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HEGEMIER, individually and on behalf of
all other AGGRIEVED EMPLOYEES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE COUNTY

KIMBERLY HEGEMIER, individually and on
behalf of all other aggrieved employees,

Plaintiff,

vs.

A BETTER LIFE RECOVERY, LLC a
Delaware limited liability company; and DOES
1 through 50, inclusive,

Defendants.

CASE NO.: 30-2021-01195119-CU-OE-
CXC

[Assigned for all purposes to the Hon. James
J. Di Cesare, Dept. C16]

**FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

[California Labor Code § 2698, et seq.]

DEMAND FOR JURY TRIAL

1 Plaintiff KIMBERLY HEGEMIER (“PLAINTIFF”), individually and on behalf of all
2 others aggrieved employees, hereby alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of herself and all other aggrieved
5 employees of defendant A BETTER LIFE RECOVERY, LLC (“A BETTER LIFE”) and DOES 1
6 through 50, inclusive (collectively, “DEFENDANTS”), in the State of California during the
7 relevant statutory period to recover penalties arising from DEFENDANTS’ failure to provide
8 employees meal and rest periods (or compensation therefor), failure to provide minimum and
9 overtime wages for all hours worked, failure to timely pay wages during employment, failure to
10 pay wages due upon separation, failure to maintain required records, failure to provide accurate
11 itemized wage statements, and failure to indemnify employees for necessary business
12 expenditures and/or losses incurred in the discharge of their duties.

13 **JURISDICTION AND VENUE**

14 2. The Superior Court of the State of California has jurisdiction in this matter because
15 PLAINTIFF is a citizen and resident of the State of California, and DEFENDANTS are qualified
16 to do business in California and regularly conduct business in California. Further, no federal
17 question is at issue because the claims are based solely on California law.

18 3. Venue is proper in this judicial district and the County of Orange, California
19 because DEFENDANTS maintain offices and facilities and transact business in the County of
20 Orange, and DEFENDANTS’ illegal policies and practices which are the subject of this action
21 were applied, at least in part, to PLAINTIFF and other aggrieved employees in the County of
22 Orange.

23 **THE PARTIES**

24 4. PLAINTIFF is a citizen and resident of the State of California. At times material
25 to this complaint, PLAINTIFF was employed by DEFENDANTS in the State of California as a
26 non-exempt employee. PLAINTIFF worked for DEFENDANTS as Client Coordinator at
27 DEFENDANTS’ facility in San Clemente, California from approximately October 2019 to
28 January 2021.

1 5. PLAINTIFF is informed and believes, and thereon alleges, that A BETTER LIFE
2 is, and at all times relevant hereto was, a Delaware limited liability company. PLAINTIFF is
3 further informed and believes, and thereon alleges, that A BETTER LIFE is authorized to conduct
4 business, and does conduct business, in the State of California. Specifically, A BETTER LIFE is
5 headquartered, maintains offices and facilities, conducts business, and engages in illegal policies
6 or practices in Orange County.

7 6. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
8 PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE defendants under fictitious
9 names. PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated
10 as a DOE is in some manner highly responsible for the occurrences alleged herein, and that
11 PLAINTIFF and other aggrieved employees' injuries and damages, as alleged herein, were
12 proximately caused by the conduct of such DOE defendants. PLAINTIFF will seek leave of Court
13 to amend this Complaint to allege their true names and capacities of such DOE defendants when
14 ascertained.

15 7. At all relevant times herein, DEFENDANTS were the joint employers of
16 PLAINTIFF and other aggrieved employees. PLAINTIFF is informed and believes, and thereon
17 alleges, that at all relevant times DEFENDANTS were the alter egos, divisions, affiliates,
18 integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-
19 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible,
20 of each other. Each defendant was completely dominated by his, her, or its co-defendant, and
21 each was the alter ego of the other.

22 8. At all relevant times, PLAINTIFF and other aggrieved employees were employed
23 by DEFENDANTS under employment agreements that were partly written, partly oral, and partly
24 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of
25 them, acted pursuant to, and in furtherance of, their policies and practices of not paying
26 PLAINTIFF and other aggrieved employees all wages earned and due, through methods and
27 schemes which include, but are not limited to, failing to provide meal periods; failing to authorize
28 and permit rest breaks; failing to pay minimum and overtime wages; failing to provide accurate

1 itemized statements; failing to maintain required records; and failing to compensate PLAINTIFF
2 and other aggrieved employees for necessary expenditures, in violation of the California Labor
3 Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order.

