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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Carlos Terriguez, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – NORTH COUNTY DIVISION

KIMBERLY FUDGE, and on behalf of other
aggrieved employees and the state of
California,

Plaintiffs,

v.

SOAP MAT, LLC a California Limited
Liability Company; LAURA ROSSI, and;
DOES 1-100, inclusive,

Defendants.

Case No.: 37-2021-00027209-CU-OE-NC

FIRST AMENDED COMPLAINT

1. FAILURE TO PAY WAGES
2. FAILURE TO PAY OVERTIME WAGES
3. FAILURE TO PROVIDE MEAL PERIODS
4. FAILURE TO PROVIDE REST PERIODS
5. PAY STUB & TIME RECORD VIOLATIONS
6. WAITING TIME PENALTIES
7. UNFAIR BUSINESS PRACTICES
8. RETALIATION
9. FAILURE TO ACCOMMODATE
10. DISABILITY DISCRIMINATION
11. VIOLATION OF PUBLIC POLICY
12. LABOR CODE SECTION 2699 PAGA CLAIMS

Complaint Filed: June 23, 2021

Judge: Blaine K. Bowman

Department: N-31

Plaintiff KIMBERLY FUDGE (“FUDGE” or “Plaintiff”) by and through her attorney
of record, bring this action individually, and intends to do so on behalf of other aggrieved
employees and the state of California pursuant to California Labor Code section 2699 et. seq.,
asserting the below claims against Defendants SOAP MAT, LLC (“LLC”), LAURA ROSSI
(“ROSSI”) and; DOES 1-100, inclusive (“Defendants”, collectively), and alleges as follows:

JURISDICTION

1. This action arises out of acts, representations and events occurring within the jurisdiction of the County of San Diego and the San Diego Judicial District – North County Division

2. FUDGE is, and at all times mentioned herein was, an individual residing in Escondido, California, within the County of San Diego.

3. LLC, at all times mentioned herein, was a business existing under the laws of the State of California, doing business in Oceanside, California, within San Diego County. FUDGE is informed and believes that LAURA ROSSI at all times mentioned herein resided and conducted business in the state of California, County of San Diego.

4. Whenever in this Complaint reference is made to any act, deed, or conduct of LLC, the allegation means that Defendant engaged in the act, deed, or conduct by or through one or more of its officers, directors, agents, employees, or representatives, who were actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of LLC.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants sued herein as DOES 1-100, inclusive and therefore sues said Defendants (the “Doe Defendants”) by such fictitious names. FUDGE will amend this Complaint to plead the true names and capacities of the Doe Defendants at such time as the identities of the Doe Defendants have been ascertained.

6. FUDGE is informed and believes that Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each other; that performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Defendants are liable to Plaintiffs to the extent of the liability of the Defendants as alleged herein.

7. FUDGE is further informed and believes that at all times herein material, Defendants were completely dominated and controlled by ROSSI and unknown individual Doe

1 Defendants and each was the alter ego of the other in a single enterprise. At those times, a unity
2 of interest and ownership between and entity Doe Defendants on the one hand, and ROSSI and
3 unknown individual Doe Defendants on the other hand existed such that the separate
4 personalities of these entities did not in reality exist. Additionally, Plaintiffs would suffer an
5 inequitable harm if the actions of LLC and entity Doe Defendants were not treated as the acts of
6 all Defendants. FUDGE is further informed and believes that at all times relevant to this action
7 LLC and business entity Doe Defendants, *inter alia*, failed to observe the requisite corporate
8 formalities, was inadequately capitalized, and its ownership and control were inappropriately
9 concentrated in LLC and unknown business entity Doe Defendants.

10 8. FUDGE is further informed and believes that at all times herein material, each
11 defendant, was completely dominated and controlled by its co-defendants and each was the alter
12 ego of the other. Whenever and wherever reference is made in this operative Complaint to any
13 conduct by Defendants, such allegations and references shall also be deemed to mean the
14 conduct of each of the Defendants, acting individually, jointly and severally. Whenever and
15 wherever reference is made to individuals who are not named as defendants in this Complaint,
16 but were employees or agents of, such individuals at all relevant times acted on behalf of
17 Defendants named in this Complaint within the scope of their respective employments.

18 9. Whenever and wherever reference is made in this Complaint to any conduct by a
19 defendant or Defendants, such allegations and references shall also be deemed to mean the
20 conduct of each of the Defendants, acting individually, jointly and severally. Whenever and
21 wherever reference is made to individuals who are not named as defendants in this Complaint,
22 but were employees or agents of, such individuals at all relevant times acted on behalf of
23 Defendants named in this Complaint within the scope of their respective employments.

24 **GENERAL ALLEGATIONS**

25 10. Defendants operate an opiate addiction treatment clinic office called "SOAP
26 MAT, LLC" ("LLC") in the city of Oceanside, California. Defendants hired Plaintiff FUDGE,
27 as non exempt "counselor" in 2016. ROSSI is and at all relevant times was a managing agent
28 for LLC because she is an owner, chief executive officer, and director of the LLC; and she

1 personally managed and directed all of the LLC's labor policies and practices for Plaintiffs. At
2 all relevant times Defendants employed approximately 25 or more other aggrieved employees
3 during the relevant time period, some of whom had the had the same job titles and duties as
4 FUDGE. FUDGE is informed and believes all of Defendants' current and former employees
5 are non-exempt aggrieved employees.

6 11. Defendants intentionally failed to pay FUDGE and other aggrieved employees
7 for: all hours worked, earned vacation time, missed/unprovided meal periods and rest period
8 (premiums). Defendants also failed to provide FUDGE and other aggrieved employees with
9 complete and accurate wage statements containing the total hours worked, gross wages
10 (including accrued vacation time) earned, applicable pay rates, etc. Defendants also failed to
11 keep compliant records and, falsified time records to the detriment of FUDGE and other
12 aggrieved employees.

13 12. As a result of Defendants' unlawful labor policies and practices including, but
14 not limited to, intentionally failing to timely pay Plaintiffs all earned wages, Defendants also
15 willfully failed to pay Plaintiffs, whom Defendants no longer employ, all earned wages at the
16 time Defendants terminated their employment or within 72 hours of quitting. Further, FUDGE
17 is informed and believes that Defendants did not pay all accrued paid time off or paid vacation
18 time when FUDGE's employment ended, and FUDGE is informed and believes that Defendants
19 implemented this unlawful policy and practice with other Plaintiffs.

20 13. Defendants' violations were all knowing and willful in disregard of the Labor
21 Code and Industrial Welfare Commission ("IWC") Orders. Accordingly, Plaintiffs are entitled
22 to recovery of civil penalties pursuant to various regulations and statutes including, but not
23 limited to, IWC Order 4-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections
24 including, but not limited to, sections 7, 98, 98.6, 200, 201, 202, 203, 204, 210, 212, 216, 218.6,
25 221, 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 232.5, 246, 256, 351, 500, 510, 512, 516,
26 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1,
27 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al.

1 14. FUDGE intends to meet the Private Attorneys General Act ("PAGA") notice
2 requirement with the Labor and Workforce Development Agency ("LWDA") through the filing
3 of a PAGA notice and sending copies to all named Defendants via certified mail. After the
4 required 65 days have passed. Plaintiff intends to amend the Complaint to add the associated
5 PAGA claims

6 15. On February 11, 2021, FUDGE suffered a significant injury to her knee which
7 was ultimately diagnosed as a torn meniscus and torn MCL (medical collateral ligament),
8 requiring surgery. Defendants failed to provide her with information regarding worker's
9 compensation benefits until after FUDGE sought independent treatment of her injury.
10 Eventually, FUDGE initiated a worker's compensation claim related to her injury which is *not*
11 the basis for any of the claims asserted in this complaint.

