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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

DEVIKA PATEL, Individually and on behalf
of all similarly-situated employees of
Defendants in the State of California,

Plaintiffs,

v.

APEX RECOVERY, LLC, a California
Corporation and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2021-00044618-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

COMPLAINT

CLASS ACTION [CCP § 382]

1. Failure to Pay Minimum and Regular Wages
2. Failure to Pay Overtime Wages
3. Failure to Authorize and Permit Meal Periods
4. Failure to Provide Rest Periods
5. Failure to Indemnify/Reimburse Expenses
6. Failure to Provide and Maintain Accurate Itemized Wage Statements
7. Failure to Timely Pay Wages Due Upon Separation of Employment
8. Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
9. PAGA Claim for Civil Penalties
10. Retaliation in Violation of Labor Code Section 98.6

DEMAND FOR JURY TRIAL

Plaintiff DEVIKA PATEL on behalf of herself and all other similarly-situated and current and former aggrieved employees alleges as follows:

I.

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff DEVIKA PATEL (hereinafter “Plaintiff” an/or “PATEL”), brings this individual, class and representative action suit against Defendant APEX RECOVERY, LLC (hereinafter “Defendant” “APEX ”) and DOES 1 through 50, inclusive (collectively referred to herein as “Defendants”), on behalf of herself and all other current and former similarly-situated and aggrieved employees for engaging in a systemic pattern of wage and hour violations under California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

2. APEX RECOVERY, LLC is a privately held institution providing comprehensive treatment program for substance abuse patients with its principal place of business in SAN DIEGO County, California.

3. At all relevant times, Plaintiff was employed by Defendants in San Diego County, California. During her employment with Defendant, Plaintiff held numerous non-exempt positions, including behavioral health technician, lead behavioral health technician, and recovery house manager.

4. Plaintiff is informed and believes, and thereon alleges, that Defendants decreased their employment-related costs in order to increase their level of productivity and profits by systematically violating both state wage and hour laws and IWC Wage Order 5-2001, including, but not limited to:

- a. Failing to pay for minimum, regular and overtime wages for all hours worked;
- b. Failing to provide compliant meal and rest breaks;
- c. Failing to indemnify Plaintiff and other similarly-aggrieved employees for her necessary expenses and losses in discharging her duties;
- d. Failing to provide and maintain accurate records and itemized wage statements;
and
- e. Failing to timely pay wages due during and upon termination of employment; and

f. Retaliating against Plaintiff when she complained about the wage and hour violations and hostile work conditions.

5. Plaintiff brings this lawsuit seeking injunctive, restitution and monetary relief against Defendants, and each of them, on behalf of Plaintiff individually and on behalf of all aggrieved and similarly-situated employees to recover, among other things, unpaid wages and benefits, interest, penalties, liquidated damages, attorney's fees and costs pursuant to California Labor Code Sections 98.6, 201, 202, 203, 204, 210, 218, 218.5, 218.6, 222, 223, 226, 226.7, 256, 510, 512, 558, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, Labor Code § 2699 et seq., and California Code of Civil Procedure 1021.5, and provisions of IWC Wage Order 5-2001. Plaintiff reserves the right to name additional representatives throughout the State of California.

II.

PARTIES, JURISDICTION AND VENUE

6. Plaintiff PATEL is and at all relevant times was a resident of the State of California, and at all relevant times was employed by Defendants in one of their centers in Southern California.

7. Defendant APEX RECOVERY, LLC ("APEX"), is a California Corporation who operates at various locations within California and has its principal place of business in SAN DIEGO County. According to its website, APEX operates its business in four different locations: Estate at Bonnie Lane, Detox in Nabal, Retreat in Jamul and the Corporate Center. The company was incorporated in California in 2013.

8. Plaintiff is informed and believes, and thereon alleges, that at times relevant APEX RECOVERY, LLC and Does 1 through 50 are the alter egos of each other and directly or indirectly, or through agents or other persons, employed Plaintiff and other similarly-situated and aggrieved employees, and exercised control over their wages, hours, and/or working conditions. Plaintiff is informed and believes, and thereon alleges, that each Defendant directly or indirectly, or through agents or other persons, acted and/or ratified in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

10. Defendants, at all relevant times, conducted business in the State of California and were employers who violated, or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558 and or 558.1.

11. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint setting forth the true names and capacities of these fictitious defendants when they are ascertained. Plaintiff is informed and believes, and on that basis, alleges that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

12. Jurisdiction and venue are proper for SAN DIEGO County Superior Court because Defendants maintain its principal offices, transact business, and/or have an agent in SAN DIEGO County and some of the acts and events complained of herein occurred in the judicial district of SAN DIEGO County and the State of California.

GENERAL ALLEGATIONS

13. Plaintiff PATEL was employed with Defendants from December 31, 2020 through June 30, 2021 when she was retaliated against and terminated for complaining about Defendants' illegal wage, hours and working conditions. While working at APEX, Plaintiff held various non-exempt positions, including behavioral health technician, lead behavioral health technician, and recovery house manager. During her tenure with Defendants, Plaintiff's primary job duties were to carry out treatment plans set for individual patients, provide and record patients' medication, and assist patients with their daily activities in the rehabilitation center.

14. Defendant APEX RECOVERY, LLC is an employer doing business in the State of California and, according to its website operates four facilities providing comprehensive treatment program for patients with substance abuse.

15. At all relevant times, Plaintiff worked under numerous policies, practices, and procedures relating to meal periods, wage statements, recordkeeping, and payment of wages applicable to Defendants' facilities. Defendants failed to pay all regular, minimum and overtime wages to Plaintiff as a result of Defendants' unlawful policies and practices.

