants knew or should have known that they had a duty to compensate
28 Plaintiff and class members for all hours worked, and that Defendants had the financial ability

1 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
2 falsely represented to Plaintiff and class members that they were properly denied wages, all in
3 order to increase Defendants' profits.

4 **Claims for Penalties Under 2004 Private Attorneys General Act**

5 44. The duties and business activities of the Aggrieved Employees were essentially
6 the same as the duties and activities of the Plaintiff described above.

7 45. This is a wage and hour representative action filed pursuant to PAGA, §§ 2698,
8 2699, which generally consists of the following group:

9 **All current or former employees who worked in the state of California from May**
10 **25, 2020 to the present for Defendants.**

11 46. All members of the represented groups will be referred to as the "Aggrieved
12 Employees."

13 47. The "Representative Period" means from **May 25, 2020** to the present, the
14 timeframe where the scope of statute allows Plaintiffs to recover wages and penalties.

15 48. At all times during the Representative Period, all the Aggrieved Employees
16 were employed in the same or similar job as Plaintiff and were paid in the same manner and
17 under the same standard employment procedures and practices as the Plaintiff.

18 49. Plaintiffs further allege, and on information and belief, Aggrieved Employees,
19 did not receive all wages due at the time their employment ended with Defendants.

20 50. On information and belief, current and former employees of Defendants were
21 subject to wage and hour violations by Defendants, including failing to be paid for all wages
22 due.

23 51. California law provides that an employee may file an action against an
24 employer to recover penalties for violations of the Labor Code and Wage Orders provided the
25 aggrieved employee files an action on behalf of him or herself and similarly-situated current
26 and former employees.

27 52. At all material times, Defendants and DOES 1 through 10 were and/or are
28 Aggrieved Employees' employers or persons acting on behalf of Aggrieved Employees'

1 employer, within the meaning of California Labor Code § 558, who violated or caused to be
2 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
3 regulating hours and days of work in any Order of the Industrial Welfare Commission and, as
4 such, are subject to penalties for each underpaid employee as set for in Labor Code § 558.

5 53. As set forth in further detail below, because of the analysis and investigation of
6 the Plaintiffs' claims, Plaintiffs' attorneys sent letters to the California Labor and Workforce
7 Development Agency (hereinafter referred to as "LWDA") and to Defendants informing
8 Defendants of their claims and their intent to pursue litigation.

9 **Exhaustion of Administrative Remedies**

10 54. As to penalty claims under the Labor Code Private Attorney General Act, on
11 **May 25, 2021**, Plaintiff provided written notice by online filing to the LWDA and by
12 Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to
13 have been violated, including facts and theories to support the alleged violations, in
14 accordance with California Labor Code section 2699.3. Plaintiff's written notice was
15 accompanied with the applicable filing fee of seventy-five dollars (\$75).

16 55. As of the filing date of this amended complaint, over 65 days have passed since
17 Plaintiff sent the initial LWDA Notice described above, and the LWDA has not responded
18 that it intends to investigate Plaintiff's claims and Defendants have not cured the violations.

19 56. Thus, Plaintiff has satisfied the administrative prerequisites under California
20 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
21 addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
22 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

23 57. At all times herein set forth, PAGA provides that any provision of law under
24 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
25 assessed and collected by the LWDA for violations of the California Labor Code and
26 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
27 civil action brought on behalf of themselves and other current or former employees pursuant
28 to procedures outlined in California Labor Code section 2699.3.

1 58. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
2 person who was employed by the alleged violator and against whom one or more of the
3 alleged violations was committed.”

4 59. Plaintiff and other current and former employees of Defendants are “aggrieved
5 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
6 or former employees and one or more of the alleged violations were committed against them.