12 16. On or about February 12, 2021, FUDGE informed Defendants that she injured
13 her knee. Due to excessive swelling and pain, FUDGE couldn't walk, so she took two days off
14 from work (March 2nd and March 3rd, 2021). On March 3rd, the CFO, Jeremy Leahy telephoned
15 FUDGE and interrogated her about why she was not at work.

16 17. On March 12, 2021, FUDGE's treating medical care provider advised her to stay
17 off work until she could start physical therapy for her work injury. FUDGE advised her
18 employer of this request.

19 18. On March 18, 2021, for the first time in her four and a half years of employment
20 by SOAP MAT, LLC Plaintiff was reprimanded for her job performance. "Write-ups" of
21 employees was extremely rare at LLC. FUDGE disputed the purported basis for the
22 disciplinary action taken against her and believes it was a pretextual excuse for termination of
23 her employment.

24 19. In fact, on March 22, 2021, Defendants terminated FUDGE's employment
25 without explanation despite FUDGE's requests for a reason for the decision to terminate her
26 employment. FUDGE was handed her purse and coffee cup and denied an opportunity to clean
27 out her desk. She was escorted from the clinic by security. FUDGE is informed and believes
28 that Defendants terminated her employment because of her disability, use of some of her

1 accrued vacation time due to her disability and requested accommodation for her disability
2 when she returned to work. Defendants refused to accommodate FUDGE's disability by, among
3 other things, failing to provide her time off for treatment and recovery.

4 20. FUDGE has exhausted administrative remedies with the Department of Fair
5 Employment and Housing ("DFEH") and has obtained a right-to-sue letter from the DFEH. A
6 copy of the right-to-sue letter is attached hereto as Exhibit 1.

7 **FIRST CAUSE OF ACTION**

8 **(Failure to Pay Wages -Against LLC Only)**

9 21. FUDGE re-alleges and incorporates herein by reference all paragraphs outside
10 this section as though fully set forth herein.

11 22. Pursuant to Labor Code section 200, "wages" includes all amounts for labor
12 performed by employees of every description, whether the amount is fixed or ascertained by the
13 standard time, task, piece, commission basis, or other method of calculation. Under California
14 law through Minimum Wage Order MW-2016, Minimum Wage Order MW-2019, and Labor
15 Code section 1182.12, every employer with 25 employees or more shall pay each employee
16 wages not less than \$10.00 per hour beginning January 1, 2017; not less than \$10.50 per hour
17 beginning January 1, 2018; not less than \$11.00 per hour beginning January 1, 2019; not less
18 than \$12.00 per hour beginning January 1, 2020; not less than \$13.00 per hour beginning
19 January 1, 2020, and; not less than \$14.00 per hour beginning January 1, 2021. Pursuant to
20 Labor Code section 1197, payment of a wage less than the minimum wage as delineated by the
21 commission is unlawful. Pursuant to Labor Code sections 98, 204, 218.5, 218.6, 1194, an
22 employee has a right to recover all unpaid wages from an employer. Labor Code section 227.3
23 does not allow an employer to divest an employee of earned vacation time and all earned
24 vacation time must be paid upon termination. Defendants failed to pay FUDGE and employees
25 for all hours worked including overtime hours and accrued vacation time during the relevant
26 time-period in question.

27 23. Labor Code section 1194, provides that, "...any employee receiving less than the
28 legal minimum wage or the legal overtime compensation applicable to the employee is entitled

1 to recover in a civil action the unpaid balance of this minimum wage or overtime compensation,
2 including interest thereon, reasonable attorney's fees, and costs of suit." Pursuant to Labor
3 Code section 1194.2, "... an employee shall be entitled to recover liquidated damages in an
4 amount equal to the wages unlawfully unpaid and interest thereon." Labor Code section 1197.1
5 specifically states, in part, as follows: "Any employer or other person acting either individually
6 or as an officer, agent, or employee of another person who pays or causes to be paid to any
7 employee a wage less than the minimum fixed by an order of the commission shall be subject to
8 a civil penalty, restitution of wages, [and] liquidated damages payable to the employee..."

9 **SECOND CAUSE OF ACTION**

10 **(Failure to Pay Overtime Wages – Against LLC Only)**

11 24. FUDGE re-alleges and incorporates herein by reference all paragraphs outside
12 this section as though fully set forth herein.

13 25. Pursuant to the applicable IWC Order 2001, section 3(A) and Labor Code
14 sections 200, 500, 510, and 1198, Defendants were required to compensate FUDGE for all
15 overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours
16 worked in excess of eight (8) hours in one workday and forty (40) hours in any one workweek,
17 and for the first eight (8) hours on the seventh consecutive workday in any one workweek; with
18 double (2) time after eight (8) hours on the seventh day of any workweek, or after twelve (12)
19 hours in any workday.

20 26. For the relevant claim periods for FUDGE, Defendants failed to compensate
21 FUDGE with overtime pay and rates for overtime hours worked as required by the
22 aforementioned labor regulations. FUDGE is entitled to overtime rate compensation for
23 overtime work performed during the course of FUDGE's employment for Defendants which
24 Defendants never paid.

25 27. Accordingly, pursuant to Labor Code sections 201-204, 210, 218.6, 226, 510,
26 558, 1194, 1194.2, Civil Code section 3289, and the IWC Orders, FUDGE, is entitled to
27 recover: penalties, the unpaid balance of hourly pay owed, overtime compensation, interest,
28 penalties, attorneys' fees, and costs of suit. Defendants are further subject to criminal penalties

1 pursuant to Labor Code sections 215 and 1199.

2 **THIRD CAUSE OF ACTION**

3 **(Failure to Provide Meal Periods – Against LLC Only)**

4 28. FUDGE re-alleges and incorporates herein by reference all paragraphs outside
5 this section as though fully set forth herein.

6 29. Pursuant to California Labor Code sections 226.7 and 512, and IWC Order 4-
7 2001, section 11, duty-free meal periods of no less than 30 minutes are required for all non-
8 exempt employees who work more than five (5) hours in a work period per workday, except
9 that if the employee's total work period per workday is no more than six (6) hours, the meal
10 period may be waived by mutual consent of the employer and employee. An employer may not
11 employ an employee for a work period of more than 10 hours per workday without providing
12 the employee with a second meal period of not less than 30 minutes, except that if the total
13 hours worked is no more than 12 hours, the second meal period may be waived by mutual
14 consent of the employer and the employee, but only if the first meal period was not waived.
15 Time records of meal breaks must be kept except that meal periods during which operations
16 cease need not be recorded. However, an employer who fails to provide duty-free meal periods
17 must pay the employee an additional one (1) hour of regular pay for each workday in which a
18 required duty-free meal period is not provided.

19 30. Defendants failed to provide FUDGE duty-free meal periods during work
20 periods lasting more than five (5) hours; and failed to record meal periods. Thus, Defendants
21 failed to provide compliant meal periods to FUDGE in direct violation of California Labor Code
22 sections cited herein. Further, Defendants also failed to pay FUDGE meal period premiums for
23 missed meal periods.