16. At all relevant times, Plaintiff and aggrieved and similarly-situated employees were non-exempt hourly employees eligible for overtime wages for work in excess of eight (8) hours a day and 40 hours within a workweek but they were not paid at least minimum wage for each hour worked, nor were they provided overtime wages for all overtime hours worked. Accordingly, Defendants failed to pay Plaintiff and aggrieved and similarly-situated employees all minimum, regular and overtime wages for all hours worked.

17. At all relevant times, due to constant understaffing of Defendants' facilities, Plaintiff, and on information and belief, other similarly-situated and current and former employees had to forgo their meal breaks. Although Plaintiff's direct supervisor was aware Plaintiff was unable to take her 30-minute off-duty meal breaks which she requested, Plaintiff was required to clock out and in for lunches to ensure that the timecards "reflected" that Plaintiff took compliant meal breaks. Consequently, Plaintiff would work through her lunches without being paid the required meal premiums or for the time she worked through her breaks because Defendants deducted 30 minutes from the total hours Plaintiff worked during a single shift. On information and belief, other similarly-situated and current and former aggrieved employees were not paid for the time they worked throughout their lunches.

18. As part of her job duties as lead behavioral health technician and a recovery house manager, Plaintiff was required to draft training materials for newly hired employees. With Defendant's knowledge, she performed that task off-the-clock at home but was never compensated for the work she did as part of her required job duties. In addition, Plaintiff would be contacted by her employer via phone and/or email before and/or after she punched in and/or out for her regular shift to discuss employment-related issues but since the time she spent answering her employers calls and emails was not permitted to be recorded

1 on her timecards, she was not compensated for the time she was under control of her employer as required
2 under the relevant provisions of the California Labor Code. On information and belief, other similarly-
3 situated and current and former aggrieved employees were subject to this unlawful practice.

4 19. Moreover, it was Defendants' regular practice to force Plaintiff to clock out during slow
5 times of work, yet require her to stay ready, on-call and immediately available in close proximity to her
6 work location and wait for things to pick up. Despite the fact that Plaintiff was not free to engage in her
7 own business and under control of APEX, she was not paid minimum, regular and overtime wages for the
8 "wait time" that primarily benefited Defendants as required under the relevant provisions of the Labor
9 Code and the applicable IWC-Wage Order. On information and belief, other similarly-situated and current
10 and former aggrieved employees were subject to his unlawful practice.

11 20. Additionally, on multiple occasions, after Plaintiff reported for work at the shift's
12 scheduled start-time, her supervisor would inform her that her services would not be needed that day.
13 However, Defendant failed to pay Plaintiff for half of her usual or scheduled day's work or less than two
14 hours at her regular rate of pay as required under the relevant provisions of the applicable IWC Wage
15 Order.

16 21. At all relevant times, Defendants did not maintain compliant meal period policies for Plaintiff
17 as required by the California Labor Code, nor did they provide off-duty meal periods compliant under
18 California law, to Plaintiff and other employees. Defendants failed to adequately inform Plaintiff and other
19 similarly-situated employees of their rights to take 30 minute off-duty meal periods. Additionally,
20 mandated second meal periods were never provided when employees worked shifts of 10 hours or more.

21 22. As a part of their job duties, Plaintiff and other aggrieved and similarly-situated employees
22 were required to stay on the premises to ensure safety of the patients undergoing a detox treatment and to
23 provide them with immediate assistance if necessary. In addition, because Defendants' facilities were
24 strategically and chronically understaffed, Plaintiff and, on information and belief other similarly-situated
25 and current and former aggrieved employees, were forced to work through their lunches without a proper
26 compensation as required under the relevant provisions of the Cal. Labor Code. Even on rare occasions,
27 when Plaintiff and other current and former employees were able to take a period of time for lunch, they
28 were forced to consume their meals either at their office desks or in a car parked in a driveway located

1 directly in front of the facility to ensure patients could seek assistance from Plaintiff at all times. As a
2 result of the control exerted by Defendants over Plaintiff and similarly-situated employees, the meal
3 periods were not compliant and a wage premium is owed to each employee for each non-compliant meal
4 break.

5 23. Defendants failed to pay Plaintiff and other employees meal period premium wages for each
6 day in which they did not provide Plaintiff an opportunity to take a compliant meal period.

7 24. At all times relevant, Defendants did not maintain compliant rest period policies for Plaintiff
8 as required by the California Labor Code, nor did they provide rest periods compliant under California
9 law, to Plaintiff and other employees. During Plaintiff's employment, Defendants had a common pattern
10 and practice of failing to properly authorize and permit compliant off-duty rest periods to Plaintiff and
11 other employees when they worked greater than 3.5 hours in a workday.

12 25. Defendants had a common policy and practice of requiring Plaintiff and other employees to
13 stay on the premises and remain on-call at all times throughout their shifts, ready and prepared to return
14 to work. As a result, Plaintiff and other employees were never relieved of all duty, and therefore were not
15 authorized to take compliant duty-free rest periods.

16 26. Furthermore, during Plaintiff's employment, Defendants did not maintain a compliant rest
17 period policy applicable to Plaintiff and other employees. Defendants did not authorize or permit Plaintiff
18 to take 10-minute paid rest periods, nor did they ever inform her or other employees of their right to take
19 compliant rest periods.

20 27. Defendants failed to pay Plaintiff and other employees rest period premium wages for each
21 day in which they did not authorize or permit them to take compliant rest periods.

22 28. Defendants failed to provide Plaintiff and other aggrieved and similarly-situated employees
23 with wage statements accurately itemizing information required by Labor Code § 226(a) and Section 7 of
24 the applicable Wage Order including. The wage statements that were provided did not include all the
25 items required by law and the little information they did contain was inaccurate. For example, the wage
26 statements did not accurately reflect the total numbers of regular and overtime hours worked. On
27 information and belief, other similar-situated employees were subject to the same policy and practice
28 concerning wage statements and receive similarly deficient wage statements.