7 60. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
8 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
9 following requirements have been met:

- 10 (a) The aggrieved employee shall give written notice by online filing
11 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
12 to the employer of the specific provisions of the California Labor Code
13 alleged to have been violated, including the facts and theories to support
14 the alleged violations.
- 15 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
16 2699.3(a) and any employer response to that notice shall be
17 accompanied by a filing fee of seventy-five dollars (\$75).
- 18 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
19 employer and the aggrieved employee by certified mail that it does not
20 intend to investigate the alleged violation within sixty (60) calendar
21 days of the postmark date of the Employee’s Notice. Upon receipt of
22 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
23 five (65) calendar days of the postmark date of the Employee’s Notice,
24 the aggrieved employee may commence a civil action pursuant to
25 California Labor Code section 2699 to recover civil penalties in addition
26 to any other penalties to which the employee may be entitled.

27 61. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
28 through Plaintiff, may pursue a civil action arising under PAGA for violations of any

1 provision other than those listed in Section 2699.5 after the following requirements have been
2 met:

- 3 (a) The aggrieved employee or representative shall give written notice by
4 online filing to the LWDA and by certified mail to the employer of the
5 specific provisions of the California Labor Code alleged to have been
6 violated (other than those listed in Section 2699.5), including the facts
7 and theories to support the alleged violation.
- 8 (b) An aggrieved employee's notice filed with the LWDA pursuant to
9 2699.3(c) and any employer response to that notice shall be
10 accompanied by a filing fee of seventy-five dollars (\$75).
- 11 (c) The employer may cure the alleged violation within thirty-three (33)
12 calendar days of the postmark date of the notice. The employer shall
13 give written notice by certified mail within that period of time to the
14 aggrieved employee or representative and the agency if the alleged
15 violation is cured, including a description of actions taken, and no civil
16 action pursuant to Section 2699 may commence. If the alleged violation
17 is not cured within the 33-day period, the employee may commence a
18 civil action pursuant to Section 2699.

19 62. Defendants, at all times relevant to this complaint, were employers or persons
20 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
21 rights by violating various sections of the California Labor Code as set forth above.

22 63. As set forth below, Defendants have violated numerous provisions of both the
23 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
24 Order.

25 64. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
26 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney
27 general, seeks assessment and collection of civil penalties for herself, all other aggrieved
28 employees, and the State of California against Defendants, in addition to other remedies, for

violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)

65. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

66. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

67. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

68. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

69. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

70. California Labor Code section 510 codifies the right to overtime compensation at one and one-half times (1½) the regular rate of pay for hours worked in excess of eight (8)

1 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
2 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
3 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
4 in a day on the seventh (7th) day of work.

5 71. For example, Plaintiff and other employees generally arrived 15 minutes prior
6 to their shifts every day in order to start up their computers and begin work for the day, and
7 they were not compensated for this time. Additionally, Plaintiff and other employees were
8 instructed to clock out at their precisely scheduled shift end time, but would do work after that
9 time, including locking up the building at the end of her shift. This additional work before
10 and after their shifts would usually take approximately 30 minutes, and occurred almost every
11 day. If Plaintiff or another employee did not clock out at their scheduled shift end time and
12 instead clocked out after they completed their work at an overtime rate, they risked being
13 reprimanded by Defendants.

14 72. Accordingly, during the relevant time period, Defendants willfully failed to pay
15 all overtime wages owed to Plaintiff and class members. During the relevant time period,
16 Plaintiff and class members were not paid overtime premiums for all of the hours they worked
17 in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess
18 of forty (40) hours in a week, because all hours worked were not recorded.

19 73. Because Plaintiff and class members regularly worked shifts of eight (8) hours
20 a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified
21 for overtime premium pay. Therefore, Plaintiff and class members were not paid overtime
22 wages for all of the overtime hours they actually worked.

23 74. Defendants' failure to pay Plaintiff and class members the balance of overtime
24 compensation and failure to include all applicable remuneration in calculating the regular rate
25 of pay for overtime pay, as required by California law, violates the provisions of California
26 Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff
27 and class members are entitled to recover their unpaid overtime compensation, as well as
28 interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION
Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1—Unpaid Minimum
Wages
(Against All Defendants)

75. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

76. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in 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, § 11070(2)(G) (defining “Hours Worked”).