24 31. Accordingly, FUDGE is entitled to recover damages, interest, penalties,
25 attorneys' fees, and costs available pursuant to Labor Code sections 226.7 and 512, Civil Code
26 section 3289, and the IWC Orders. Defendants are further subject to criminal penalties pursuant
27 to Labor Code sections 215 and 1199.

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1 at the respective plants or establishments. These records shall be kept in accordance with rules
2 established for this purpose by the commission, but in any case, shall be kept on file for not less
3 than three years.”

4 39. Labor Code section 1174.5 provides, in pertinent part, as follows: “Any person
5 employing labor who willfully fails to maintain the records required by subdivision... (d) of
6 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

7 40. LLC intentionally falsified, manipulated and altered time records of FUDGE and
8 other aggrieved employees resulting in records which showed less hours than those actually
9 worked by FUDGE and other aggrieved employees, for which a civil penalty of \$500 should be
10 assessed against Defendant.

11 41. Labor Code section 226(a) states in pertinent part, as follows: “[a]n employer,
12 semimonthly or at the time of each payment of wages, shall furnish to his or her employee ... an
13 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked
14 by the employee ..., (5) net wages earned ..., and (9) all applicable hourly rates in effect during
15 the pay period and the corresponding number of hours worked at each hourly rate by the
16 employee...” Labor Code section 226 also requires employers to keep a copy of the wage
17 statements. Labor Code section 246 requires employers to include the amount of paid sick
18 leave available in the wage statement or in a separate writing on pay dates.

19 42. Defendants failed to provide FUDGE compliant wage statements at the time
20 wages were paid or semimonthly. The wage statements Defendants provided to FUDGE were
21 inaccurate and incomplete due to Defendants’ unlawful policies and practices including, but not
22 limited to, not paying all earned wages for all hours worked at the applicable hourly rates such
23 as minimum wage or overtime rates, not tracking and paying all hours worked, and not
24 indicating gross earned wages among other inadequacies.

25 43. As a result, pursuant to Labor Code section 226(e)(1), FUDGE is entitled to
26 recover from Defendants, “the greater of all actual damages or fifty dollars (\$50) for the initial
27 pay period in which a violation occurs and one hundred dollars (\$100) per employee for each
28 violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand

1 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.”

2 **SIXTH CAUSE OF ACTION**

3 **(Waiting Time Penalties – Against LLC Only)**

4 44. FUDGE re-alleges and incorporates herein by reference all paragraphs outside
5 this section as though fully set forth herein.

6 45. Pursuant to Labor Code section 203(a), “[i]f an employer willfully fails to pay
7 any wages of an employee who is discharged or who quits, the wages of the employee shall
8 continue as a penalty from the due date thereof at the same rate until paid or until an action
9 therefor is commenced; but the wages shall not continue for more than 30 days.” Labor Code
10 section 201 requires that, “[i]f an employer discharges an employee, the wages earned and
11 unpaid at the time of discharge are due and payable immediately.”

12 46. On March 22, 2021, Defendants were obligated to pay FUDGE all earned and
13 unpaid wages described throughout this operative Complaint when Defendants terminated
14 FUDGE. Defendants did not pay FUDGE all of the earned unpaid wages described throughout
15 this operative Complaint. More than 30 days have passed, and Defendants continue to fail to
16 pay these earned unpaid wages.

17 47. Defendants committed the acts stated herein knowingly and willfully, thus
18 FUDGE is entitled to 30 days of additional daily wages as a waiting time penalty as provided by
19 Labor Code sections 201, 202, 203, and 558.1, which Defendants also have not paid to FUDGE
20 yet.

21 **SEVENTH CAUSE OF ACTION**

22 **(Unfair Business Practices – Against LLC Only)**

23 48. FUDGE re-alleges and incorporates herein by reference all paragraphs outside
24 this section as though fully set forth herein.

25 49. The acts, omissions, and practices of Defendants as alleged throughout this
26 Complaint for violations of the Labor Code constitute unlawful and unfair business acts and
27 practices within the meaning of California Business & Professions Code sections 17200, et. seq.

28 50. FUDGE is informed and believes Defendants have engaged in “unlawful”

1 business acts and practices with all Plaintiffs, including FUDGE, through Defendants' policies
2 and practices of failure to pay wages earned, failure to pay overtime at applicable rates, failure
3 to pay wages timely, failure to provide meal and rest periods, failure to pay a one hour wage
4 premium for each workday with a missed meal period and for each workday with a missed rest
5 period, failure to provide compliant wage statements, falsification of time records and failure to
6 pay all earned unpaid wages due termination. These failures are all in violation of the statutes
7 and regulations referenced throughout this Complaint.

8 51. Defendants' "unfair" business acts and practices, alleged above, caused harm to
9 Plaintiffs which outweighs the utility of such conduct. Such conduct offends public policy, is
10 unethical and dishonest, caused and continues to cause substantial injury to Plaintiffs, and
11 provides Defendants with an unfair competitive advantage over those employers that abide by
12 the law, properly pay earned wages at the required minimum rates timely, properly provide
13 required meal and rest periods or pay wage premiums in lieu thereof, properly provide
14 compliant wage statements, and properly indemnify employees for all necessary expenditures
15 and losses incurred during the course of employment.

16 52. As a result of the conduct described above, Defendants have been and will be
17 unjustly enriched at the expense of Plaintiffs whom Defendants employed. Specifically,
18 Defendants have been unjustly enriched by the retention of a significant sum of dollars in wages
19 earned and wrongfully withheld from Plaintiffs.

20 53. Pursuant to section 17203 of the California Business & Professions Code,
21 FUDGE requests that this Court order Defendants to disgorge all ill-gotten gains and award
22 Plaintiffs full restitution of all monies wrongfully acquired by Defendants by such "unfair"
23 business act and practices as outlined herein above, plus interest and attorneys' fees pursuant to,
24 *inter alia*, section 1021.5 of the California Code of Civil Procedure. FUDGE additionally
25 request that such funds be impounded by the Court or that an asset freeze or constructive trust
26 be imposed upon such revenues and profits to avoid dissipation or fraudulent transfers or
27 concealment of such monies by Defendants. Plaintiffs may be irreparably harmed or denied an
28 effective and complete remedy if such an order is not granted.

1 54. Pursuant to section 17203 of the California Business & Professions Code,
2 FUDGE further seeks an order of this Court for equitable or injunctive relief in the form of
3 requiring Defendants to correct their unfair business acts and practices by way of properly
4 paying all earned wages timely; providing meal and rest periods when required by law; paying
5 one hour of additional wages as a premium for every workday with an unlawfully missed meal
6 period and every workday with a missed rest period; and indemnifying all business expenses
7 incurred by employees for all of Defendants employees going forward.

8 55. Accordingly, Plaintiff seeks injunctive relief, restitution, damages, interest,
9 penalties, attorney fees, and costs available pursuant to the Labor Code, Business & Professions
10 Code, and IWC Orders.

11 **EIGHTH CAUSE OF ACTION**

12 **(Retaliation – Against LLC Only)**

13 56. FUDGE re-alleges and incorporates herein by reference all paragraphs outside
14 this section as though fully set forth herein.

15 57. Government Code section 12940(m)(2) provides that it is unlawful, “[f]or an
16 employer or other entity covered by this part to, in addition to the employee protections
17 provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for
18 requesting accommodation under this subdivision, regardless of whether the request was
19 granted.”

