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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JANETTE GALLEGOS, individually, and
on behalf of other members of the general
public similarly situated and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

CHILDREN'S INSTITUTE, INC., a
California non-profit corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 21STCV19276

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

- (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 (Unreimbursed Business Expenses);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698,

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- 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 JANETTE GALLEGOS, individually, and on behalf of all other members of
2 the public similarly situated and as an aggrieved employee and on behalf of all other
3 aggrieved 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 JANETTE GALLEGOS, at all times relevant to the claims asserted
5 herein, was a resident of Los Angeles, in Los Angeles County, California. Defendants
6 employed Plaintiff as an hourly, non-exempt employee from on or about October 8, 2018 to
7 on or about July 27, 2020. Plaintiff initially started working for CHILDREN'S INSTITUTE,
8 INC. ("CII" or "DEFENDANT") as a social worker and inhouse education counselor who
9 performed her work throughout Los Angeles County, California. During her employment,
10 Plaintiff typically worked eight (8) to ten (10) hours per day, five (5) days per week, and
11 approximately forty-five (45) to fifty (50) or more hours per week. Her job duties included,
12 without limitation, meeting and speaking with clients, responding to client phone calls,
13 collaborating with outside parties and attending meetings regarding the same, and completing
14 any follow-up paperwork or training that was required.

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

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

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

27 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
28 acts and omissions alleged herein was performed by, or is attributable to, CII; and/or DOES 1

1 through 10 (collectively “DEFENDANTS” or “Defendants”), each acting as the agent,
2 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
3 Defendants and was acting within the course and scope of such agency, employment, joint
4 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any
5 and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

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

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

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

28 (b) jointly exercised meaningful control over Plaintiff and class members’

wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and class members;

(c) jointly required that Plaintiff and class members perform work which is an integral part of Defendants' businesses; and

(d) jointly exercised control over Plaintiff and class members as a matter of economic reality in that Plaintiff and class members were dependent on Defendants, who shared the power to set the wages of Plaintiff and class members and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

15. Plaintiff is informed and believes, and further alleges, that at all relevant times there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

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

17. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name CII.

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

19. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

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

All persons who are or were employed by Defendants as nonexempt, hourly-paid employees in California within four years prior to the filing of this complaint until the date of trial ("Class").

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

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

6 22. Members of the Class and Subclass will hereinafter be referred to as "class
7 members."

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

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

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

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

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

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

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

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

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

GENERAL ALLEGATIONS

26. Defendants are a California non-profit corporation providing support services to low income families and children throughout California. Within California, Defendants are estimated to employ over 100 persons.

27. Upon information and belief, Defendants maintain a single, centralized Human Resources department in Los Angeles, 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 Los Angeles,
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 Los Angeles, California.

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

28 31. Defendants continue to employ non-exempt, hourly-paid employees within

1 California.

2 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
4 and advisors knowledgeable about California labor and wage law, employment and personnel
5 practices, and about the requirements of California law.

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

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

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

17 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to meal periods in
19 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
20 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
21 periods and that Plaintiff and class members were not provided with all meal periods or
22 payment of one (1) additional hour of pay at their regular rates of pay when they did not
23 receive a timely, uninterrupted, thirty (30) minute meal period.

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

1 periods or payment of one (1) additional hour of pay at their regular rates of pay when they
2 were not provided a compliant rest period.

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

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

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

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

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

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

mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and class members for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and class members that they were properly denied wages, all in order to increase Defendants' profits.

Claims for Penalties Under 2004 Private Attorneys General Act

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

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

All current or former employees who worked in the state of California from May 20, 2020 to the present for Defendants.

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

47. The "Representative Period" means from **May 20, 2020** to the present, the timeframe where the scope of statute allows Plaintiffs to recover wages and penalties.

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

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

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

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

1 52. At all material times, Defendants and DOES 1 through 10 were and/or are
2 Aggrieved Employees’ employers or persons acting on behalf of Aggrieved Employees’
3 employer, within the meaning of California Labor Code § 558, who violated or caused to be
4 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
5 regulating hours and days of work in any Order of the Industrial Welfare Commission and, as
6 such, are subject to penalties for each underpaid employee as set for in Labor Code § 558.