77. For example, Plaintiff and other employees generally arrived 15 minutes prior to their shifts every day in order to start up their computers and begin work for the day, and they were not compensated for this time. Additionally, Plaintiff and other employees were instructed to clock out at their precisely scheduled shift end time, but would do work after that time, including locking up the building at the end of her shift. This additional work before and after their shifts would usually take approximately 30 minutes, and occurred almost every day.

78. Thus, Defendants did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

79. Defendants’ failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover

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

2 **THIRD CAUSE OF ACTION**

3 **Violations of California Labor Code, §§ 226.7 and 512(a)—Meal Period Violations**
4 **(Against all Defendants)**

5 80. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 81. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
8 California Labor Code sections 226.7, 512(a), and 1198 were applicable to Plaintiff and class
9 members' employment by Defendants.

10 82. At all relevant times herein set forth, California Labor Code section 512(a)
11 provides that an employer may not require, cause, or permit an employee to work for a period
12 of more than five (5) hours per day without providing the employee with a meal period of not
13 less than thirty (30) minutes, except that if the total work period per day of the employee is
14 not more than six (6) hours, the meal period may be waived by mutual consent of both the
15 employer and the employee. Under California law, first meal periods must start after no more
16 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
17 2012).

18 83. At all relevant times herein set forth, California Labor Code section 226.7 and
19 512(a) provide that no employer shall require an employee to work during any meal period
20 mandated by an applicable order of the IWC.

21 84. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
22 the applicable IWC Wage Order also require employers to provide a second meal break of not
23 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
24 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
25 hours worked is no more than twelve (12) hours, the second meal period may be waived by
26 mutual consent of the employer and the employee only if the first meal period was not waived.
27 Under California law, an employer cannot evade meal break requirements via the use of "on-
28 duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*,

1 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

2 85. As stated, Defendants' policies prevented Plaintiff and class members from
3 taking compliant meal periods. Because of Defendants' practices and/or policies, Plaintiff and
4 class members were required to continue to perform their duties without being able to take a
5 timely, compliant meal period. Plaintiff and class members had to work through part or all of
6 their meal periods, have their meal periods interrupted, and/or wait extended periods of time
7 before taking meal periods.

8 86. Additionally, Defendants systematically and on a company-wide basis required
9 that Plaintiff and class members always record meal breaks, even when meal breaks were
10 never taken, or were late, short, and/or interrupted. As a result, 30-minute meal periods were
11 deducted from Plaintiff's and class members' time records for hours they actually spent
12 working.

13 87. Further, Labor Code section 1198 and the applicable wage order require that
14 employers record meal periods. Defendants violated Labor Code section 1198 and the
15 applicable wage order insofar as Defendants failed to correctly record when Plaintiff and class
16 members took meal periods, to the extent they were authorized and permitted to do so.

17 88. Moreover, Defendants engaged in a systematic, company-wide practice and/or
18 policy payoff not paying meal period premiums owed when compliant meal periods were not
19 provided. Defendants' company-wide policy was to treat noncompliant meals as "on duty"
20 meal periods instead of to pay meal period premiums.

21 89. Plaintiff and class members did not receive all required off-duty meal periods
22 and did not receive premium pay for missed meal periods. As a result, Defendants failed to
23 provide Plaintiff and class members compliant meal periods and failed to pay the full meal
24 period premiums due.

25 90. Defendants' conduct violates the applicable IWC Wage Order, and California
26 Labor Code sections 226.7, 512(a), and 1198. Plaintiff and class members are therefore
27 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
28 rate of compensation for each work day that the meal period was not provided or

1 compensation in lieu thereof was not paid.

2 **FOURTH CAUSE OF ACTION**

3 **Violation of California Labor Code § 226.7—Rest Break Violations**

4 **(Against all Defendants)**

5 91. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 92. At all relevant times herein set forth, the applicable IWC Wage Order and
8 California Labor Code sections 226.7 and 1198 were applicable to Plaintiff and class
9 members' employment by Defendants.