20 58. On or about February 12, 2021, FUDGE informed Defendants that she injured
21 her knee. Due to excessive swelling and pain, FUDGE couldn’t walk, so she took two days off
22 from work (March 2nd and March 3rd, 2021). On March 3rd, the CFO, Jeremy Leahy telephoned
23 FUDGE and interrogated her about why she was not at work. On March 12, 2021, FUDGE’s
24 treating medical care provider advised her to stay off work until she could start physical therapy
25 for her work injury. FUDGE advised her employer of this request.

26 59. Defendants told FUDGE for the first time, on March 18, 2021, that there was a
27 performance issue. Four days later (March 22nd) Defendants terminated her employment. On
28 March 30, 2021, FUDGE was diagnosed with a torn meniscus and medial collateral ligament.

1 60. As a direct, foreseeable and proximate result of Defendants' wrongful acts,
2 FUDGE has lost earnings, and suffered the expected past severe humiliation, past
3 embarrassment, past mental and emotional distress, and past discomfort, all to her detriment, in
4 an amount to be established according to proof at trial.

5 61. FUDGE is informed and believes that in taking the actions alleged herein,
6 Defendants acted with malice, fraud and oppression, and in reckless disregard of FUDGE's
7 rights to enjoy protections from being retaliated against for requesting reasonable
8 accommodations for disabilities.

9 62. Accordingly, FUDGE seeks reinstatement, other injunctive relief, declaratory
10 relief, compensatory and punitive damages, interest, attorney fees and costs in an amount to be
11 proven at trial.

12 **NINTH CAUSE OF ACTION**

13 **(Failure to Accommodate -Against LLC Only)**

14 63. FUDGE re-alleges and incorporates herein by reference all paragraphs outside
15 this section as though fully set forth herein.

16 64. Government Code section 12940(m)(1) provides that it is unlawful, "[f]or an
17 employer or other entity covered by this part to fail to make reasonable accommodation for the
18 known physical or mental disability of an applicant or employee."

19 65. As a direct, foreseeable and proximate result of Defendants' wrongful acts
20 described throughout the complaint, FUDGE has lost earnings, and suffered the expected past
21 severe humiliation, past embarrassment, past mental and emotional distress, and past
22 discomfort, all to her detriment, in an amount to be established according to proof at trial.

23 66. FUDGE is informed and believes that in taking the actions alleged herein,
24 Defendants acted with malice, fraud and oppression, and in reckless disregard of FUDGE's
25 rights to request and receive reasonable accommodations for her orthopedic injuries sustained
26 on the job.

27 67. Accordingly, FUDGE seeks reinstatement, other injunctive relief, declaratory
28 relief, compensatory and punitive damages, interest, attorney fees and costs, pursuant to

1 Government Code section 12965 (b).

2 **TENTH CAUSE OF ACTION**

3 **(Disability Discrimination – Against LLC Only)**

4 68. FUDGE re-alleges and incorporates herein by reference all paragraphs outside
5 this section as though fully set forth herein.

6 69. Government Code section 12940(a) provides that it is unlawful for an employer
7 to refuse to hire or employ any person or refuse to select any person for a training program
8 leading to employment, or discharge a person from employment or from a training program
9 leading to employment, or discriminate against any person in compensation or in terms,
10 conditions, or privileges of employment on the basis of disability.

11 70. As a direct, foreseeable and proximate result of Defendants' wrongful acts
12 described throughout this complaint, FUDGE has lost earnings, and suffered the expected past
13 severe humiliation, past embarrassment, past mental and emotional distress, and past
14 discomfort, all to her detriment, in an amount to be established according to proof at trial.

15 71. FUDGE is informed and believes that in taking the actions alleged herein,
16 Defendants acted with malice, fraud and oppression, and in reckless disregard of FUDGE's
17 rights to enjoy protections from being discriminated against on the basis of disability.

18 72. Accordingly, FUDGE seeks reinstatement, other injunctive relief, declaratory
19 relief, compensatory and punitive damages, interest, attorney fees and costs, pursuant to
20 Government Code section 12965 (b).

21 **ELEVENTH CAUSE OF ACTION**

22 **(Wrongful Termination in Violation of Public Policy – Against LLC Only)**

23 73. FUDGE re-alleges and incorporates herein by reference all paragraphs outside
24 this section as though fully set forth herein.

25 74. Government Code section 12940(m)(2) provides that it is unlawful, "[f]or an
26 employer or other entity covered by this part to, in addition to the employee protections
27 provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for
28 requesting accommodation under this subdivision, regardless of whether the request was

1 granted.”

2 75. Government Code section 12940(a) provides that it is unlawful for an employer
3 to refuse to hire or employ any person or refuse to select any person for a training program
4 leading to employment, or discharge a person from employment or from a training program
5 leading to employment, or discriminate against any person in compensation or in terms,
6 conditions, or privileges of employment on the basis of disability.

7 76. The above listed statutes establish California’s public policies prohibiting
8 retaliation and discrimination against employees because employees disclose violations of the
9 law or request reasonable accommodations for disabilities; and prohibiting discrimination based
10 on disability.

11 77. As a direct, foreseeable and proximate result of Defendants’ wrongful acts
12 described throughout the complaint, FUDGE has lost earnings, and suffered the expected past
13 severe humiliation, past embarrassment, past mental and emotional distress, and past
14 discomfort, all to her detriment, in an amount to be established according to proof at trial.

15 78. FUDGE is informed and believes that in taking the actions alleged herein,
16 Defendants acted with malice, fraud and oppression, and in reckless disregard of FUDGE’s
17 rights to disclose information which revealed violations of various laws and regulations, enjoy
18 protections from being discriminated against on the basis of disability, and be free from
19 retaliation because she requested reasonable accommodations for her disability.

20 79. Accordingly, FUDGE seeks reinstatement, other injunctive relief, declaratory
21 relief, compensatory and punitive damages, interest, attorney fees and costs, pursuant to
22 Government Code section 12965 (b).

23 **TWELFTH CAUSE OF ACTION**

24 **(Labor Code § 2699 Claims Against LLC and ROSSI)**

25 80. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
26 this section as though fully set forth herein.

27 81. On June 29, 2021, pursuant to Labor Code sections 2699 (a) and 2699.3, Plaintiff
28 provided notice, on behalf of other aggrieved employees and the State of California in writing,

1 by electronic submission, to the California Labor Workforce Development Agency ("LWDA")
2 and, by certified mail and regular mail, to Defendants, that Plaintiff intended to assert PAGA
3 claims pursuant to section 2699 (a) on her own behalf, and in a representative capacity on behalf
4 of other current or former aggrieved employees, for Defendants' violations of specified
5 provisions of the California Labor Code. A true and correct copy of the notice is attached hereto
6 as Exhibit "1" and thereby incorporated by reference herein.

7 82. The LWDA failed to respond to Plaintiff's notice within the statutory period of
8 sixty-five (65) days from the electronic submission date of September 2, 2021, and, as a result,
9 Plaintiff has perfected her right to sue Defendants, and each of them, in a civil action, on behalf
10 of other aggrieved employees and the state of California LWDA to collect statutory penalties,
11 pursuant to Labor Code section 2699.3(a)(2)(A)(1).