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

11 **Exhaustion of Administrative Remedies**

12 54. As to penalty claims under the Labor Code Private Attorney General Act, on
13 **May 20, 2021**, Plaintiff provided written notice by online filing to the LWDA and by
14 Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to
15 have been violated, including facts and theories to support the alleged violations, in
16 accordance with California Labor Code section 2699.3. Plaintiff’s written notice was
17 accompanied with the applicable filing fee of seventy-five dollars (\$75).

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

21 56. Thus, Plaintiff has satisfied the administrative prerequisites under California
22 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
23 addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
24 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

25 57. At all times herein set forth, PAGA provides that any provision of law under
26 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
27 assessed and collected by the LWDA for violations of the California Labor Code and
28 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a

1 civil action brought on behalf of themselves and other current or former employees pursuant
2 to procedures outlined in California Labor Code section 2699.3.

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

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

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

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

1 61. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
2 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
3 provision other than those listed in Section 2699.5 after the following requirements have been
4 met:

5 (a) The aggrieved employee or representative shall give written notice by
6 online filing to the LWDA and by certified mail to the employer of the
7 specific provisions of the California Labor Code alleged to have been
8 violated (other than those listed in Section 2699.5), including the facts
9 and theories to support the alleged violation.

10 (b) An aggrieved employee's notice filed with the LWDA pursuant to
11 2699.3(c) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).

13 (c) The employer may cure the alleged violation within thirty-three (33)
14 calendar days of the postmark date of the notice. The employer shall
15 give written notice by certified mail within that period of time to the
16 aggrieved employee or representative and the agency if the alleged
17 violation is cured, including a description of actions taken, and no civil
18 action pursuant to Section 2699 may commence. If the alleged violation
19 is not cured within the 33-day period, the employee may commence a
20 civil action pursuant to Section 2699.

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

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

27 64. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
28 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney

1 general, seeks assessment and collection of civil penalties for herself, all other aggrieved
2 employees, and the State of California against Defendants, in addition to other remedies, for
3 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
4 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

5 **FIRST CAUSE OF ACTION**

6 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

7 **(Against all Defendants)**

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

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

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

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

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

1 70. California Labor Code section 510 codifies the right to overtime compensation
2 at one and one-half times (1½) the regular rate of pay for hours worked in excess of eight (8)
3 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
4 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
5 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
6 in a day on the seventh (7th) day of work.

7 71. For example, Plaintiff and other employees were instructed to contact their
8 clients prior to driving to their client's address; this compensable work was performed prior to
9 Plaintiff and other employees clocking in for the day, and Defendants were aware such work
10 was occurring. Additionally, Plaintiff and other employees were instructed to turn in their
11 time sheets that included their recorded work time, but Defendants would edit those
12 timesheets to remove overtime hours Defendants did not wish to pay.

13 72. Moreover, Plaintiff and other employees were required to address emergency
14 issues with clients after the end of the regular work day. On these occasions, Plaintiff and
15 other employees attended to their client's concerns, and Plaintiff and other employees were
16 not able to record their additional work time. Even though Plaintiff and other employees were
17 required to prepare notes reflecting their calls with clients, Defendants instructed Plaintiff and
18 other employees to record a different call time such that the call would appear as though it
19 occurred during Plaintiff's work hours. As a result, Plaintiff and other employees were not
20 paid for this additional work time after the regular work day.

21 73. Additionally, Plaintiff and other employees received non-discretionary
22 bonuses; Defendant failed to include those non-discretionary bonuses in Plaintiff and other
23 employees' total remuneration, and as a result did not pay overtime to Plaintiff and other
24 employees at the regular rate of pay as required under California law.

25 74. Accordingly, during the relevant time period, Defendants willfully failed to pay
26 all overtime wages owed to Plaintiff and class members. During the relevant time period,
27 Plaintiff and class members were not paid overtime premiums for all of the hours they worked
28 in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess

of forty (40) hours in a week, because all hours worked were not recorded.