4 9. PLAINTIFF is informed and believes, and thereon alleges, that each and every one
5 of the acts and omissions alleged herein were performed by, and/or attributable to, all
6 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
7 of each of the other defendants, and that said acts and failures to act were within the course and
8 scope of said agency, employment and/or direction and control.

9 10. As a direct and proximate result of DEFENDANTS’ unlawful actions,
10 PLAINTIFF and other aggrieved employees have suffered, and continue to suffer, from loss of
11 earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction
12 of this Court.

13 **PAGA REPRESENTATIVE ALLEGATIONS**

14 11. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
15 Code §§ 2698-2699.5, PLAINTIFF brings this action on behalf of herself and all current and
16 former non-exempt aggrieved employees of DEFENDANTS in the State of California at any time
17 within the period beginning one (1) year and sixty-five (65) days prior to the filing of this action,
18 and ending at the time this action settles or proceeds to final judgment (“PENALTY PERIOD”).

19 12. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on
20 February 2, 2021 by online filing to the California Labor and Workforce Development Agency
21 (“LWDA”) and by certified mail to A BETTER LIFE of the specific provisions of the California
22 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories
23 to support the alleged violations. More than sixty-five (65) days have passed since the filing of
24 the notice and the LWDA has not provided notice to PLAINTIFF that it intends to investigate the
25 alleged violations.

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1 **FACTUAL ALLEGATIONS**

2 **Failure to Provide Meal Periods**

3 **[Labor Code §§ 226.7, 512; IWC Wage Order No. 5-2001 § 11]**

4 13. During the PENALTY PERIOD, DEFENDANTS had, and continue to have, a
5 policy and practice of failing to provide PLAINTIFF and other aggrieved employees full and
6 timely meal periods as required by California Labor Code §§ 226.7 and 512 and IWC Wage
7 Order No. 5-2001 § 11.

8 14. As a result of DEFENDANTS' policies and practices as alleged herein,
9 PLAINTIFF and other aggrieved employees have been, and continue to be denied, the
10 opportunity to take full, uninterrupted, and timely meal periods as required under California
11 Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5-2001 § 11.

12 15. DEFENDANTS further violated, and continue to violate, California Labor Code §
13 226.7 and IWC Wage Order No. 5-2001 § 11 by failing to compensate PLAINTIFF and other
14 aggrieved employees who were not provided a meal period, in accordance with the applicable
15 Wage Order, one (1) additional hour of compensation at each employee's regular rate of pay for
16 each workday that a meal period was not provided.

17 **Failure to Authorize and Permit Rest Periods**

18 **[Labor Code § 226.7; IWC Wage Order No. 5-2001 § 12]**

19 16. During the PENALTY PERIOD, DEFENDANTS had, and continue to have, a
20 policy and practice of failing to authorize and permit PLAINTIFF and other aggrieved employees
21 to take rest breaks as required by California Labor Code § 226.7 and IWC Wage Order No. 5-
22 2001 § 12. As a result of DEFENDANTS' policies and practices as alleged herein, PLAINTIFF
23 and other aggrieved employees regularly have been, and continue to be, denied the opportunity to
24 take full, uninterrupted, and timely rest periods as required under California Labor Code § 226.7
25 and IWC Wage Order No. 5-2001 § 12.

26 17. DEFENDANTS further violated, and continue to violate, California Labor Code §
27 226.7 and IWC Wage Order No. 5-2001 § 12 by failing to pay PLAINTIFF and other aggrieved
28 employees who were not provided a rest period, in accordance with the applicable Wage Order,

one (1) additional hour of compensation at each employee's regular rate of pay for each workday that a rest period was not provided.

Failure to Pay Minimum Wages

[Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001 § 4]

18. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 5-2001 § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

19. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to pay PLAINTIFF and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting PLAINTIFF and other aggrieved employees to work off the clock; requiring, suffering or permitting PLAINTIFF and other aggrieved employees to work through meal periods without compensation; illegally and inaccurately recording time worked by PLAINTIFF and other aggrieved employees; and other methods to be discovered.