10 93. At all relevant times, the applicable IWC Wage Order provides that “[e]very
11 employer shall authorize and permit all employees to take rest periods, which insofar as
12 practicable shall be in the middle of each work period” and that the “rest period time shall be
13 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
14 hours or major fraction thereof” unless the total daily work time is less than three and one-half
15 (3½) hours.

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

24 95. Pursuant to the applicable IWC Wage Order and California Labor Code
25 section 226.7(b), Plaintiff and class members are entitled to recover from Defendants one (1)
26 additional hour of pay at their regular rates of pay for each work day that a required rest
27 period was not provided.

28 96. During the relevant time period, Defendants regularly failed to authorize and

1 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
2 period worked or major fraction thereof. Additionally, Defendants had no policy of
3 scheduling rest periods for employees, which further impeded and prevented Plaintiff and
4 class members from taking rest periods.

5 97. As a result, Plaintiff and class members worked shifts in excess of 3.5 hours, in
6 excess of six (6) hours, and in excess of ten (10) hours without receiving all uninterrupted ten
7 (10) minute rest periods to which they were entitled. For example, Plaintiff was not permitted
8 to take a full and complete 10-minute rest period.

9 98. Defendants have also engaged in a company-wide practice and/or policy to not
10 pay rest period premiums owed when compliant rest periods are not provided. As a result,
11 Plaintiff and class members were denied rest periods and Defendants failed to pay the full rest
12 period premiums due, in violation of Labor Code section 226.7 and the applicable IWC Wage
13 Order.

14 99. Defendants' conduct violates the applicable IWC Wage Order and California
15 Labor Code sections 226.7 and 1198. Pursuant to the applicable IWC Wage Order and
16 California Labor Code section 226.7(b), Plaintiff and class members are entitled to recover
17 from Defendants one (1) additional hour of pay at the employee's regular rate of
18 compensation for each work day that the rest period was not provided.

19 **FIFTH CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 226(a) and 1174(d)—Non-Compliant Wage** 21 **Statements and Failure to Maintain Accurate Payroll Records** 22 **(Against all Defendants)**

23 100. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 101. At all relevant times herein, California Labor Code section 226(a) provides that
26 every employer shall furnish each of his or her employees an accurate and complete itemized
27 wage statement in writing, including, but not limited to, the name and address of the legal
28 entity that is the employer, the inclusive dates of the pay period, the total hours worked, and

1 all applicable rates of pay.

2 102. During the relevant time period, Defendants have knowingly and intentionally
3 provided Plaintiff and class members with uniform, incomplete, and inaccurate wage
4 statements. Specifically, Defendants violated sections 226. Because Defendants deducted
5 time worked from Plaintiff's and class members' wage statements and employment records
6 for meal periods they did not actually receive, *infra*, the result of which was an unlawful
7 deduction of wages earned and meal period premiums that should have been paid. Thus,
8 Defendants did not furnish wage statements to Plaintiff and class members containing
9 accurate totals of the hours worked (Lab. Code § 226(a)(2)), the number of hours worked at
10 each hourly rate (Lab. Code § 226(a)(9), the net wages earned (Lab. Code § 226(a)(5)) and
11 gross wages earned (Lab. Code § 226(a)(1)).

12 103. California Labor Code section 1174(d) provides that “[e]very person employing
13 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
14 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
15 plants or establishments at which employees are employed, payroll records showing the hours
16 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
17 applicable piece rate paid to, employees employed at the respective plants or
18 establishments...” During the relevant time period, and in violation of Labor Code
19 section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff
20 and class members showing the daily hours they worked and the wages paid thereto as a result
21 of failing to record the off-the-clock hours that they worked and by failing to correctly list the
22 gross wages and net wages earned by them.

23 104. California Labor Code section 1198 provides that the maximum hours of work
24 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
25 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
26 employment of any employees for longer hours than those fixed by the order or under
27 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
28 Wage Order, employers are required to keep accurate time records showing when the

1 employee begins and ends each work period and meal period. During the relevant time
2 period, Defendants failed, on a company-wide basis, to keep accurate records of meal period
3 start and stop times for Plaintiff and class members, in violation of section 1198.