75. Further, when Plaintiff and class members worked shifts in excess of ten (10) hours in a day, Defendants did not provide them with a second uninterrupted 30-minute meal period. Plaintiff and class members did not sign valid meal break waivers on days that they were entitled to meal periods but were not relieved of all duties.

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

77. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled to recover their unpaid overtime compensation, as well as 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)

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

79. 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").

80. For example, Plaintiff and other employees were instructed to contact their

1 clients prior to driving to their client's address; this compensable work was performed prior to
2 Plaintiff and other employees clocking in for the day, and Defendants were aware such work
3 was occurring. Additionally, Plaintiff and other employees were instructed to turn in their
4 time sheets that included their recorded work time, but Defendants would edit those
5 timesheets to remove overtime hours Defendants did not wish to pay.

6 81. Moreover, Plaintiff and other employees were required to address emergency
7 issues with clients after the end of the regular work day. On these occasions, Plaintiff and
8 other employees attended to their client's concerns, and Plaintiff and other employees were
9 not able to record their additional work time. Even though Plaintiff and other employees were
10 required to prepare notes reflecting their calls with clients, Defendants instructed Plaintiff and
11 other employees to record a different call time such that the call would appear as though it
12 occurred during Plaintiff's work hours. As a result, Plaintiff and other employees were not
13 paid for this additional work time after the regular work day.

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

19 83. Defendants' failure to pay Plaintiff and class members minimum wages violates
20 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
21 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
22 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

23 **THIRD CAUSE OF ACTION**

24 **Violations of California Labor Code, §§ 226.7 and 512(a)—Meal Period Violations** 25 **(Against all Defendants)**

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

28 85. At all relevant times herein set forth, the applicable IWC Wage Order(s) and

1 California Labor Code sections 226.7, 512(a), and 1198 were applicable to Plaintiff and class
2 members' employment by Defendants.

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

11 87. At all relevant times herein set forth, California Labor Code section 226.7 and
12 512(a) provide that no employer shall require an employee to work during any meal period
13 mandated by an applicable order of the IWC.

14 88. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
15 the applicable IWC Wage Order also require employers to provide a second meal break of not
16 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
17 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
18 hours worked is no more than twelve (12) hours, the second meal period may be waived by
19 mutual consent of the employer and the employee only if the first meal period was not waived.
20 Under California law, an employer cannot evade meal break requirements via the use of "on-
21 duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*,
22 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

23 89. As stated, Defendants failed to provide Plaintiff and class members with
24 compliant meal periods. Because of Defendants' practices and/or policies, Plaintiff and class
25 members were required to continue to perform their duties without being able to take a timely,
26 compliant meal period. Plaintiff and class members had to work through part or all of their
27 meal periods, have their meal periods interrupted, and/or wait extended periods of time before
28 taking meal periods. Further, on information and belief, Defendants routinely altered

1 Plaintiff's and class members' meal period time records to reflect that compliant meal periods
2 were taken, when, in actuality, they were not.

3 90. Furthermore, Defendants did not provide Plaintiff and class members with
4 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
5 day. As stated, Plaintiff sometimes worked 10-hour shifts without being permitted or
6 authorized to take a second 30-minute meal period. Plaintiff and class members did not sign
7 valid meal break waivers on days that they were entitled to meal periods and were not relieved
8 of all duties.

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

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

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

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

26 95. Defendants' conduct violates the applicable IWC Wage Order, and California
27 Labor Code sections 226.7, 512(a), and 1198. Plaintiff and class members are therefore
28 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular

1 rate of compensation for each work day that the meal period was not provided or
2 compensation in lieu thereof was not paid.

3 **FOURTH CAUSE OF ACTION**

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

5 **(Against all Defendants)**

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

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

11 98. At all relevant times, the applicable IWC Wage Order provides that “[e]very
12 employer shall authorize and permit all employees to take rest periods, which insofar as
13 practicable shall be in the middle of each work period” and that the “rest period time shall be
14 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
15 hours or major fraction thereof” unless the total daily work time is less than three and one-half
16 (3½) hours.