29. As a result of these deficiencies and inaccuracies, Plaintiff and other aggrieved and similarly-situated employees were not able to promptly and easily determine from these wage statements alone their total overtime and/or all wages earned.

30. Defendants further had a policy and practice of failing to indemnify Plaintiff and other similarly-situated and current and former aggrieved employees for all necessary expenditures or losses incurred in direct consequence of their duties. As a condition of her employment and part of her job duties, Plaintiff was required to maintain and utilize her own cellphone and pay all costs associated with the cell-phone to perform her job duties and to communicate with her supervisors and co-workers regarding work schedule, progress of patients' treatment, and/or any other issues related to her job. Plaintiff was not reimbursed for these necessary expenses incurred for the benefit of Defendants.

31. Defendants failed to maintain accurate records reflecting the beginning and ending time of each shift, including meal periods, and all wages earned as required by law. Defendants instructed Plaintiff and other aggrieved and similarly-situated employees to record inaccurate hours worked and not the true and correct time worked.

32. Defendants failed to pay Plaintiff and other aggrieved and similarly-situated employees for all wages due and owing and by the times required by law in the time periods set forth by Labor Code § 204 and Section 4 of the applicable Wage Order in that Defendants failed to properly compensate said employees for all hours worked.

33. Defendants failed to pay Plaintiff PATEL and other aggrieved and similarly-situated employees all wages due and owing at the time of termination of employment as required by Labor Code §§ 201(a) and 202(a), as applicable, because Plaintiff PATEL and other aggrieved and similarly-situated employees were not properly compensated for all hours worked. On information and belief, Defendants willingly withheld wages including, but not limited to, minimum wages, regular wages, and overtime wages.

34. Defendants have engaged in unfair business practices in California and willingly and knowingly have practiced, employed, and utilized the employment patterns and practices alleged in this complaint in violation of Business & Professions Code §§ 17200, *et seq.*

35. Following Plaintiff's numerous complaints to the Human Resources representative regarding her inability to take compliant meal breaks, being unpaid for her off-the clock work, and being forced to perform job duties outside the scope of her employment, she was retaliated against by her direct supervisor. Specifically, Plaintiff's supervisor used derogatory language towards Plaintiff while discussing work-related issues, made abnormal and retaliatory last minute changes to the start time of her shifts and their locations, which resulted in lost wages by Plaintiff and caused her mental anguish and anxiety. These illegal retaliatory acts by Defendants are in direct violation of Labor Code Section 98.6 which prohibit employers from retaliating against employees who complained about unlawful work conditions.

IV.

CLASS ACTION DESIGNATION

36. Plaintiff brings this class action pursuant to Code of Civil Procedure § 382 on behalf of all current and former aggrieved and similarly-situated employees. The Classes that Plaintiff seeks to represent is defined as follows:

All non-exempt employees who were employed by Defendants in the State of California at any time commencing four (4) years prior to the filing of this Action.

37. As to Causes of Action One through Eight, Plaintiff seeks to recover on behalf of the Class all remedies available to the extent permitted by law including, but not limited to, wages, damages, penalties, liquidated damages, interest, attorney's fees, costs, other monies due and owing and injunctive relief.

38. Causes of Action One through Eight are appropriately suited for a class action under Code of Civil Procedure § 382 because:

a. Numerosity: The potential Class as defined is significant in size because Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendants employed over 20 similarly-situated current and former employees who were affected by the unlawful employment practices alleged herein. Based on the potential class size, joinder of all employees individually would be impractical. Plaintiff also believes that there are more than 20 people that are members of the Class.

c. Typicality: Plaintiff's claims as alleged herein are typical of the claims of each of the putative Class because Plaintiff was subjected to the same violations of his rights under California law and seeks the same types of damages, restitution, and other relief on the same theories and legal grounds as those of the members of the putative Class he seeks to represent.

d. Adequacy of Representation: Plaintiff is able to fairly and adequately protect the interests of all members of the putative Class because it is in his best interest to prosecute the claims alleged herein to obtain full compensation due to her for all pay, benefits and other relief afforded under the Labor Code and IWC Wage Orders. Plaintiff's interest is not in conflict with those of the putative class members. Plaintiff's counsel are competent and experienced in litigating large employment class actions including wage and hour cases such as this case.

e. Superiority of Class Action: Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of these claims. Each putative class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies, and/or practices as alleged herein. Class action treatment will allow those similarly-situated persons to litigate his/her claims in the manner that is most efficient and economical for the parties and the judicial system.

V.

PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION

39. The Causes of Action alleged herein are appropriately suited for a Labor Code Private Attorneys General Act of 2004 (hereinafter referred to as “PAGA”) representative action because:

a. This action involves allegations of violations of provisions of the California Labor Code that either do not provide for a civil penalty or provide for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (hereinafter referred to as "LWDA") or any departments, divisions, commissions, boards, agencies or employees;

1 b. Plaintiff PATEL is an "aggrieved employee" because she was employed by the alleged
2 violators and had one or more of the alleged violations committed against her and, therefore, is properly
3 suited to represent the interests of all other current and former employees of Defendants;

4 c. Plaintiff PATEL seeks to recover all applicable penalties under PAGA on behalf of
5 herself and all other aggrieved employees including, but not limited to, an amount sufficient to recover
6 underpaid wages including all unpaid and/or underpaid wages pursuant to Labor Code § 558.