4 105. Because Defendants failed to provide the accurate number of total hours
5 worked, and the gross wages earned, and net wages earned on wage statements, Plaintiff and
6 class members have been prevented from verifying, solely from information on the wage
7 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and class
8 members have had to look to sources outside of the wage statements themselves and
9 reconstruct time records to determine whether in fact they were paid correctly and the extent
10 of underpayment, thereby causing them injury.

11 106. Plaintiff and class members are entitled to recover from Defendants the greater
12 of their actual damages caused by Defendants' failure to comply with California Labor Code
13 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
14 employee.

15 **SIXTH CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 201 and 202 – Wages Not Timely Paid Upon** 17 **Termination** 18 **(Against all Defendants)**

19 107. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 108. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
22 that if an employer discharges an employee, the wages earned and unpaid at the time of
23 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
24 her employment, his or her wages shall become due and payable not later than seventy-two
25 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
26 his or her intention to quit, in which case the employee is entitled to his or her wages at the
27 time of quitting.

28 109. During the relevant time period, Defendants willfully failed to pay Plaintiff and

1 class members all wages earned upon their discharge or resignation. Additionally, Defendant
2 willfully failed to pay Plaintiff and other class members who are no longer employed by
3 Defendants all their earned wages set forth above, including but not limited to, overtime
4 wages, minimum wages, meal and rest period premium wages either at the time of discharge,
5 or within seventy-two (72) hours of their leaving Defendants' employ.

6 110. Defendants' failure to pay Plaintiff and those class members who are no longer
7 employed by Defendants their wages earned and unpaid at the time of discharge, or within
8 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
9 and 202.

10 111. Plaintiff and class members are therefore entitled to recover from Defendants
11 the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to
12 a thirty (30) day maximum pursuant to California Labor Code section 203.

13 SEVENTH CAUSE OF ACTION

14 Violation of California Labor Code § 2802 – Unpaid Business-Related Expenses 15 (Against all Defendants)

16 112. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 113. At all times herein set forth, California Labor Code section 2802 provides that
19 an employer must reimburse employees for all necessary expenditures and losses incurred by
20 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
21 to prevent employers from passing off their cost of doing business and operating expenses on
22 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
23 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: "[w]hen tools or
24 equipment are required by the employer or are necessary to the performance of a job, such
25 tools and equipment shall be provided and maintained by the employer, except that an
26 employee whose wages are at least two (2) times the minimum wage provided herein may be
27 required to provide and maintain hand tools and equipment customarily required by the trade
28 or craft."

114. During the relevant time period, Defendants, on a company-wide basis, required that Plaintiff and class members use their own personal cell phone and electricity to perform business related tasks. Defendants failed to reimburse Plaintiff and other employees for those costs.

115. Defendants engaged in a systematic, company-wide policy to not reimburse its employees for necessary business expenses. Defendants could have provided Plaintiff and class members with the actual tools for use on the job, including company phones, or reimbursed employees for their cell phone usage, but instead, Defendants passed these operating costs off onto Plaintiff and class members.

116. Defendants' company-wide policy and/or practice of passing its operating costs on to Plaintiff and class members is in violation of California Labor Code section 2802. Defendants have intentionally and willfully failed to fully reimburse Plaintiff and class members for necessary business-related expenses and costs.

117. Plaintiff and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

EIGHTH CAUSE OF ACTION

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

(Against all Defendants)

118. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

119. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

120. California Labor Code §§ 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, 1197.1, and 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of

those Labor Code sections not found in section 2699.5, including sections 1182.12.

121. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other aggrieved employees with all required overtime pay as alleged herein;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked as alleged herein;
- (c) Violation of Labor Code sections 226.7, 512, 1198, and the applicable IWC wage order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal and/or rest periods, as alleged herein;
- (d) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (e) Violations of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as alleged herein;
- (f) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;
- (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as alleged herein; and
- (h) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

122. At all relevant times herein set forth, California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th

1 days, inclusive, of any calendar month, other than those wages due upon termination of an
2 employee, are due and payable between the 16th and the 26th day of the month during which
3 the labor was performed. Labor Code section 204 further provides that all wages earned by
4 any person in any employment between the 16th and the last day, inclusive, of any calendar
5 month, other than those wages due upon termination of an employee, are due and payable
6 between the 1st and the 10th day of the following month.