12 83. As a result of the acts alleged above, Plaintiff brings this action on her own
13 behalf, and in her representative capacity on behalf of other current or former aggrieved
14 employees, for penalties pursuant to California Labor Code section 2699 for Defendants'
15 violations of the enumerated Labor Code sections alleged in throughout this pleading including,
16 but not limited to sections 201, 202, 203, 203.1, 204, 210, 218.5, 2018.6, 226, 226.3, 226.6,
17 226.7, 510, 512, 552, 558, 558.1, 1174, 1174.5, 1175, 1194, 1197.1, 1198, 1198.5, 1199 and
18 2751.

19 84. Labor Code section 558 states that, "[a]ny employer or other person acting on
20 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
21 provision regulating hours and days of work in any order of the Industrial Welfare Commission
22 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
23 each underpaid employee for each pay period for which the employee was underpaid in addition
24 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
25 hundred dollars (\$100) for each underpaid employee for each pay period for which the
26 employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3)
27 Wages recovered pursuant to this section shall be paid to the affected employee." The Section
28 further states that "[t]he civil penalties provided for in this section are in addition to any other

1 civil or criminal penalty provided by law.”

2 85. Labor Code section 558.1 (a) also states that, “[a]ny employer or other person
3 acting on behalf of an employer, who violates, or causes to be violated, any provision regulating
4 minimum wages or hours and days of work in any order of the Industrial Welfare Commission,
5 or violates, or causes to be violated, sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
6 held liable as the employer for such violation.”

7 86. ROSSI was an employee and/or person acting on behalf of LLC violated, or
8 caused to be violated, Labor Code Sections and Wage Orders including, but not limited to, those
9 requiring timely payment of all wages owed, payment of overtime, payment of wages due at the
10 time of separation, delivery of pay stubs, production of documents requested, maintenance of
11 time records, alleged herein.

12 87. Accordingly, Plaintiff, on her own behalf, other aggrieved employees, and the
13 state of California (specifically, the California Labor & Workforce Development Agency, aka
14 the “LWDA”) are entitled to personally recover against Defendants, and all of them, such
15 penalties as set forth in Labor Code section 558, 558.1 , as delineated above, and for amounts
16 owed under Labor Code sections 203, 203.1, 226, 226.3, 226.6, 226.7, 1194, and 2802, alleged
17 herein, pursuant to Labor Code section 558.1.

18 88. It should also be noted that Labor Code section 1197.1 specifically states, in part,
19 as follows: "Any employer or other person acting either individually or as an officer, agent, or
20 employee of another person, who pays or causes to be paid to any employee a wage less than
21 the minimum fixed by an order of the commission shall be subject to a civil penalty and
22 restitution of wages payable to the employee, as follows: (1) For any initial violation that is
23 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
24 period for which the employee is underpaid. This amount shall be in addition to an amount
25 sufficient to recover underpaid wages. (2) For each subsequent violation for the same specific
26 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
27 which the employee is underpaid regardless of whether the initial violation is intentionally
28 committed. This amount shall be in addition to an amount sufficient to recover underpaid

1 wages..." ROSSI was a person acting individually or as an officer, agent, or employee of an
2 entity Defendant who caused the Plaintiff and other aggrieved employees to be paid less than
3 the statutorily required minimum wage as described in this First Amended Complaint.

4 Accordingly, she is subject to individual liability pursuant to Labor Code section 1197.1. The
5 same holds true pursuant to Labor Code section 558, as described above.

6 89. Pursuant to California Labor Code section 2699, Plaintiff and other aggrieved
7 employees are entitled to be awarded twenty-five percent (25%) of all penalties referenced
8 herein and due under California law, in addition to interest, attorneys' fees, and costs.

9 90. The Court shall award seventy-five percent (75%) of all penalties referenced
10 herein and due under California law to the State of California.

11 91. Plaintiff, on her own behalf and other aggrieved employees and the state of
12 California, therefore seeks to recover from Defendants, and each of them, allowable PAGA
13 penalties, costs, attorneys' fees, and interest, in an amount according to proof at time of trial, in
14 accordance with Labor Code sections 2699, et seq., and related statutes.

15 **PRAYER**

16 WHEREFORE, Plaintiff prays for judgment against Defendants in an amount exceeding
17 \$25,000 as follows:

18 1. Economic damages, non-economic damages and premiums as set forth
19 throughout this pleading, according to proof;

20 2. Penalties, liquidated damages and compensation pursuant to Labor Code sections
21 201, 201.5, 201.7, 202, 203, 204, 206, 206.5, 209, 210, 212, 218, 222-224, 226, 226.3, 227,
22 227.3, 226.7, 500, 510, 512, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197.1, 1197.5, 1198, and
23 2699, et. seq., etc.;

24 3. Interest pursuant to all applicable statutes, including, but not limited to, Labor
25 Code section 218.6 and Civil Code section 3289;

26 4. Restitution and/or disgorgement pursuant to Business & Professions Code
27
28

1 sections 17200, et seq. and Labor Code section 1197.1;

2 5. Attorneys' fees and costs pursuant to all applicable statutes, including, but not
3 limited to, Labor Code sections 218.5, 226, 1194, 1102.5, 2802, 2699 et. seq., Government
4 Code section 12965 (b) and Code of Civil Procedure section 1021.5;
5

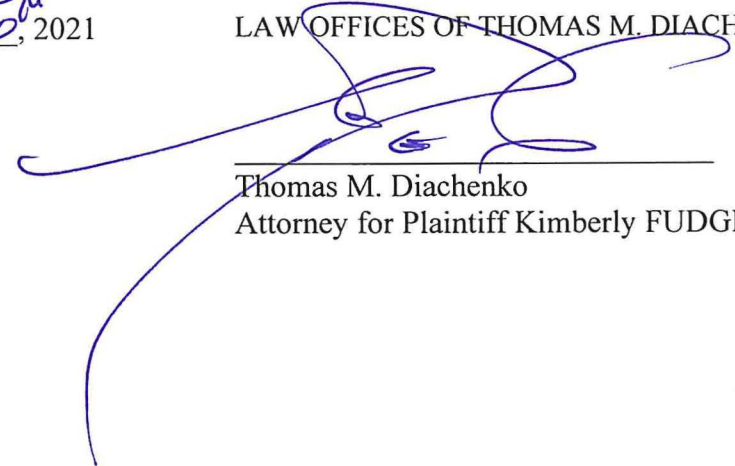
6 7. Punitive damages, and;

7 8. For such other and further and relief as the court may deem just and proper.

8
9 Date: September  10, 2021

Respectfully submitted by,

LAW OFFICES OF THOMAS M. DIACHENKO, APC



Thomas M. Diachenko
Attorney for Plaintiff Kimberly FUDGE

Exhibit 1

LAW OFFICES OF

✧ **THOMAS M. DIACHENKO, APC**

Practice Areas Include:
**Wage, Employment, Personal
Injury & Business Litigation**

E-mail: Thom@DiachenkoLaw.com

June 28, 2021

1916 Third Avenue
San Diego, California 92101
Tel: (619) 699-5870
Fax: (619) 699-5871

Refer to File No.:
03222021-05132021

Sent via electronic mail to:

**PAGA Administrator
David M. Lanier
PAGAfiling@dir.ca.gov**

***Re: LLC, LLC a California Limited Liability Company; LAURA ROSSI, an
individual and; DOES 1-100, inclusive***

Dear Mr. Lanier:

I represent Kimberly Fudge ("Plaintiff" or "FUDGE"), individually and on behalf of all other aggrieved employees. Plaintiff and the other aggrieved employees are collectively referred to hereinafter as "PAGA Plaintiffs", "Plaintiffs" or "Plaintiff and other aggrieved employees"). FUDGE is a former employee of SOAP MAT, LLC ("LLC") whose employment was terminated after she suffered a significant knee injury at work. Laura Rossi, ("ROSSI") in her various executive capacities carried out and/or ratified LLC's illegal employment practices. LLC and Rossi are also sometime hereinafter collectively referred to as "Defendants".

Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendants' various Labor Code violations and of our intent to recover statutory penalties under the Labor Code's Private Attorney General Act of 2004. Payment will be submitted concurrently with this letter through the LWDA/PAGA portal: (<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>).

The following information is based upon best information and belief available at the time of this writing.

INVOLVED ENTITIES AND INDIVIDUALS

Defendant Soap Mat, LLC (LLC) is a California limited liability company located at 3230 Waring Court, Suite A, Oceanside, California 92056. Laura Rossi (ROSSI) is an identified Manager/ Members for the LLC. ROSSI is believed to be the manager of LLC and served in various executive and director levels. This individual was responsible for making and/or ratifying all decisions relevant to the below claims. During all times relevant herein, this individual possessed and exerted decision-making power over Plaintiff's working conditions, failure to pay wages (for overtime hours worked), failure to provide compliant meal and rest

periods and/or premiums for missed or late meal and rest periods, failure to maintain required records of hours worked, failure to provide legally compliant paystubs and failure to pay all wages owed at the termination of employment.

After and in response to FUDGE's disclosure of a disability and expressed need for accommodations, Defendants retaliated and discriminated against FUDGE by terminating her employment.

GENERAL ALLEGATIONS

Defendants operate an opiate addiction treatment clinic office called "SOAP MAT, LLC" ("LLC") in the city of Oceanside, California. Defendants hired Plaintiff FUDGE, as non-exempt "counselor" in 2016. ROSSI is and at all relevant times was a managing agent for LLC because she is an owner, chief executive officer, and director of the LLC; and she personally managed and directed all of the LLC's labor policies and practices for Plaintiffs. At all relevant times Defendants employed approximately 25 or more other aggrieved employees during the relevant time period, some of whom had the had the same job titles and duties as FUDGE. FUDGE is informed and believes all of Defendants' current and former employees are non-exempt aggrieved employees.

Defendants intentionally failed to pay FUDGE and other aggrieved employees for: all hours worked, earned vacation time, missed/unprovided meal periods and rest period (premiums). Defendants also failed to provide FUDGE and other aggrieved employees with complete and accurate wage statements containing the total hours worked, gross wages (including accrued vacation time) earned, applicable pay rates, etc. Defendants also failed to keep compliant records and, falsified time records to the detriment of FUDGE and other aggrieved employees.

As a result of Defendants' unlawful labor policies and practices including, but not limited to, intentionally failing to timely pay Plaintiffs all earned wages, Defendants also willfully failed to pay Plaintiffs, whom Defendants no longer employ, all earned wages at the time Defendants terminated their employment or within 72 hours of quitting. Further, FUDGE is informed and believes that Defendants did not pay all accrued paid time off or paid vacation time when FUDGE's employment ended, and FUDGE is informed and believes that Defendants implemented this unlawful policy and practice with other Plaintiffs.

Defendants' violations were all knowing and willful in disregard of the Labor Code and Industrial Welfare Commission ("IWC") Orders. Accordingly, Plaintiffs are entitled to recovery of civil penalties pursuant to various regulations and statutes including, but not limited to, IWC Order 4-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections including, but not limited to, sections 7, 98, 98.6, 200, 201, 202, 203, 204, 210, 212, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 232.5, 246, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5,

1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al.

On February 11, 2021, FUDGE suffered a significant injury to her knee which was ultimately diagnosed as a torn meniscus and torn MCL (medical collateral ligament), requiring surgery. Defendants failed to provide her with information regarding worker's compensation benefits until after FUDGE sought independent treatment of her injury. Eventually, FUDGE initiated a worker's compensation claim related to her injury which is *not* the basis for any of the claims asserted herein.

On or about February 12, 2021, FUDGE informed Defendants that she injured her knee. Due to excessive swelling and pain, FUDGE couldn't walk, so she took two days off from work (March 2nd and March 3rd, 2021). On March 3rd, the CFO, Jeremy Leahy telephoned FUDGE and interrogated her about why she was not at work.

On March 12, 2021, FUDGE's treating medical care provider advised her to stay off work until she could start physical therapy for her work injury. FUDGE advised her employer of this request.

On March 18, 2021, for the first time in her four and a half years of employment by SOAP MAT, LLC Plaintiff was reprimanded for her job performance. "Write-ups" of employees was extremely rare at LLC. FUDGE disputed the purported basis for the disciplinary action taken against her and believes it was a pretextual excuse for termination of her employment.

In fact, on March 22, 2021, Defendants terminated FUDGE's employment without explanation despite FUDGE's requests for a reason for the decision to terminate her employment. FUDGE was handed her purse and coffee cup and denied an opportunity to clean out her desk. She was escorted from the clinic by security. FUDGE is informed and believes that Defendants terminated her employment because of her disability, use of some of her accrued vacation time due to her disability and requested accommodation for her disability when she returned to work. Defendants refused to accommodate FUDGE's disability by, among other things, failing to provide her time off for treatment and recovery.

STATUTORY VIOLATIONS

Failure to Pay Wages (Over time, premiums, liquidated damages, premiums, etc.):

Defendants are subject to PAGA penalties for the above described failure to pay and failure to timely pay all wages owed in violation of Labor Code sections 200, 201, 203, 203.1, 204, 210, 223, 221, 226.6, 226.7, 227, 227.3, 500, 510, 512, 1194 and 1198, subjecting Defendants the civil penalties in the amounts and frequencies as described and pursuant to Labor Code sections 558, 558.1, 226.6, 227, 203.1, 210, 1194.2, 1197.1, 1199 and 2699. ROSSI's personal liability lies in the plan language of these statutory provisions. For example,

pursuant to Labor Code section 1199, "[e]very employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following: (a) [r]equires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission...." (Emphasis added.) Defendants can also be held personally liable pursuant to Labor Code sections 558 and 558.1 (without having to prove alter-ego) pursuant to the applicable PAGA provisions. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809.

Pursuant to Labor Code section 200, "wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard time, task, piece, commission basis, or other method of calculation. Under California law through Minimum Wage Order MW-2016, Minimum Wage Order MW-2019, and Labor Code section 1182.12, every employer with 25 employees or more shall pay each employee wages not less than \$10.00 per hour beginning January 1, 2017; not less than \$10.50 per hour beginning January 1, 2018; not less than \$11.00 per hour beginning January 1, 2019; not less than \$12.00 per hour beginning January 1, 2020; not less than \$13.00 per hour beginning January 1, 2020, and; not less than \$14.00 per hour beginning January 1, 2021. Pursuant to Labor Code section 1197, payment of a wage less than the minimum wage as delineated by the commission is unlawful. Pursuant to Labor Code sections 98, 204, 218.5, 218.6, 1194, an employee has a right to recover all unpaid wages from an employer. Labor Code section 227.3 does not allow an employer to divest an employee of earned vacation time and all earned vacation time must be paid upon termination. Defendants failed to pay PAGA Plaintiffs for all hours worked including overtime hours and accrued vacation time during the relevant time-period in question.