7 d. Pursuant to Labor Code § 2698, *et seq.*, Plaintiff PATEL has complied with her notice
8 requirements by serving via certified mail, return receipt requested, the LWDA and APEX
9 RECOVERY, LLC a notice with her claims for wage and hour violations and penalties. The PAGA
10 claims have been tolled during the pendency of the notice period to the LWDA. The statutory period
11 expired, and the LWDA did not provide Plaintiff PATEL with a notice of intent to assume jurisdiction
12 over the applicable penalty claims. Therefore, Plaintiff PATEL has satisfied and exhausted the
13 procedural notice requirement to pursue penalties against Defendants pursuant to Labor Code § 2699,
14 *et seq.* Pursuant to Labor Code § 2698, *et seq.*

15 **VI.**
16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**
18 **FAILURE TO PAY MINIMUM AND REGULAR WAGES**

19 (Violation of Labor Code §§ 1194, 1197, 1198 and the Applicable Wage Order)
20 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

21 40. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth
22 herein.

23 41. Plaintiff and members of the Class are/were "non-exempt" employees of Defendants in the
24 State of California within the meaning of the Labor Code and the applicable Wage Order.

25 42. Labor Code § 1197 states "The minimum wage for employees fixed by the commission or
26 by any state or local law, is the minimum wage to be paid to employees, and the payment of a less wage
27 than minimum wage so fixed is unlawful."

28 43. Labor Code § 1198 states "The maximum hours of work and the standard conditions of labor
fixed by the commission shall be the maximum hours of work and the standard conditions of labor for

1 employees. The employment of any employee for longer hours than those fixed by the order or under
2 conditions of labor prohibited by the order is unlawful.”

3 44. IWC Wage Order 5-2001 § 4 provides that an employer may not pay employees less than
4 the applicable minimum wage for all hours worked.

5 45. Labor Code § 1194 states “Notwithstanding any agreement to work for a lesser wage, any
6 employee receiving less than the legal minimum wage or the legal overtime compensation applicable to
7 the employee is entitled to recover in a civil action the unpaid balance of the full amount of his minimum
8 wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

9 46. As set forth above, members of the class were not paid all minimum and regular wages for
10 all hours worked. Furthermore, Plaintiff and other aggrieved and similarly-situated employees were
11 required to attend mandatory company meetings without being compensated for that time as required by
12 the California Labor Code.

13 47. At all material times, Defendants were and/or are Plaintiff’s and/or other aggrieved and
14 similarly-situated employees’ employers and/or persons acting on behalf of Defendants within the
15 meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter
16 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the
17 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set
18 forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

19 48. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and individually
20 as employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who violated, or caused
21 to be violated, any provision regulating minimum wages or hours and days of work in the applicable order
22 of the Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7,
23 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to
24 California Labor Code § 558.1.

25 49. As a direct result of Defendants’ violations alleged herein, Plaintiff and Class Members have
26 suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages,
27 including lost interest on such monies and expenses and attorney’s fees in seeking to compel Defendants
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1 to fully perform their obligation under state law, all to their respective damage in amounts according to
2 proof at trial and within the jurisdictional limitations of this Court.

3 50. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid
4 wages resulting from Defendants' minimum wage violations including interest thereon, reasonable
5 attorney's fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible
6 including those permitted pursuant to Labor Code §§ 558, 1194 and 1194.2 and Code of Civil Procedure
7 § 1021.5.

8 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

9 **SECOND CAUSE OF ACTION**
10 **FAILURE TO PAY OVERTIME WAGES**

11 (Violation of Labor Code §§ 510, 1198 and the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

12 51. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth
13 herein.

14 52. Plaintiff and members of the Class are/were "non-exempt" employees of Defendants in the
15 State of California within the meaning of the Labor Code and the applicable Wage Order.

16 53. Labor Code § 510 provides in pertinent part: "Eight hours of labor constitutes a day's work.
17 Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek
18 and the first eight hours worked on the seventh day of work in any one workweek shall be compensated
19 at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in
20 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay
21 for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall
22 be compensated at the rate of no less than twice the regular rate of pay of an employee."

23 54. Labor Code § 1198 states "The maximum hours of work and the standard conditions of labor
24 fixed by the commission shall be the maximum hours of work and the standard conditions of labor for
25 employees. The employment of any employee for longer hours than those fixed by the order or under
26 conditions of labor prohibited by the order is unlawful."

27 55. IWC Wage Order 5-2001 § 3 provides that an employer may not pay non-exempt employees
28 less than the applicable overtime rate for all overtime hours worked.

56. Through Defendants' conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed to pay all Plaintiff and Class Members all overtime wages for all overtime worked and recorded, all in violation of Labor Code §§ 510, 1198 and the applicable Wage Order.

57. At all material times, Defendants were and/or are Plaintiff's and/or other aggrieved and similarly-situated employees' employers and/or persons acting on behalf of Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

58. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

59. As a direct result of Defendants' violations alleged herein, Plaintiff and Class Members have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

60. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendants' overtime wage violations including interest thereon, reasonable attorney's fees and costs of suit, and penalties, to the fullest extent permissible including those permitted pursuant to Labor Code §§ 510, 558, 1194 and 1194.2 and Code of Civil Procedure §1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Violation of Labor Code §§ 226.7(b), 512(a), 1198
and the “Meal Period” Section of the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

61. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

62. At all times relevant, Plaintiff was a “non-exempt” employee of Defendants in the State of California within the meaning of the Labor Code and the applicable Wage Order.

63. Labor Code § 226.7(b) provides: “No employer shall require any employee to work during any meal or rest or recovery period mandated by an applicable order of the Industrial Welfare Commission.”

64. Labor Code § 512(a) provides: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

65. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

66. Section 11 of the application IWC Wage Order provides, in part, that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. An employer may not employ an employee for a work period of more than ten (10) hours per day 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 only if the first meal period was not waived. Subsection D of the applicable IWC Wage Order

§ 11 provides that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

67. Through Defendants' conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants violated Labor Code §§ 226.7(b), 512(a), 1198, and the applicable Wage Order when they failed to provide a 30-minute uninterrupted, duty-free meal period no later than the start of the sixth hour of work during work periods in excess of five consecutive hours and, when applicable, when it failed to provide a second 30-minute uninterrupted, duty-free meal period no later than the start of the eleventh hour of work.