7 123. At all relevant times herein, California Labor Code section 204 also requires
8 that all wages earned for labor in excess of the normal work period shall be paid no later than
9 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
10 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
11 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
12 more than seven (7) calendar days following the close of the payroll period.

13 124. During the relevant time period, Defendants willfully failed to pay Plaintiff and
14 other aggrieved employees all wages due to them within any time period specified by
15 California Labor Code section 204 including, but not limited to, overtime wages, minimum
16 wages, and meal and rest period premium wage. Plaintiff and other aggrieved employees are
17 therefore entitled to recover civil penalties pursuant to Labor Code sections 210 and/or
18 2699(a), (f), and (g).

19 **NINTH CAUSE OF ACTION**

20 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

21 **Unlawful Business Practices**

22 **(Against all Defendants)**

23 125. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 126. Defendants are a “person” as defined by California Business & Professions
26 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies
27 and/or associations.

28 127. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,

1 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
2 suffered injury in fact and has lost money as a result of Defendants' unlawful business
3 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
4 meaning of Code of Civil Procedure section 1021.5.

5 128. Defendants' activities, as alleged herein, are violations of California law, and
6 constitute unlawful business acts and practices in violation of California Business &
7 Professions Code sections 17200, *et seq.*

8 129. A violation of California Business & Professions Code sections 17200, *et seq.*
9 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
10 policies and practices have violated state law in at least the following respects:

- 11 (a) Requiring non-exempt employees, including Plaintiff and class
12 members, to work overtime without paying them proper compensation
13 in violation of California Labor Code sections 510 and 1198 and the
14 applicable IWC Order and paying overtime at a lower rate than required
15 by law, as alleged herein;
- 16 (b) Failing to pay at least minimum wage to Plaintiff and class members in
17 violation of California Labor Code sections 1182.12, 1194, 1197 and
18 1197.1 and the applicable IWC Order, as alleged herein;
- 19 (c) Failing to provide uninterrupted meal and rest periods to Plaintiff and
20 class members in violation of California Labor Code sections 226.7 and
21 512 and the applicable IWC Order, as alleged herein;
- 22 (d) Failing to provide Plaintiff and class members with accurate wage
23 statements in violation of California Labor Code section 226(a) and the
24 applicable IWC Order and failing to maintain accurate payroll records in
25 violation of Labor Code section 1174(d), as alleged herein;
- 26 (e) Failing timely to pay all earned wages to Plaintiff and class members in
27 violation of California Labor Code section 204 and the applicable IWC
28 Order, as alleged herein; and

(f) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein.

130. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

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

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

132. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

133. Defendants are a "person" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

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

135. Defendants' activities, namely Defendants' company-wide practice and/or

1 policy of not paying Plaintiff and class members all meal and rest period premium wages due
2 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
3 compensation guarantee and enhanced enforcement implemented by section 226.7. The
4 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
5 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
6 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
7 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
8 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
9 unfair business practice in violation of California Business & Professions Code sections
10 17200, *et seq.* (Id.)

11 136. A violation of California Business & Professions Code sections 17200, *et seq.*
12 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
13 and practices have violated the spirit of California’s meal and rest break laws and constitute
14 acts against the public policy behind these laws.

15 137. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
16 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
17 benefits implemented by section 226.7 withheld and retained by Defendants during a period
18 that commences four years prior to the filing of this complaint; a permanent injunction
19 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
20 Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil
21 Procedure section 1021.5 and other applicable laws; and an award of costs.

22 REQUEST FOR JURY TRIAL

23 Plaintiff requests a trial by jury.

24 PRAYER FOR RELIEF

25 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
26 against Defendants, jointly and severally, as follows:

27 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in
28 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff

1 reserves the right to amend his prayer for relief to seek a different amount.