Labor Code section 1194, provides that, "...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Pursuant to Labor Code section 1194.2, "... an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon." Labor Code section 1197.1 specifically states, in part, as follows: "Any employer or other person acting either individually or as an officer, agent, or employee of another person who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, [and] liquidated damages payable to the employee..."

Pursuant to the applicable IWC Order 2001, section 3(A) and Labor Code sections 200, 500, 510, and 1198, Defendants were required to compensate PAGA Plaintiffs for all overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) hours in one workday and forty (40) hours in any one workweek, and for the first eight (8) hours on the seventh consecutive workday in any one workweek; with double (2) time after eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

For the relevant claim periods for PAGA Plaintiffs, Defendants failed to compensate PAGA Plaintiffs with overtime pay and rates for overtime hours worked as required by the aforementioned labor regulations. PAGA Plaintiffs are entitled to overtime rate compensation for overtime work performed during the course of their employment for Defendants which Defendants never paid.

Accordingly, pursuant to Labor Code sections 201-204, 210, 218.6, 226, 510, 558, 1194, 1194.2, Civil Code section 3289, and the IWC Orders, PAGA Plaintiffs are entitled to recover: penalties, the unpaid balance of hourly pay owed, overtime compensation, interest, penalties, attorneys' fees, and costs of suit. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

Pursuant to California Labor Code sections 226.7 and 512, and IWC Order 4-2001, section 11, duty-free meal periods of no less than 30 minutes are required for all non-exempt employees who work more than five (5) hours in a work period per workday, except that if the employee's total work period per workday is no more than six (6) hours, the meal period may be waived by mutual consent of the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per workday without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee, but only if the first meal period was not waived. Time records of meal breaks must be kept except that meal periods during which operations cease need not be recorded. However, an employer who fails to provide duty-free meal periods must pay the employee an additional one (1) hour of regular pay for each workday in which a required duty-free meal period is not provided.

Defendants failed to provide PAGA Plaintiffs duty-free meal periods during work periods lasting more than five (5) hours; and failed to record meal periods. Thus, Defendants failed to provide compliant meal periods to PAGA Plaintiffs in direct violation of California Labor Code sections cited herein. Further, Defendants also failed to pay FUDGE meal period premiums for missed meal periods.

Accordingly, PAGA Plaintiffs are entitled to recover damages, interest, penalties, attorneys' fees, and costs available pursuant to Labor Code sections 226.7 and 512, Civil Code section 3289, and the IWC Orders. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

Pursuant to California Labor Code section 226.7 and IWC Order 4-2001, section 12, employers must also provide non-exempt employees a paid 10-minute duty-free rest period for every four (4) hours worked. Rest periods need not be recorded. An employer who fails to provide duty-free rest periods must pay the employee an additional one (1) hour of regular pay for each workday in which a duty-free rest period is not provided.

Defendants failed to provide PAGA Plaintiffs paid duty-free rest periods for every (4) hour hours worked in a workday because Defendants had a policy and practice of not providing Plaintiffs 10-minute rest periods by never even informing Plaintiffs that they even had a right to take such breaks. Defendants also did not pay PAGA Plaintiffs missed rest period wage premiums.

At all times mentioned herein, Defendants violated Labor Code section 226.7 and IWC Wage Orders section 12 by failing to allow PAGA Plaintiffs to take uninterrupted rest periods and failing to pay an additional hour of wages for each workday with a missed rest period.

Accordingly, PAGA Plaintiffs are entitled to recover damages, interest, penalties, attorneys' fees, and costs available pursuant to Labor Code sections 226.7, Civil Code section 3289, and the IWC Orders. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

Failure to Maintain Records

Pursuant to Labor Code Section 1174(d), Defendants have a legal obligation to "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments."

Defendants failed to maintain records of the PAGA Plaintiffs' hours worked which Defendants were required to keep pursuant to Labor Code Section 1174(d). Therefore, Defendants violated Labor Code Section 1174(d) by failing to collect and keep records indicating the daily hours worked by Plaintiffs and other aggrieved employees.

Pursuant to Labor Code Section 1174.5, "any person employing labor who willfully fails to maintain . . . accurate and complete records required by subdivision (d) of Section 1174 . . . shall be subject to a civil penalty of five hundred dollars (\$500)." Accordingly, Defendants are required to pay an additional \$500 per PAGA Plaintiff in penalties.

Failure to Provide Proper Pay Stubs (Wage Statements)

Defendants failed to provide the PAGA Plaintiffs with accurate pay stubs, or for that matter, any pay stubs. This failure was in clear dereliction of its duties as set forth in California Labor code sections 226 and 226.3 Labor Code section 226 states in part, that, "[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing, among other things, "(1) gross wages earned, (2) total hours worked by the employee..." Labor Code § 226 states in part as follows: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two

hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

California Labor Code section 226.3, states in pertinent part as follows: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

Defendants failed to comply with Labor Code Sections 226 and 226.3. Accordingly, Defendants are liable pursuant to Labor Code Section 226 which states that "[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

Personal liability (of ROSSI) for violations of section 226 can be found in Labor code section 226.6 which reads as follows: "Any employer who knowingly and intentionally violates the provisions of Section 226, or any officer, agent, employee, fiduciary, or other person who has the control, receipt, custody, or disposal of, or pays, the wages due any employee, and who knowingly and intentionally participates or aids in the violation of any provision of Section 226 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned not to exceed one year, or both, at the discretion of the court. That fine or imprisonment, or both, shall be in addition to any other penalty provided by law."

Waiting Time Penalties

Pursuant to Labor Code sections 201, 202 and 203, the PAGA Plaintiffs were entitled to all wages earned and unpaid at the time of discharge or within the time allotted by Labor Code sections 201 and 202.

Defendants failed to pay the PAGA Plaintiffs, when they terminated them ("their contracts"), all wages and sums owed at time of discharge, or within the time allowed by Labor Code sections 201 and 202, including, but not limited to, minimum wage, overtime, in accordance with Labor Code section 203. Defendants intentionally failed to pay PAGA Plaintiffs all wages owed to him at the time of his termination and that Defendants also failed to pay other

aggrieved employees the wages owed to them at their time of discharge from employment as well.

As a direct result, the PAGA Plaintiffs have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law. The PAGA Plaintiffs are also entitled to waiting time penalties as provided by Labor Code §§ 201, 202, 203 and civil penalties as described in Labor Code sections 558, 558.1, 226.6, 227, 203.1, 210, 1194.2, 1197.1, 1199 and 2699. Personal liability of ROSSI under Labor Code section 203, is set forth in Labor Code section 558.1.

Retaliation

California Labor Code § 1102.5 (entitled "Whistleblower Protection") prohibits an employer, or any person acting on behalf of the employer from retaliating against an employee "because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, ...if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

In addition, Labor Code section 98.6 (a), states in pertinent part as follows:

A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101)...or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

On or about February 12, 2021, FUDGE informed Defendants that she injured her knee. Due to excessive swelling and pain, FUDGE couldn't walk, so she took two days off from work (March 2nd and March 3rd, 2021). On March 3rd, the CFO, Jeremy Leahy telephoned FUDGE and interrogated her about why she was not at work. On March 12, 2021, FUDGE's treating medical care provider advised her to stay off work until she could start physical therapy for her work injury. FUDGE advised her employer of this request.