68. Labor Code § 226.7(c) and IWC Wage Order § 11(D), provides that the employer shall pay an employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. Defendants have not paid the appropriate meal premium wages to Plaintiff and other aggrieved and similarly-situated employees.

69. At all material times, Defendants were and/or are Plaintiff's and/or other employees' employers and/or persons acting on behalf of Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

70. Pursuant to California Labor Code § 558.1, Defendants a person acting on behalf of Plaintiff's employer, who violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

71. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their

obligation under state law, all to the respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

72. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted pursuant to Labor Code §§ 226.7, 512, 558, 558.1, and Code of Civil Procedure § 1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS

(Violation of Labor Code §§ 226.7(b), 1198,
and the "Rest Period" Section of the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

73. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

74. At all times relevant, Plaintiff is and/or was a "non-exempt" employee of Defendants in California within the meaning of the Labor Code and the applicable Wage Order.

75. Labor Code § 1198 makes the employment of any employee under conditions of labor prohibited by a Wage Order unlawful.

76. By Order of the Industrial Welfare Commission, every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes rest time per four (4) hours or major fraction thereof. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages as provided in the applicable IWC Wage Order.

77. Pursuant to Labor Code § 226.7(c) and the applicable IWC Wage Order, Defendants shall pay Plaintiff one additional hour of pay at the employees' regular rate of compensation for each day that the rest period is not authorized and permitted.

78. Through Defendants' conduct during the applicable statutory period including the conduct alleged herein, Defendants violated Labor Code §§ 226.7 and 1198 and the IWC Wage Order when they failed to authorize and permit full 10-minute, uninterrupted, duty-free rest periods for every four hours

1 worked (or major fraction thereof) to Plaintiff during the time period each employee worked for
2 Defendants.

3 79. Defendants further have failed to pay to Plaintiff the rest period wage premiums pursuant to
4 Section 226.7. Defendants' omissions in failing to pay the applicable wages set forth in Section 226.7 are
5 not in good faith, and further, Defendants had no reasonable grounds for believing the omissions are not
6 in violation of the Labor Code relating to an order of the commission.

7 80. At all material times, Defendants were and/or are Plaintiff's employers or persons acting on
8 behalf of their employer, within the meaning of California Labor Code § 558, who violated or caused to
9 be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours
10 and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties
11 for each underpaid employee as set for in Labor Code § 558 including the payment of the underpaid wages
12 to affected employees.

13 81. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and individually
14 as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who violated, or caused
15 to be violated, any provision regulating minimum wages or hours and days of work in the applicable order
16 of the Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7,
17 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to
18 California Labor Code § 558.1.

19 82. As a direct result, Plaintiff has suffered and continues to suffer, substantial losses related to
20 the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's
21 fees in seeking to compel Defendants to fully perform their obligation under state law, all to the respective
22 damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

23 83. Pursuant to the Labor Code, Plaintiff seeks to recover in a civil action the unpaid balance of
24 the full amount of the unpaid wages including interest thereon, reasonable attorney's fees and costs of suit
25 to the fullest extent permissible including those permitted pursuant to Labor Code §§ 226.7, 558, 558.1,
26 and Code of Civil Procedure § 1021.5.

27 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

28 ///

FIFTH CAUSE OF ACTION
FAILURE TO INDEMNIFY PLAINTIFF EXPENSES
AND LOSSES IN DISCHARGING HER DUTIES

(Violation of Labor Code § 2802)

(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

84. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

85. At all times relevant herein, as a condition of her employment, Plaintiff was required to utilize her own supplies, including personal cell phones, to perform her job duties.

86. Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

87. At all relevant times herein, Defendants failed to reimburse Plaintiff for necessary expenditures and losses incurred in direct consequence to the discharge of her duties in violation of Labor Code § 2802. Consequently, Plaintiff is entitled to reimbursement for expenses incurred as a result of being required to purchase, maintain and utilize her personal cell phones which were necessary to perform her job duties. Defendants, and each of them, derived and continue to derive an unjust and inequitable economic benefit by failing to comply with the sections alleged herein.

88. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

89. As a direct result of violating Labor Code § 2802(a), Plaintiff has suffered and continues to suffer, substantial losses related to such earned but unpaid wages, incurred expenses, unlawful deductions, and the use and enjoyment of earned wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform her obligations under the law, all in an amount to be proved at time of trial.

91. Furthermore, Labor Code §2802(c) states “For the purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee in enforcing the rights granted by this section.” Therefore, Plaintiff will seek to recover the amounts unreimbursed, interest, and the costs and attorney's fees she will necessarily incur in pursuing same. The exact amount of reimbursements, interest, costs and attorney's fees will be in an amount to be proved at time of trial.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

(Violation of Labor Code §§ 226(a), 1198 and the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

92. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

93. At all times relevant, Plaintiff was an employee of Defendants within the meaning of the Labor Code and the applicable Wage Order.

94. Labor Code § 226(a) states in pertinent part “Every 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:

- (1) Gross wages earned;
- (2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

1 (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid
2 on a piece rate basis;

3 (4) All deductions, provided that all deductions made on written orders of the employee may be
4 aggregated and shown as one item;

5 (5) Net wages earned;

6 (6) The inclusive dates of the period for which the employee is paid;

7 (7) The name of the employee and only the last four digits of his or her social security number
8 or an employee identification number other than the social security number;

9 (8) The name and address of the legal entity that is the employer...;

10 (9) All applicable hourly rates in effect during the pay period and the corresponding number of
11 hours worked at each hourly rate by the employee.... The deductions made from payment of wages shall
12 be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy
13 of the statement and the record of the deductions shall be kept on file by the employer for at least three
14 years at the place of employment or at a central location within the State of California.”