2 2. That this case be certified as a class action;

3 3. That Plaintiff be appointed as the representative of the Class and subclass;

4 4. That counsel for Plaintiff be appointed as class counsel.

5 **As to the First Cause of Action**

6 5. That the Court declare, adjudge, and decree that Defendants violated California
7 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
8 pay all overtime wages due to Plaintiff and class members;

9 6. For general unpaid wages at overtime wage rates and such general and special
10 damages as may be appropriate;

11 7. For pre-judgment interest on any unpaid overtime compensation commencing
12 from the date such amounts were due, or as otherwise provided by law;

13 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
14 California Labor Code section 1194(a); and

15 9. For such other and further relief as the Court may deem equitable and
16 appropriate.

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

18 10. That the Court declare, adjudge and decree that Defendants violated California
19 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
20 minimum wages to Plaintiff and class members;

21 11. For general unpaid wages and such general and special damages as may be
22 appropriate;

23 12. For pre-judgment interest on any unpaid compensation from the date such
24 amounts were due, or as otherwise provided by law;

25 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
26 California Labor Code section 1194(a);

27 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

28 15. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), and 1198 and applicable IWC Wage Order(s) by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

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

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

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

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

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 1198 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and class members;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not provided;

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

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

27. For pre-judgment interest on any unpaid rest period premiums from the date

such amounts were due, or as otherwise provided by law;

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

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and class members, and willfully failed to provide accurate itemized wage statements thereto;

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

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and bonus pay, owed at the time of termination of the employment of Plaintiff and other terminated class members;

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

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts

1 were due, or as otherwise provided by law;

2 40. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 41. For such other and further relief as the Court may deem equitable and
5 appropriate.

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

7 42. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
9 related expenses and costs incurred by Plaintiff and class members;

10 43. For unpaid business-related expenses and such general and special damages as
11 may be appropriate;

12 44. For pre-judgment interest on any unpaid business-related expenses from the
13 date such amounts were due, or as otherwise provided by law;

14 45. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 46. For attorneys' fees and costs pursuant to California Labor Code section
17 2802(c), or as otherwise provided by law; and

18 47. For such other and further relief as the Court may deem equitable and
19 appropriate.

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

21 48. That the Court declare, adjudge and decree that Defendants violated the
22 following California Labor Code provisions as to Plaintiff and aggrieved employees: 510 and
23 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198
24 (by failing to pay at least minimum wages for all hours worked); 226.7, 512 and 1198 (by
25 failing to provide all meal and rest periods); 226(a), 1174(d) and 1198 (by failing to provide
26 accurate wage statements and maintain accurate payroll records); 201, 202, 203 (by failing
27 timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned
28 wages during employment); and 2802 (by failing to reimburse business expenses).

1 49. For civil penalties, pursuant to California Labor Code sections 210, 226.3,
2 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code
3 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1,
4 1198, and 2802;

5 50. For attorneys' fees and costs pursuant to California Labor Code section
6 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
7 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194,
8 1197, 1197.1, 1198, and 2802;

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

10 52. For such other and further relief as the Court may deem equitable and
11 appropriate.

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

13 53. That the Court declare, adjudge and decree that Defendants conduct of failing
14 to provide Plaintiff and class members all overtime wages due to them, failing to provide
15 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
16 class members all meal and rest periods, failing to provide Plaintiff and class members
17 accurate and complete wage statements, failing to maintain accurate payroll records for
18 Plaintiff and class members, failing timely to pay Plaintiff and class members all earned
19 wages during employment, failing to reimburse Plaintiff and class members for business-
20 related expenses, and failing to provide written notice of information material to employment,
21 constitutes an unlawful business practice in violation of California Business and Professions
22 Code sections 17200, *et seq.*;

23 54. For restitution of unpaid wages to Plaintiff and all class members and
24 prejudgment interest from the day such amounts were due and payable;

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

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

57. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

58. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

59. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the day such amounts were due and payable;

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

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

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

63. For such other and further relief as the Court may deem equitable and appropriate.

Dated: September 27, 2021

Respectfully submitted,

By: 

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