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

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

101. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. Additionally, Defendants had no policy of scheduling rest periods for employees, which further impeded and prevented Plaintiff and class members from taking rest periods.

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

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

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

FIFTH CAUSE OF ACTION

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

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

106. At all relevant times herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal

1 entity that is the employer, the inclusive dates of the pay period, the total hours worked, and
2 all applicable rates of pay.

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

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

24 109. California Labor Code section 1198 provides that the maximum hours of work
25 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
26 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
27 employment of any employees for longer hours than those fixed by the order or under
28 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC

1 Wage Order, employers are required to keep accurate time records showing when the
2 employee begins and ends each work period and meal period. During the relevant time
3 period, Defendants failed, on a company-wide basis, to keep accurate records of meal period
4 start and stop times for Plaintiff and class members, in violation of section 1198.
5 Furthermore, in light of Defendants' failure to provide Plaintiff and class members with
6 second 30-minute meal periods to which they were entitled, Defendants failed to keep
7 accurate records of meal start and end times for second meal periods.

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

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

19 **SIXTH CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 201 and 202 – Wages Not Timely Paid Upon** 21 **Termination** 22 **(Against all Defendants)**

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

25 113. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
26 that if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
28 her employment, his or her wages shall become due and payable not later than seventy-two

(72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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

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

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

SEVENTH CAUSE OF ACTION

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

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

118. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such

1 tools and equipment shall be provided and maintained by the employer, except that an
2 employee whose wages are at least two (2) times the minimum wage provided herein may be
3 required to provide and maintain hand tools and equipment customarily required by the trade
4 or craft.”

5 119. During the relevant time period, Defendants, on a company-wide basis,
6 required that Plaintiff and class members use their own personal internet service and
7 electricity to charge their company phones and company computers. Defendants failed to
8 sufficiently reimburse Plaintiff and other employees for those costs.

9 120. Defendants engaged in a systematic, company-wide policy to not reimburse its
10 employees for necessary business expenses. Defendants could have provided Plaintiff and
11 class members with the actual tools for use on the job, or reimbursed employees for the cost
12 internet service and for charging their company cell phones and computers, but instead,
13 Defendants passed these operating costs off onto Plaintiff and class members.

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

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

21 **EIGHTH CAUSE OF ACTION**

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

23 **(Against all Defendants)**

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

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

28 125. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover

1 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
2 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
3 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
4 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
5 violations of those Labor Code sections not found in section 2699.5, including sections
6 1182.12.

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

- 9 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
10 wage order for Defendants' failure to compensate Plaintiff and other
11 aggrieved employees with all required overtime pay as alleged herein;
- 12 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
13 and the applicable IWC wage order for Defendants' failure to
14 compensate Plaintiff and other aggrieved employees with at least
15 minimum wages for all hours worked as alleged herein;
- 16 (c) Violation of Labor Code sections 226.7, 512, 1198, and the applicable
17 IWC wage order for Defendants' failure to provide Plaintiff and other
18 aggrieved employees with meal and/or rest periods, as alleged herein;
- 19 (d) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
20 wage order for failure to provide accurate and complete wage statements
21 to Plaintiff and other aggrieved employees, as alleged herein;
- 22 (e) Violations of Labor Code sections 1174(d), 1198, and the applicable
23 IWC wage order for failure to maintain payroll records as alleged
24 herein;
- 25 (f) Violation of Labor Code section 204 for failure to pay all earned wages
26 during employment as set forth below;
- 27 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
28 earned wages upon termination as alleged herein;

1 (h) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
2 and other aggrieved employees for all business expenses necessarily
3 incurred, as alleged herein; and

4 127. At all relevant times herein set forth, California Labor Code section 204
5 requires that all wages earned by any person in any employment between the 1st and the 15th
6 days, inclusive, of any calendar month, other than those wages due upon termination of an
7 employee, are due and payable between the 16th and the 26th day of the month during which
8 the labor was performed. Labor Code section 204 further provides that all wages earned by
9 any person in any employment between the 16th and the last day, inclusive, of any calendar
10 month, other than those wages due upon termination of an employee, are due and payable
11 between the 1st and the 10th day of the following month.