15 95. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor
16 fixed by the commission shall be the maximum hours of work and the standard conditions of labor for
17 employees. The employment of any employee for longer hours than those fixed by the order or under
18 conditions of labor prohibited by the order is unlawful.”

19 96. IWC Wage Order 5-2001§ 7(A) states in relevant part that the employer shall keep accurate
20 information regarding “(3) Time Records showing when the employee begins and ends each work
21 period... (4) Total wages paid each payroll period, including value of board, lodging, or other
22 compensation actually furnished to the employee. (5) Total hours worked in the payroll period and
23 applicable rates of pay.”

24 97. Through Defendants’ conduct during the applicable statutory period including, but not limited
25 to, the conduct alleged herein, including that alleged on information and belief, Defendants failed to
26 provide accurate wage statements. For example, in addition to the derivative violations suffered as a result
27 of the other violations detailed above, Defendants also failed to provide a wage statement that properly
28 identified the number of overtime hours worked and numbers of vacation and sick hours accrued.

1 98. Plaintiff suffered injuries as a result of Defendants’ intentional and knowing failure to provide
2 to Plaintiff and maintain the writings required by Labor Code § 226(a) and the IWC Wage Orders.
3 Defendants’ failure to provide and maintain accurate statements left Plaintiff without the ability to know,
4 understand and question the hours worked and wage earned and due. As a direct result, Plaintiff has
5 suffered and continues to suffer substantial injuries, losses and actual damages related to Defendants’
6 violations, including lost wages, lost interest on such wages, and expense and attorney’s fees in seeking
7 to compel Defendants to fully perform their obligations.

8 99. Labor Code § 226(e)(1) states “An employee suffering injury as a result of a knowing and
9 intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all
10 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
11 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate
12 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
13 fees.” Labor Code §226(e)(2)(B) states “An employee is deemed to suffer injury for purposes of this
14 subdivision if the employer fails to provide accurate and complete information as required by any one or
15 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily
16 determine from the wage statement alone one or more of the following: (i) The amount of gross wages or
17 net wages paid to the employee during the pay period or any other information required to be provided on
18 the itemized wage statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)...”
19 Because Plaintiff at times did not receive any wage statements, or the wage statements did not include,
20 among other things, an accurate accounting of gross wages earned or total hours worked she is deemed to
21 have suffered injury.

22 100. Labor Code § 226(h) states “An employee may also bring an action for injunctive relief to
23 ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.”

24 101. At all material times, Defendants were and/or are Plaintiff’s and/or other similarly-situated
25 employees’ employers and/or persons acting on behalf of Defendants within the meaning of Labor Code
26 § 558, who violated or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code
27 or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission
28 and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558

1 including the payment of the underpaid wages to affected employees.

2 102. Pursuant to California Labor Code § 558.1, Defendants APEX RECOVERY, LLC and
3 Does 1-50 are sued collectively and individually as employers of Plaintiff, and/or a person acting on
4 behalf of Plaintiff's employer, who violated, or caused to be violated, any provision regulating minimum
5 wages or hours and days of work in the applicable order of the Industrial Welfare Commission, as well
6 as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable
7 as an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

8 103. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
9 continues to suffer injury including substantial losses related to the use and enjoyment of such wages, lost
10 interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform
11 their obligation under state law, all to the respective damage in amounts according to proof at trial and
12 within the jurisdictional limitations of this Court.

13 104. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid wages,
14 penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible including those
15 permitted pursuant to Labor Code §§ 226(e) and (h), 558, 558.1, and Code of Civil Procedure § 1021.5.

16 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

17
18 **SEVENTH CAUSE OF ACTION**
19 **FAILURE TO TIMELY PAY WAGES DUE**
20 **UPON SEPARATION OF EMPLOYMENT**
(Violation of Labor Code §§ 201(a) and 202(a))

(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

21 105. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth
22 herein.

23 106. Plaintiff and members of the Class are/were "non-exempt" employees of Defendants within
24 the meaning of the Labor Code and the applicable Wage Order.

25 107. Labor Code § 201(a) states "If an employer discharges an employee, the wages earned and
26 unpaid at the time of discharge are due and payable immediately."

27 108. Labor Code § 202(a) states "If an employee not having a written contract for a definite period
28 quits his or her employment, his or her wages shall become due and payable not later than 72 hours

1 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which
2 case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other
3 provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive
4 payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall
5 constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the
6 notice of quitting.”

7 109. Defendants did not provide Plaintiff his final paycheck containing all of her wages earned
8 and due on the date of this termination. Additionally, through Defendants’ conduct during the applicable
9 statutory period including, but not limited to, the conduct alleged herein, including that alleged on
10 information and belief, Defendants willfully failed to provide all Plaintiff and members of the Class with
11 all wages due and owing, including minimum wages, overtime wages, regular wages, by the time specified
12 by Labor Code §§ 201(a) and 202(a), as applicable.

13 110. Labor Code § 203(a) states, in relevant part, “If an employer willfully fails to pay, without
14 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an
15 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the
16 due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall
17 not continue for more than 30 days.”

18 111. At all material times, Defendants were and/or are Plaintiff’s and/or other aggrieved and
19 similarly-situated employees’ employers and/or persons acting on behalf of Defendants within the
20 meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter
21 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the
22 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set
23 forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

24 112. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and individually
25 as employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who violated, or caused
26 to be violated, any provision regulating minimum wages or hours and days of work in the applicable order
27 of the Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7,
28

256, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

113. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the Class have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

114. Plaintiff seeks to recover in a civil action all remedies to the fullest extent permissible including those permitted pursuant to Labor Code § 203.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

EIGHTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.

(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

115. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

116. Business & Professions Code § 17200 states "As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code."

117. Through Defendants' conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants have engaged in business practices in California by practicing, employing, and utilizing, the employment practices outlined in the preceding paragraphs all in violation of California law and the Industrial Welfare Commission Wage Orders. Defendants' use of such practices constitutes an unfair business practice, unfair competition, and provides an unfair advantage over Defendants' competitors doing business in the State of California that comply with their obligations to properly provide employment conditions in compliance with the law and pay employees for all earned wages and compensation as required by law.

118. Defendants' violations of the Labor Code and the Industrial Welfare Commission Wage Orders and their scheme to lower payroll costs as alleged herein constitute unlawful business practices

1 because these actions were done in a systematic manner over a period of time to the detriment of Plaintiff
2 and the Class. The acts complained of herein occurred within the last four (4) years preceding the filing
3 of this complaint and include, but are not limited to, failure to (i) pay proper minimum, overtime, and
4 regular wages; (ii) to lawfully deduct of wages and or credit the correct rental credits; (iii) pay timely
5 wages during and upon separation of employment; (iv) maintain accurate records and provide and
6 maintain accurate itemized wage statements; (v) provide compliant meal and rest breaks; and (vi) provide
7 proper hiring and commission documents to employees during their employment.

8 119. Plaintiff is informed and believes and on that basis alleges that, at all times herein mentioned,
9 Defendants have engaged in the above-mentioned acts of unlawful, deceptive, and unfair business
10 practices prohibited by California Business and Professions Code §§ 17200, *et seq.*, including those set
11 forth in the preceding paragraph, thereby depriving Plaintiff and the Class the minimum working condition
12 standards and conditions due, including those under California Labor Code and Wage Order of the
13 Industrial Welfare Commission.

14 120. As a result of Defendants' unfair competition as alleged herein, Plaintiff has suffered injury
15 in fact and lost money or property. Plaintiff has been deprived of the rights to wages and benefits due as
16 alleged herein.

17 121. Pursuant to California Business & Professions Code § 17203, Plaintiff is entitled to seek
18 restitution of all wages and other monies owed on behalf of herself and the represented employees
19 belonging to them, including interest thereon, which Defendants wrongfully withheld from them and
20 retained for themselves by means of its unlawful and unfair business practices.

21 122. Plaintiff is entitled to an injunction and other declaratory and equitable relief against such
22 practices to prevent future damage for which there is no adequate remedy at law, and to avoid a multiplicity
23 of lawsuits.

24 123. Plaintiff is informed and believes, and on that basis, alleges, that the illegal conduct alleged
25 herein is continuing and there is no indication that Defendants will not continue such activity into the
26 future. Plaintiff alleges that if Defendants are not enjoined from the conduct set forth in this Complaint,
27 they will continue to fail to pay the wage and compensation required to be paid and will fail to comply
28

1 with other requirements of the California Labor Code and Wage Order of the Industrial Welfare
2 Commission.

3 124. As a direct and proximate result of Defendants' conduct, Defendants have received and will
4 continue to receive monies that rightfully belong to members of the general public who have been
5 adversely affected by Defendants' conduct, as well as to Plaintiff by virtue of unpaid wages and other
6 monies.

7 125. Plaintiff is entitled and seeks any and all available remedies including restitution and
8 recovery of reasonable attorney's fees pursuant to California Code of Civil Procedure §1021.5, Business
9 and Professions Code § 17200, *et seq.*, the substantial benefit doctrine, and/or the common fund doctrine.

10 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

11 **NINTH CAUSE OF ACTION**
12 **PRIVATE ATTORNEY GENERAL ACT (PAGA)**

13 (Violation of Labor Code § 2699, *et seq.*)
14 (Alleged by Plaintiff Individually and On Behalf of all current and former Aggrieved Employees
15 Against All Defendants)

16 126. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth
17 herein.

18 127. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a civil
19 penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions,
20 boards, agencies or employees for violation of the code may, as an alternative, be recovered through a
21 civil action brought by an aggrieved employee on behalf of herself or herself and other current or former
22 employees pursuant to the procedures specified in Labor Code § 2699.3.

23 128. Plaintiff PATEL is an "aggrieved employee" because she was employed by the alleged
24 violator and had one or more of the alleged violations committed against her, and therefore is properly
25 suited to represent the interests of other current and former aggrieved employees of Defendants.

26 129. On July 30, 2021 pursuant to Labor Code § 2698, *et seq.*, Plaintiff PATEL filed with the
27 LWDA and served via certified mail, return receipt requested, the Defendant, APEX RECOVERY, LLC,
28 with her claims for wage and hour violations and penalties. The statutory period expired, and the LWDA
did not serve Plaintiff with a notice of intent to assume jurisdiction over the applicable penalty claims.
Therefore, Plaintiff has satisfied and exhausted the procedural notice requirement to pursue penalties

1 against Defendants pursuant to Labor Code §2698, *et seq.*

2 130. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor
3 fixed by the commission shall be the maximum hours of work and the standard conditions of labor for
4 employees. The employment of any employee for longer hours than those fixed by the order or under
5 conditions of labor prohibited by the order is unlawful.”

6 131. Section 7 of the applicable IWC Wage Order obligates an employer to keep accurate
7 information with respect to each one of its employees’ meal periods. Section 7(A)(3) of the applicable
8 IWC Wage Order states in pertinent part “Every employer shall keep accurate information with respect to
9 each employee including the following: ...“(3) Time records showing when the employee begins and ends
10 each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded...;
11 (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually
12 furnished to the employee; (5) Total hours worked in the payroll period and applicable rates of pay.”

13 132. Cal. Labor Code § 1174 states, “ Keep, at a central location in the state or at the plants or
14 establishments at which employees are employed, payroll records showing the hours worked daily by and
15 the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
16 employees employed at the respective plants or establishments. These records shall be kept in accordance
17 with rules established for this purpose by the commission, but in any case, shall be kept on file for not less
18 than three years. An employer shall not prohibit an employee from maintaining a personal record of hours
19 worked, or, if paid on a piece-rate basis, piece-rate units earned.”

20 133. Through Defendants’ conduct during the applicable statutory period including, but not
21 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants
22 violated Labor Code § 1198 and the applicable Wage Order when they failed to keep accurate information
23 and record each employees’ meal periods, and accurate records reflecting all hours worked.

24 134. As a direct result of Defendants’ violations alleged herein, Plaintiff and aggrieved employees
25 have suffered and continue to suffer substantial losses related to Defendants’ failure to record and maintain
26 records of Class members’ meal periods and time records, including expenses and attorney’s fees in
27 seeking to compel Defendants to fully perform their obligation under state law, all to their respective
28 damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

1 135. Labor Code § 204(a) states in pertinent part, “All wages . . . earned by any person in any
2 employment are due and payable twice during each calendar month, on days designated in advance by the
3 employer as the regular paydays.”

4 136. Section 4 of the applicable IWC Wage Order states “Every employer shall pay to each
5 employee, on the established payday for the period involved, not less than the applicable minimum wage
6 for all hours worked in the payroll period, whether the remuneration is measured by time, piece,
7 commission or otherwise.”

8 137. Through Defendants’ conduct during the applicable statutory period including, but not
9 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed
10 to pay Plaintiff and members of the Classes (i) all wages due and owing and (ii) all wages due and owing
11 by the time set forth pursuant to Labor Code § 204(a) and section 4 of the applicable IWC Wage Order,
12 including, but not limited to, not paying all regular, minimum and overtime wages, and meal and rest
13 premium wages.

14 138. As set forth herein, Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226,
15 226.7 , 510, 512, 1174, 1197, 1198, 2802, and Labor Code § 2699, *et seq.*, imposes upon Defendants, and
16 each of them, penalties for violating the Labor Code, including those penalties set forth in 210, 226.3, 558,
17 1174.5, 1197.1, 1194.2 and 2698, *et seq.*

18 139. Pursuant to Labor Code § 2699, Plaintiff PATEL seeks to recover civil penalties on behalf
19 of herself and other current and former aggrieved employees of Defendants who suffered one or more the
20 labor code violations described herein. The exact amount of the applicable penalty is all in an amount to
21 be shown according to proof at trial.

22 140. For bringing this action, Plaintiff PATEL is entitled to attorney’s fees and costs incurred
23 herein.

24 WHEREFORE, Plaintiff PATEL prays for relief as hereinafter requested.

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TENTH CAUSE OF ACTION
RETALIATION
(Violation of Labor Code § 98.6)
(Alleged by Plaintiff Against Defendants)

141. Plaintiff PATEL realleges and incorporates by reference the foregoing allegations, as though set forth herein.

142. At all times herein mentioned, Labor Code § 98.6 was in full force and effect, and was binding upon Defendants. Said section prohibits employers from discriminating or retaliating against employees who complain regarding an employer's violations of wage and hour laws.

143. At all relevant times herein and in violation of California Labor Code § 98.6, Defendants harassed and retaliated against Plaintiff in response to her complaints and disclosures, including but not limited to her complaints she made to her supervisors about Defendants' unlawful wage payment practices and last minute changes in her work schedule. Such retaliation included, but were not limited to, harassment, intimidation, and failure to follow proper procedure and protocol in investigation of Plaintiff's complaints.

144. To the extent that Defendants retaliated against Plaintiff for enforcing her rights under the Labor Code, said conduct constitutes unlawful retaliation in violation of Labor Code § 98.6. Said violation caused substantial injury and damage to Plaintiff including, but not limited to, lost wages, benefits and emotional distress in amounts to be determined at trial according to proof.

145. As a result of Defendants' wrongful conduct, Plaintiff is entitled to all damages and penalties allowed by law in amounts to be determined at trial according to proof. Plaintiff also seeks all interest, attorney's fees, and costs allowed by law, including but not limited to, common law and Labor Code § 98.6.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays PATEL for damages for judgment against Defendants, jointly and severally, as applicable, as follows:

- a. For injunctive relief as provided by the Labor Code and to the extent permitted by law including, but not limited to, pursuant to § 226(h) and Business and Professions Code

§17200, *et seq.* and including injunctive relief to compel Defendants to produce all records as required by § 226(h) and the “Records” section of the applicable IWC wage order;

- b. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- c. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
- d. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission including, but not limited to, waiting time penalties under Labor Code § 203, penalties under Labor Code §§ 226(e), 226.3, 210, 226.8, 558, and 1174.5, and PAGA penalties pursuant to Labor Code §2698 *et seq.*
- e. For an award of unpaid wages, including regular wages, minimum and overtime wages, to the extent permissible by law to each affected person;
- f. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission including, but not limited to, waiting time penalties under Labor Code § 203, penalties under Labor Code §§ 226(e), and 558.1 penalties;
- g. For an award of actual damages to the extent permissible by the Labor Code including Labor Code § 226(e);
- h. For an award of liquidated damages to the extent permissible by Labor Code §1194.2;
- i. For pre- and post-judgment interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;
- j. For reasonable attorney’s fees and cost of suit and, to the extent permitted by law, including pursuant to Labor Code §§ 218.5, 226, 1194, 2698 *et seq.* and Code of Civil Procedure § 1021.5; and
- k. An award of such other and further relief as this Court deems proper and just.

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1 Dated: October 19, 2021

ShortLegal, APC

2 

3 By: _____

BRIAN R. SHORT

4 DOROTA A. JAMES

Attorneys for Plaintiff DEVIKA PATEL

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6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands trial by jury to the extent authorized by law.

8 Dated: October 19, 2021

ShortLegal, APC

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