Failure to Pay Overtime Wages

[Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001 § 3]

20. Pursuant to California Labor Code §§ 510 and 1194 and IWC Wage Order No. 5-2001 § 3, DEFENDANTS are required to compensate PLAINTIFF and other aggrieved employees for all overtime at a rate of one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday and at a rate of twice the regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

21. PLAINTIFF and other aggrieved employees are current and former non-exempt employees entitled to the protections of California Labor Code §§ 510 and 1194 and IWC Wage Order No. 5-2001. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to compensate PLAINTIFF and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular

1 rate of pay as provided by California Labor Code §§ 510 and 1194 and IWC Wage Order No. 5-
2 2001 § 3; requiring, suffering or permitting PLAINTIFF and other aggrieved employees to work
3 off the clock; requiring, suffering or permitting PLAINTIFF and other aggrieved employees to
4 work through meal periods without compensation; illegally and inaccurately recording time in
5 which PLAINTIFF and other aggrieved employees worked; and other methods to be discovered.

6 **Failure to Timely Pay Wages During Employment**

7 **[Labor Code § 204]**

8 22. Pursuant to California Labor Code § 204, for all labor performed between the 1st
9 and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
10 employees between the 16th and 26th day of the month during which the labor was performed.
11 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
12 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
13 between the 1st and 10th day of the following calendar month. In addition, California Labor
14 Code § 204 provides that all wages earned for labor in excess of the normal work period shall be
15 paid no later than the payday of the next regular payroll period.

16 23. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to
17 timely pay PLAINTIFF and other aggrieved employees all the wages for labor performed by the
18 next regular payroll period as required by California Labor Code § 204.

19 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

20 **[Labor Code §§ 201, 202, 203]**

21 24. Pursuant to California Labor Code §§ 201, 202, and 203, DEFENDANTS are
22 required to pay all earned and unpaid wages to an employee upon separation.

23 25. California Labor Code § 201 mandates that if an employer discharges an
24 employee, the employee's wages accrued and unpaid at the time of discharge are due and payable
25 immediately.

26 26. Pursuant to California Labor Code § 202, DEFENDANTS are required to pay all
27 accrued wages due to an employee no later than 72 hours after the employee quits his or her
28 employment, unless the employee provided 72 hours previous notice of his or her intention to

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

27. Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with §§ 201 and 202, any wages of any employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

28. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to pay accrued wages and other compensation to PLAINTIFF and other aggrieved employees in accordance with California Labor Code §§ 201 and 202.

Failure to Maintain Required Records

[Labor Code §§ 226, 1174; IWC Wage Order No. 5-2001 § 7]

29. During the PENALTY PERIOD, as part of DEFENDANTS' illegal payroll policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned and due, DEFENDANTS failed, and continue to fail, to maintain records as required under California Labor Code §§ 226 and 1174 and IWC Wage Order No. 5-2001 § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Failure to Furnish Accurate Itemized Wage Statements

[Labor Code § 226; IWC Wage Order No. 5-2001 § 7]

30. During the PENALTY PERIOD, DEFENDANTS failed to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity or entities employing PLAINTIFF and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC Wage Order No. 5-2001 § 7.

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[Labor Code § 2802]

32. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to indemnify PLAINTIFF and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of DEFENDANTS, including but not limited to expenses for uniforms and safety equipment and other employment-related expenses, in violation of California Labor Code § 2802.

(Against all DEFENDANTS)

36. Pursuant to Labor Code §§ 2698–2699.5, PLAINTIFF seeks to recover civil penalties from DEFENDANTS in a representative action for the violations set forth above,

1 including but not limited to violations of California Labor Code §§ 201, 202, 203, 204, 226(a),
2 226.7, 510, 512, 1174(d), 1194, 1197, 1198, and 2802.

3 37. Pursuant to Labor Code § 2699(a), PLAINTIFF seeks civil penalties for
4 DEFENDANTS' violations of Labor Code provisions for which a civil penalty is specifically
5 provided, including but not limited to the following:

6 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
7 DEFENDANTS are subject to a civil penalty in the amount of one hundred
8 dollars (\$100) for the initial violation for each failure to pay each employee
9 and two hundred dollars (\$200) per employee for violations in subsequent
10 pay periods.

11 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a),
12 DEFENDANTS are subject to a civil penalty in the amount of two hundred
13 and fifty dollars (\$250) per aggrieved employee for the initial pay period
14 where a violation occurs and one thousand dollars (\$1,000) per aggrieved
15 employee for violations in subsequent pay periods.

16 c. Pursuant to Labor Code § 558(a), "[a]ny employer or other person acting
17 on behalf of an employer who violates, or causes to be violated, a section
18 of this chapter or any provision regulating hours and days of work in any
19 order of the Industrial Welfare Commission," including Labor Code §§ 510
20 and 512, shall be subject to a civil penalty, in addition to any other penalty
21 provided by law, of fifty dollars (\$50) for initial violations for each
22 underpaid employee for each pay period for which the employee was
23 underpaid and one hundred dollars (\$100) for each subsequent violation for
24 each underpaid employee for each pay period for which the employee was
25 underpaid.

26 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d),
27 DEFENDANTS are subject to a civil penalty of five hundred dollars
28 (\$500).

1 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be
2 paid to any employee a wage less than the minimum fixed by an order of
3 the commission, shall be subject to a civil penalty as follows: for any initial
4 violation that is intentionally committed, one hundred dollars (\$100) for
5 each underpaid employee for each pay period for which the employee is
6 underpaid; and for each subsequent violation of the same offense, two
7 hundred fifty dollars (\$250) for each underpaid employee for each pay
8 period for which the employee is underpaid regardless of whether the
9 initial violation was intentionally committed.

10 38. Labor Code § 2699(f) provides that for all Labor Code violations for which a civil
11 penalty is not specifically provided, the following civil penalties are established: one hundred
12 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
13 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.
14 PLAINTIFF seeks such civil penalties under Labor Code § 2699(f) for DEFENDANTS'
15 violations of Labor Code provisions for which a civil penalty is not specifically provided,
16 including but not limited to Labor Code §§ 201, 202, 203, 204, 226.7, 1194, 1197, 1198, and
17 2802.

18 39. PLAINTIFF additionally seeks reasonable attorney's fees and costs pursuant to
19 Labor Code § 2966(g)(1).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF, individually and on behalf of all other aggrieved employees,
22 respectfully prays for relief against DEFENDANTS, and each of them, as follows:

23 1. For civil penalties according to proof, and all penalties authorized by the Labor
24 Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);

25 2. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, and 2802,
26 California Civil Code §§ 3287 and 3288 and/or any other applicable provision providing for pre-
27 judgment interest;

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1 3. For reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1)
2 and/or any other applicable provisions providing for attorney's fees and costs; and

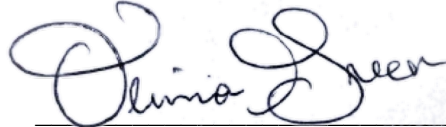
3 4. For such further relief that the Court may deem just and proper.
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5 DATED: July 27, 2021

Respectfully submitted,

6 **MATERN LAW GROUP, PC**

7
8 By:



9 MATTHEW J. MATERN

LAUNA ADOLPH

OLIVIA GREEN

10 Attorneys for Plaintiff KIMBERLY HEGEMIER,
11 individually and on behalf of all other aggrieved
12 employees
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1 **DEMAND FOR JURY TRIAL**

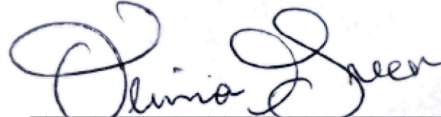
2 PLAINTIFF, individually and on behalf of all other aggrieved employees, hereby
3 demands a trial by jury on all issues so triable.

4
5 DATED: July 27, 2021

Respectfully submitted,

6 **MATERN LAW GROUP, PC**

7
8 By:



9 MATTHEW J. MATERN

LAUNA ADOLPH

OLIVIA GREEN

10 Attorneys for Plaintiff KIMBERLY HEGEMIER,
11 individually and on behalf of all other aggrieved
12 employees

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to this action. My business address is 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266.

On **July 27, 2021**, I served the following document or documents:

FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

☒ **By e-mail or electronic transmission.** I caused the documents to be sent to the person at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Andrew C. Crane acrane@fisherphillips.com Mark Jacobs mjacobs@fisherphillips.com Yvonne Bromley bromley@fisherphillips.com Fisher & Phillips LLP 2050 Main Street, Suite 1000 Irvine, CA 92614	Attorneys for Defendants A Better Life Recovery, LLC
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **July 27, 2021** at Downey, California.

Cathy Lozano
Type or Print Name


Signature