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

18 129. During the relevant time period, Defendants willfully failed to pay Plaintiff and
19 other aggrieved employees all wages due to them within any time period specified by
20 California Labor Code section 204 including, but not limited to, overtime wages, minimum
21 wages, and meal and rest period premium wage. Plaintiff and other aggrieved employees are
22 therefore entitled to recover civil penalties pursuant to Labor Code sections 210 and/or
23 2699(a), (f), and (g).

24 **NINTH CAUSE OF ACTION**

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

26 **Unlawful Business Practices**

27 **(Against all Defendants)**

28 130. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 131. Defendants are a “person” as defined by California Business & Professions
3 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies
4 and/or associations.

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

10 133. Defendants’ activities, as alleged herein, are violations of California law, and
11 constitute unlawful business acts and practices in violation of California Business &
12 Professions Code sections 17200, *et seq.*

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

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

1 applicable IWC Order and failing to maintain accurate payroll records in
2 violation of Labor Code section 1174(d), as alleged herein;

3 (e) Failing timely to pay all earned wages to Plaintiff and class members in
4 violation of California Labor Code section 204 and the applicable IWC
5 Order, as alleged herein; and

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

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

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

19 TENTH CAUSE OF ACTION

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

21 Unfair Business Practices

22 (Against all Defendants)

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

25 138. 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.

28 139. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,

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

5 140. Defendants' activities, namely Defendants' company-wide practice and/or
6 policy of not paying Plaintiff and class members all meal and rest period premium wages due
7 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
8 compensation guarantee and enhanced enforcement implemented by section 226.7. The
9 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to
10 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
11 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
12 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
13 thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
14 unfair business practice in violation of California Business & Professions Code sections
15 17200, *et seq.* (Id.)

16 141. A violation of California Business & Professions Code sections 17200, *et seq.*
17 may be predicated on any unfair business practice. In the instant case, Defendants' policies
18 and practices have violated the spirit of California's meal and rest break laws and constitute
19 acts against the public policy behind these laws.

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

27 **REQUEST FOR JURY TRIAL**

28 Plaintiff requests a trial by jury.

1 **PRAYER FOR RELIEF**

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

4 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
5 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
6 reserves the right to amend his prayer for relief to seek a different amount.

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

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

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

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

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

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

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

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

20 9. For such other and further relief as the Court may deem equitable and
21 appropriate.

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

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

26 11. For general unpaid wages and such general and special damages as may be
27 appropriate;

28 12. For pre-judgment interest on any unpaid compensation from the date such

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

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

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

5 15. For such other and further relief as the Court may deem equitable and
6 appropriate.

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

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

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

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

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

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

19 21. For attorneys' fees pursuant to California Code of Civil Procedure section
20 1021.5, or as otherwise provided by law; and

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

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

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

27 24. That the Court make an award to the Plaintiff and class members of one (1) hour
28 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;

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

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

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

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

9 41. For such other and further relief as the Court may deem equitable and
10 appropriate.

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

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

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

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

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

21 46. For attorneys' fees and costs pursuant to California Labor Code section
22 2802(c), or as otherwise provided by law; and

23 47. For such other and further relief as the Court may deem equitable and
24 appropriate.

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

26 48. That the Court declare, adjudge and decree that Defendants violated the
27 following California Labor Code provisions as to Plaintiff and aggrieved employees: 510 and
28 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198

(by failing to pay at least minimum wages for all hours worked); 226.7, 512 and 1198 (by failing to provide all meal and rest periods); 226(a), 1174(d) and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); and 2802 (by failing to reimburse business expenses).

49. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), 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;

50. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' 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;

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

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

As to the Ninth Cause of Action

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

54. For restitution of unpaid wages to Plaintiff and all class members and

1 prejudgment interest from the day such amounts were due and payable;

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

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

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

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

11 58. That the Court declare, adjudge and decree that Defendants' conduct of denying
12 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
13 an unfair business practice in violation of California Business and Professions Code sections
14 17200, *et seq.*;

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

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

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

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

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

1 Dated: August 10, 2021

Respectfully submitted,

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4 By:


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