Defendants told FUDGE for the first time, on March 18, 2021, that there was a performance issue. Four days later (March 22nd) Defendants terminated her employment. On March 30, 2021, FUDGE was diagnosed with a torn meniscus and medial collateral ligament.

LAW OFFICES OF

✧ **THOMAS M. DIACHENKO, APC**

June 28, 2021

9 | Page

As such, Defendants' above described retaliatory actions were each a substantial factor in causing harm. Pursuant to California Labor Code § 98.6(b)(1), "any employee who is . . . retaliated against . . . shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer." Pursuant to California Labor Code § 1102.5(f), "in addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty, not exceeding ten thousand dollars (\$10,000) for each violation of this section." FUDGE asserts that other PAGA Plaintiffs who were subjected to the same or similar treatment are also entitled to seek said civil penalties described above via the PAGA carrying statutes as codified in Labor Code sections 2699 et. seq.

REQUEST FOR RELIEF

Accordingly, Plaintiff respectfully requests that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations pertaining to all aggrieved employees. If the LWDA declines to pursue enforcement, Plaintiff fully intends to pursue these claims for civil penalties on behalf of themselves and all other current and former aggrieved employees in a Superior Court action. Plaintiffs, through counsel, intend to bring this action as a representative action on behalf of other current or former aggrieved employees, for penalties pursuant to California Labor Code section 2699, et. seq., for Defendants' violations of the various enumerated Labor Code sections set forth throughout this notice letter and the associated sections which provide for civil penalties, including, but not limited to Labor Code sections 98.6, 200-204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.6, 226.7, 227, 227.3, 500, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1, 1198, 1199 and 2699.

Should you have any questions or concerns regarding the above, please do not hesitate to contact my office. Thank you for your attention to this matter.

Sincerely,



Thomas M. Diachenko, Esq.

TMD:maj

Enclosure:
Proof of Service

cc:
See attached Service List

SERVICE LIST

Sent via certified mail and USPS to:

Eric D. Morton
Agent for Service of Process
Soap Mat, LLC
2173 Salk Avenue, Suite 250
Carlsbad, California 92056

Laura Rossi
3230 Waring Court, Suite A
Oceanside, California 92056

KIMBERLY FUDGE

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over eighteen years of age and not a party to this action; my business address is 1916 Third Avenue, San Diego, California, 92101. My electronic Service address is Malia@Dicahenkolaw.com

On June 29, 2021, I served a true copy of the foregoing document(s):

1. CORRESPONDENCE, PAGA NOTICE LETTER

on all interested parties in this action as follows:

Eric D. Morton Agent for Service of Process Soap Mat, LLC 2173 Salk Avenue, Suite 250 Carlsbad, California 92056	Laura Rossi 3230 Waring Court, Suite A Oceanside, California 92056
PAGA Administrator (Via Email Only) David M. Lanier PAGAfilings@dir.ca.gov	

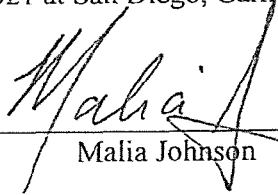
☒ **(CERTIFIED U.S. MAIL):** I caused each such envelope to be placed in the U.S. Post Office at San Diego, California. I am readily familiar with the firm's practice of collection and processing of correspondence for overnight delivery. Under that practice it would be deposited directly with the U.S. Postal Service or other facility maintained by the U.S. Postal Service, in an envelope or package designated for use by U.S. Postal service and with delivery fees prepaid.

☒ **(U.S. MAIL):** I enclosed the documents in a sealed envelope or package addressed to the person(s) at the addresses above. I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☒ **(VIA ELECTRONIC MEANS):** To the PAGA Administrator ONLY. I caused such document(s) to be sent by electronic means, pursuant to written agreement between the parties.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 29 2021 at San Diego, California.


Malia Johnson

**U.S. Postal Service™
CERTIFIED MAIL®**

Domestic Mail Only
For delivery information, visit our website at usps.com

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

Total Postage and Fees

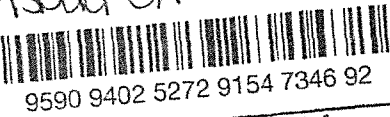
Sent To
Eric D. Morton, Agent for Service Soap Mat, LLC
2173 Salk Avenue
Carlsbad CA 92018

PS Form 3800, April 2015 PSN 7530-02-000-9047

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Eric D. Morton, Agent for Service Soap Mat, LLC
2173 Salk Avenue
Carlsbad CA 92018



2. Article Number (Transfer from service label)
7018 1830 0001 8697 5909

PS Form 3811, July 2015 PSN 7530-02-000-9053

Agent for Service of Process
Soap Mat, LLC
2173 Salk Avenue, Suite A
Carlsbad, California 92018

PAGA Administrator
David M. Lanier
PAGAfilings@dir.ca.gov

☒ (CERTIFIED MAIL)
 placed in the U.S. Mail
 with the firm's prepayment

USPS First Class Mail 12.34
 Track #: 70181830000186975909
 Ret Rcpt: 9590940252729154734692
 USPS First Class Mail 12.34
 Track #: 70181830000186975916
 Ret Rcpt: 9590940252729154734685
 SUBTOTAL 24.68
 TAX 0.00
 TOTAL 24.68
 TEND MCVisa 24.68

Total shipments: 0

None selected

06/30/2021

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee
X Ross
 B. Received by (Printed Name) **CHRISTOPHER**
 C. Date of Delivery **6/30/2021**
 D. Is delivery address different from item 1? ☐ Yes ☒ No
 If YES, enter delivery address below:

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Suite A
 92056

hope to be
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**U.S. Postal Service™
CERTIFIED MAIL®**

Domestic Mail Only
For delivery information, visit our website at usps.com

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

Total Postage and Fees

Sent To
Laura Rossi
3230 Waring Rd
Oceanside CA 92056

PS Form 3800, April 2015 PSN 7530-02-000-9047

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Laura Rossi
3230 Waring Rd, Suite A
Oceanside CA 92056



9590 9402 5272 9154 7346 85

2. Article Number (Transfer from service label)
7018 1830 0001 8697 5916

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent ☐ Addressee
X Laci O'Brien
 B. Received by (Printed Name) **Laci O'Brien**
 C. Date of Delivery
 D. Is delivery address different from item 1? ☐ Yes ☒ No
 If YES, enter delivery address below:

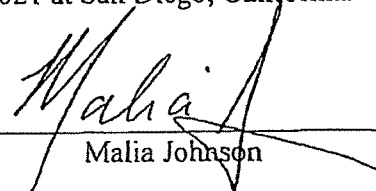
3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

THOMAS IVL. DIACHENKO, APC
1916 Third Avenue
San Diego, California 92101
(619) 699-5870

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2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct.

4 Executed on June 29 2021 at San Diego, California.

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7 Malia Johnson
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Malia Johnson

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Tuesday, June 29, 2021 5:10 PM
To: Malia Johnson
Subject: Thank you for submission of your PAGA Case.

6/29/2021

LWDA Case No. LWDA-CM-836492-21
Law Firm : Law Offices of Thomas M. Diachenko Plaintiff Name : Kimberly Fudge
Employer: Soap Mat, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm