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6 COURTNEY CHEEVER

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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10 COURTNEY CHEEVER, as an aggrieved
employee on behalf of the State of
11 California and other aggrieved employees,

12 Plaintiff,
13 vs.

14 TUESDAY MORNING, INC., a Texas
corporation; and DOES 1 through 10,
15 inclusive,

16 Defendants.

Case No. 21STCV39238

REPRESENTATIVE ACTION COMPLAINT

- (1) Claim for Civil Penalties for Violations of the
California Labor Code Pursuant to Private
Attorneys General Act of 2004 (Labor Code §
2698, *et seq.*)

1 Plaintiff Courtney Cheever, as an aggrieved employee and on behalf of the State of California
2 and all other aggrieved employees, alleges on information and belief as follows:

3 **INTRODUCTION**

4 1. This is a representative action under the Labor Code Private Attorneys General Act
5 of 2004, Labor Code Section 2698, *et seq.* (“PAGA”) that challenges systemic employment practices
6 resulting in violations of the California Labor Code against non-exempt and exempt employees who
7 worked for Defendants in California.

8 2. The Labor Code is broadly remedial in nature. Its laws serve an important public
9 interest in establishing minimum working conditions and requirements in California. These labor
10 standards protect employees from onerous terms and conditions of employment or exploitation by
11 employers who have superior economic and bargaining power. PAGA was enacted to improve the
12 enforcement of California’s Labor Code by empowering an aggrieved employee to bring an
13 enforcement action as a private attorney general and proxy for the State of California for an
14 employer’s violations of California labor law.

15 3. By this action, Plaintiff seeks civil penalties and any other available relief under the
16 PAGA on behalf of herself, the State of California and other current and former employees who
17 worked for Defendant Tuesday Morning, Inc. as non-exempt, hourly-paid and exempt employees in
18 California.

19 4. This Complaint seeks civil penalties and other relief pursuant to the PAGA for
20 Defendants’ violations of Labor Code Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1102.5
21 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

22 **THE PARTIES**

23 5. Plaintiff Courtney Cheever (“Plaintiff”) is and at all times relevant to this Complaint
24 was a citizen of California, and a resident of Riverside County, California.

25 6. Defendant Tuesday Morning, Inc. (“Tuesday Morning”) is and at all times relevant to
26 this Complaint was a Texas corporation with its principal place of business in Texas, and a citizen of
27 Texas. Tuesday Morning does business throughout California including in Los Angeles County,
28 California.

1 sufficient minimum contacts in California, or otherwise intentionally avail themselves of the
2 California market so as to render the exercise of jurisdiction over them by the California courts
3 consistent with traditional notions of fair play and substantial justice.

4 14. There is no basis for federal diversity jurisdiction in this action given that the State of
5 California, as the real party in interest in this action, is not a “citizen” for purposes of satisfying
6 diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013).
7 *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy
8 requirement for federal diversity jurisdiction in this action, and that diversity jurisdiction cannot be
9 established when Plaintiff’s share of the civil penalties attributable to violations personally suffered
10 are less than \$75,000. *Id.* at 1122. Plaintiff’s share of civil penalties sought in this action does not
11 exceed \$75,000.

12 15. Venue is proper in this Court because a foreign corporation that has failed to designate
13 a principal place of business in California, like Defendant Tuesday Morning, may be sued in any
14 county in the state. *See, e.g., Easton v. Superior Court* (1970) 12 Cal. App. 3d 243, 246-247. Venue
15 is also proper in this Court because “venue is proper in any county in which an aggrieved employee
16 worked and Labor Code violations allegedly occurred.” *Crestwood Behavioral Health, Inc. v.*
17 *Superior Court of Alameda County* (Cal. Ct. App., Feb. 17, 2021) No. A160523, 2021 WL 613700,
18 at *2. The Aggrieved Employees worked, and the alleged Labor Code violations occurred, in Los
19 Angeles County, California.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 16. On August 18, 2021, Plaintiff provided written notice by online filing to the Labor
22 and Workforce Development Agency (“LWDA”) and by certified mail to Defendant Tuesday
23 Morning, Inc. of the specific provisions of the Labor Code alleged to have been violated, including
24 facts and theories to support the alleged violations, in accordance with Labor Code Section 2699.3.
25 A true and correct copy of Plaintiff’s PAGA Notice is attached hereto as **Exhibit 1**.

26 17. As of the filing date of this Complaint, over 65 days have passed since Plaintiff sent
27 the August 18, 2021 LWDA Notice, and the LWDA has not responded that it intends to investigate
28 Plaintiff’s claims, and Defendants have not cured the violations. Plaintiff has thus satisfied the

administrative prerequisites under Labor Code Sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in addition to other remedies, for violations of Labor Code Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1102.5 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

EXCLUDED CLAIMS FOR DAMAGES

18. Plaintiff expressly excludes from the scope of this action any claim for civil penalties that was discharged in Defendant Tuesday Morning's bankruptcy proceedings in 2020 in *In re Tuesday Morning Corporation, et al.*, Case No. 20-31476-HDH-11 (N.D. Tex.).

GENERAL ALLEGATIONS

19. This is a representative action brought pursuant to the PAGA on behalf of the State of California and the following individuals:

All current and former non-exempt and exempt employees who worked one or more pay periods for Tuesday Morning, Inc. in the State of California at any time during the PAGA Period ("Aggrieved Employees").

20. The PAGA Period is defined as the period of time beginning on January 1, 2021 and continuing to the present ("PAGA Period").

21. Tuesday Morning operates retail stores throughout California.

22. Tuesday Morning employed Plaintiff as an hourly-paid, non-exempt retail associate in California from August 5, 2019 until June 18, 2021, at its retail store in Riverside, California.

23. Plaintiff and all other current and former non-exempt and exempt employees who worked one or more pay periods for Tuesday Morning, Inc. in the State of California at any time during the PAGA Period are "aggrieved employees" within the meaning of Labor Code Section 2699, *et seq.* See Labor Code § 2699(c).

24. On information and belief, Defendants maintain a centralized Human Resources department, which is responsible for communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

25. On information and belief, Defendants subjected Plaintiff and other Aggrieved

1 Employees to the same policies, practices and procedures governing the control and payment of
2 wages and hours worked, the provision of rest and meal periods, the reimbursement of business
3 expenses, and uniformly denied Plaintiff and other Aggrieved Employees the rights afforded to them
4 under the California Labor Code, IWC Wage Order No. 4-2001 and the California Business and
5 Professions Code.

6 26. On information and belief, Defendants issued the same formatted wage statements to
7 Plaintiff and other Aggrieved Employees, irrespective of their work locations.

8 27. On information and belief, Defendants process payroll for all departing Aggrieved
9 Employees in the same manner, regardless of the manner in which each employee's employment
10 ends.

11 28. Plaintiff generally worked three (3) to five (5) shifts per week of between four (4) and
12 six (6) hours, but also worked shifts of approximately eight (8) hours and in excess of eight (8) hours.

13 29. On information and belief, other Aggrieved Employees worked, and continue to work,
14 shifts of between four (4) and six (6) hours, shifts of in excess of (6) hours and shifts in excess of
15 eight (8) hours.

16 30. Defendants continue to employ non-exempt, hourly paid and exempt employees in
17 California.

18 **A. Defendants' Failure to Pay Minimum Wage For All Hours Worked**

19 31. Upon information and belief, Defendants knew or should have known that Plaintiff
20 and other Aggrieved Employees were entitled to receive at least minimum wage for all hours worked,
21 and that they were not receiving at least minimum wage for all hours worked.

22 32. Upon information and belief, Defendants' compensation practices and policies
23 systematically failed to pay Plaintiff and other Aggrieved Employees the applicable minimum wage
24 for all hours worked because Defendants required Plaintiff and other Aggrieved Employees to work
25 off-the-clock without compensation by:

- 26 a. Requiring Plaintiff and other Aggrieved Employees to line up to undergo off-the-
27 clock security and loss-prevention bag checks after clocking out for the end of their
28 shifts;

- b. Requiring Plaintiff and other Aggrieved Employees, during the COVID-19 pandemic, to line up to wait to undergo and to undergo off-the-clock medical questionnaires and temperature checks prior to being permitted to clock in for their shifts;
- c. Requiring Plaintiff and other Aggrieved Employees to access an app on their personal cell phones for work purposes while off the clock;
- d. Requiring Plaintiff and other Aggrieved Employees to respond to work-related emails and text messages while off the clock;
- e. Requiring Plaintiff and other Aggrieved Employees to complete mandatory employment-related web-based training while off-the-clock; and
- f. Shaving time from the total hours worked by Plaintiff and other Aggrieved Employees by editing the employees' time records to reduce regular hours worked and to reduce and/or eliminate overtime hours worked.

B. Defendants' Failure to Pay Overtime Compensation

33. Upon information and belief, Defendants knew or should have known that Plaintiff and other Aggrieved Employees were entitled to receive overtime compensation for hours worked in excess of eight (8) hours in a day and forty (40) hours in a week, and that they were not receiving required overtime compensation.

34. As detailed above, Defendants knowingly required, suffered and permitted Plaintiff and other Aggrieved Employees to perform duties off-the-clock and failed to compensate them for all hours worked, including all overtime hours worked.

35. Defendants also engaged in a practice of shaving and/or editing the time records of Plaintiff and other Aggrieved Employees to eliminate and/or reduce overtime hours worked.

36. Additionally, because Plaintiff and other Aggrieved Employees worked shifts of eight (8) hours in a single day, in excess of eight (8) hours in a single day, and/or close to and/or in excess of forty (40) hours in week, some of the off-the-clock work performed by Plaintiff and other Aggrieved Employees qualified as overtime under California law, and should have been paid at the applicable overtime rate.

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1 **C. Defendants' Failure to Provide Off-Duty Rest Periods**

2 37. Upon information and belief, Defendants knew or should have known that Plaintiff
3 and other Aggrieved Employees were entitled to receive all 10-minute rest periods in accordance
4 with the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay
5 at Plaintiff's and other Aggrieved Employees' regular rates of pay when a compliant rest period was
6 missed, and that Plaintiff and other Aggrieved Employees did not receive all rest periods or payment
7 of one (1) additional hour of pay at Plaintiff's and other Aggrieved Employees' regular rates of pay
8 when a compliant rest period was missed.

9 38. Throughout the relevant period, Plaintiff and other Aggrieved Employees routinely
10 worked shifts in excess of three-and-a-half hours and in excess of six hours, and were thus entitled,
11 respectively, to one or two timely, uninterrupted ten (10) minute rest periods.

12 39. Throughout the relevant time period, Defendants' scheduling and staffing policies and
13 practices, or lack thereof, prevented Plaintiff and other Aggrieved Employees from being relieved of
14 all duty in order to take the compliant rest periods to which they were entitled.

15 40. Notwithstanding any formal written policy to the contrary, Defendants' actual custom
16 and business practice was to undermine any formal policy of providing legally required rest periods
17 by pressuring employees to perform their duties in ways that omitted breaks, including, but not
18 limited to, scheduling a heavy workload that made taking rest periods extremely difficult,
19 maintaining an informal anti-rest-period policy enforced through pressure, failing to schedule rest
20 periods, failing to provide rest-period coverage, and otherwise discouraging employees from taking
21 legally protected rest periods. Plaintiff and other Aggrieved Employees routinely worked through
22 their shifts without being able to take a legally complaint rest period.

23 41. Additionally, Defendants systematically failed to provide Plaintiff and other
24 Aggrieved Employees one additional hour of compensation at their regular rate of pay for each
25 workday that an off-duty, uninterrupted 10-minute rest period was not provided.

26 42. Upon information and belief, Defendants failed to implement any practice or
27 procedure to pay rest period premiums when Plaintiff and other Aggrieved Employees missed a
28 required rest period.

43. Defendants also failed to compensate Plaintiff and other Aggrieved Employees for the time they spent working instead of taking legally compliant rest periods.

D. Defendants' Failure to Provide Compliant Off-Duty Meal Periods

44. Upon information and belief, Defendants knew or should have known that Plaintiff and other Aggrieved Employees were entitled to meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods, and that Plaintiff and other Aggrieved Employees were not provided with all required meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

45. Throughout the relevant period, Plaintiff and other Aggrieved Employees routinely worked shifts of six (6) or more hours, and were thus entitled to a timely, uninterrupted thirty (30) minute meal period prior to the end of their fifth hour of work.

46. During the relevant time period, Defendants' scheduling and staffing policies and practices, or lack thereof, prevented Plaintiff and other Aggrieved Employees from being relieved of all duty in order to take timely, compliant meal periods.

47. Notwithstanding any formal written policy to the contrary, Defendants' actual custom and business practice was to undermine any formal policy of providing legally required meal periods by pressuring employees to perform their duties in ways that omitted meal periods, including, but not limited to, scheduling a heavy workload that made taking meal periods extremely difficult, maintaining an informal anti-meal-period policy enforced through pressure, failing to schedule meal periods, failing to provide meal-period coverage, and otherwise discouraging employees from taking legally protected meal periods. Plaintiff and other Aggrieved Employees routinely worked through their shifts without being able to take a legally complaint meal period.

48. Additionally, on information and belief, Defendants had a policy and/or practice that incentivized managerial staff to edit non-exempt employees' clock-in and clock-out times to eliminate evidence of untimely or missed meal periods.

49. Upon information and belief, Plaintiff and other Aggrieved Employees did not validly

1 or legally waive their meal periods by mutual consent with Defendants or otherwise.

2 50. Throughout the relevant time period, Defendants also systematically failed to provide
3 Plaintiff and other Aggrieved Employees with one additional hour of compensation at their regular
4 rate of pay for each work day that Defendants deprived Plaintiff and other Aggrieved Employees of
5 an off-duty, uninterrupted 30-minute meal period.

6 51. Upon information and belief, Defendants failed to implement any practice or
7 procedure to pay meal period premiums when Plaintiff and other Aggrieved Employees missed a
8 required meal period.

9 **E. Defendants' Failure to Reimburse Necessary Business Expenses**

10 52. Upon information and belief, Defendants knew or should have known that Plaintiff
11 and other Aggrieved Employees were entitled to receive full reimbursement for all business-related
12 expenses and costs they incurred during the course and scope of their employment, and that they did
13 not receive full reimbursement of applicable business-related expenses and costs incurred.

14 53. Throughout the relevant time period, Defendants had a uniform policy and/or practice
15 that required Plaintiff and other Aggrieved Employees to use their personal cell phone and cell phone
16 data plan to carry out their job duties. For example, Plaintiff and other Aggrieved Employees were
17 required to download the Ultipro mobile application to their personal cell phones and to access it
18 frequently for scheduling and communication purposes. Plaintiff and other Aggrieved Employees
19 were also required to communicate with management regarding work-related matters using their
20 personal cell phones. In addition, Defendants required Plaintiff and other Aggrieved Employees to
21 use their personal computers and personal Internet data plans to complete mandatory employment-
22 related web-based training.

23 54. Although Defendants required Plaintiff and other non-exempt and exempt Aggrieved
24 Employees to use their personal cell phones and cellular data plans, and personal computer and
25 internet plans, for work purposes, Defendants failed to reimburse Plaintiff and other non-exempt and
26 exempt Aggrieved Employees for the costs they incurred in maintaining a personal cell phone and
27 cellular data plan, and personal computers and personal Internet plans.

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1 **F. Inaccurate Wage Statements and Failure to Maintain Accurate Payroll Records**

2 55. Upon information and belief, Defendants knew or should have known that Plaintiff
3 and other Aggrieved Employees were entitled to receive complete and accurate wage statements in
4 accordance with California law, and that Defendants were not providing Plaintiff and Aggrieved
5 Employees with complete and accurate wage statements.

6 56. Throughout the relevant time period, Defendants had a consistent policy and/or
7 practice of not providing accurate wage statements to Plaintiff and Aggrieved Employees. The wage
8 statement deficiencies include the following:

- 9 a. failing to include the accurate amount of “gross wages,” “net wages” and “total hours
10 worked by the employee” because Defendants failed to record all hours worked by
11 Plaintiff and other Aggrieved Employees when they worked off-the-clock;
- 12 b. failing to include the accurate amount of “gross wages,” “net wages” and “total hours
13 worked by the employee” because Defendants shaved time to reduce the number of
14 total hours worked;
- 15 c. failing to include the accurate number of “total hours worked by the employee”
16 because Defendants did not include time spent working during on-duty rest and meal
17 periods for which Plaintiff and other Aggrieved Employees should have been
18 compensated; and
- 19 d. failing to include “all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee” because
21 Defendants shaved time and edited time records to eliminate and/or reduce overtime
22 hours and to eliminate records of late meal periods.

23 57. Because Defendants failed to provide Plaintiff and other Aggrieved Employees with
24 accurate, itemized wage statements, Plaintiff and other Aggrieved Employees were never aware of
25 what their true wages should have been, and how they should have been calculated.

26 58. Upon information and belief, Defendants also knew or should have known that they
27 had a duty to maintain accurate and complete payroll records in accordance with the Labor Code and
28 applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

59. Throughout the relevant time period, Defendants also failed to maintain accurate payroll records showing the total hours worked daily by, and the wages paid to, Plaintiff and other Aggrieved Employees. Because Defendants failed to record all hours worked, none of the Defendants' payroll records pertaining to Plaintiff and other Aggrieved Employees accurately reflect all regular hours worked, overtime hours worked, actual gross wages and net wages earned, and premium wages owed for denied lawful meal and rest periods. As a result of Defendants' failure to maintain accurate payroll records, Defendants prohibited Plaintiff and other Aggrieved Employees from monitoring whether Defendants compensated them correctly and lawfully.

G. Failure to Timely Pay Wages During Employment and at Separation

60. Upon information and belief, Defendants knew or should have known that Plaintiff and other Aggrieved Employees were entitled to timely payment of wages during their employment.

61. Nevertheless, in violation of the Labor Code, Defendants failed to timely pay Plaintiff and other Aggrieved Employees all earned wages during their employment.

62. Upon information and belief, Defendants knew or should have known that Plaintiff and other Aggrieved Employees were entitled to timely payment of all wages earned when they resigned or were terminated from employment.

63. Nevertheless, in violation of the Labor Code, Defendants failed to timely pay Plaintiff and other Aggrieved Employees all their earned wages when they resigned or were terminated from employment.

FIRST CAUSE OF ACTION

For Civil Penalties for Violations of the California Labor Code

Pursuant to Labor Code § 2698, *et seq.*

(By Plaintiff on Behalf of the State of California and Aggrieved Employees

Against all Defendants)

64. Plaintiff incorporates all preceding allegations as if fully set forth herein.

65. Labor Code Section 2698, *et seq.* permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5. Section 2699.5 enumerates Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 1174(d), 1194, 1197,

1 1197.1, 1197.5, 1198, and 2802. Labor Code Section 2699.3(c) permits aggrieved employees,
2 including Plaintiff, to recover civil penalties for violations of those Labor Code Sections not found
3 in Section 2699.5, including Sections 1182.12.

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

- 6 a. Violation of Labor Code Sections 1182.12, 1194, 1197, and 1198, and the applicable
7 IWC Wage Order for Defendants' failure to compensate Plaintiff and other Aggrieved
8 Employees with at least minimum wages for all hours worked, as set forth below;
- 9 b. Violation of Labor Code Sections 510 and 1198, and the applicable IWC Wage Order
10 for Defendants' failure to compensate Plaintiff and other Aggrieved Employees with
11 all required overtime pay to Plaintiff and other Aggrieved Employees, as set forth
12 below;
- 13 c. Violation of Labor Code Sections 226.7, 516, and 1198, and the applicable IWC Wage
14 Order for Defendants' failure to authorize and permit Plaintiff and other Aggrieved
15 Employees to take compliant rest periods, as set forth below;
- 16 d. Violation of Labor Code Sections 226.7, 512(a), 516, and 1198, and the applicable
17 IWC Wage Order for Defendants' failure to provide Plaintiff and other Aggrieved
18 Employees with compliant meal periods, as set forth below;
- 19 e. Violation of Labor Code Section 2802 for failure to reimburse Plaintiff and other
20 Aggrieved Employees for all business expenses necessarily incurred, as set forth
21 below; and
- 22 f. Violation of Labor Code Sections 226(a) and 1198, and the applicable IWC Wage
23 Order for failure to provide accurate and complete wage statements to Plaintiff and
24 other Aggrieved Employees, as set forth below;
- 25 g. Violation of Labor Code Sections 1174(d) and 1198, and the applicable IWC Wage
26 Order for failure to maintain payroll records, as set forth below;
- 27 h. Violation of Labor Code Section 204 for failure to pay all earned wages during
28 employment, as set forth below;

i. Violation of Labor Code Sections 201 and 202 for failure to pay all earned wages upon termination, as set forth below;

67. Labor Code Section 558(a) provides that “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . ; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code Section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties under Labor Code Section 558 for herself, all other Aggrieved Employees, and the State of California against Defendants for violations of Labor Code Section 510, 512(a), 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not seek the recovery of unpaid wages under Labor Code Section 558 from Defendants for violations of Labor Code sections 510, 512(a), 1198, and the applicable IWC Wage Order.

68. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff, acting in the public interest as a private attorney general, may recover and hereby seeks civil penalties on behalf of herself, the State of California and all Aggrieved Employees for Defendants’ violation of Defendants violated Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1182.12, 1194, 1197, 1197.1, 1197.5, 1198, and 2802.

FAILURE TO PAY MINIMUM WAGE

(Labor Code §§ 1182.12, 1194, 1197 and 1198)

69. Plaintiff asserts this portion of the claim with respect to only non-exempt Aggrieved Employees.

70. Labor Code Sections 1182.12, 1194, 1197 and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.

1 71. Compensable work time is defined by the applicable wage order as “the time during
2 which an employee is subject to the control of an employer, and includes all the time the employee
3 is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, §
4 11040(2)(K) (defining “Hours Worked”).

5 72. Labor Code Section 1194(a) provides that “Notwithstanding any agreement to work
6 for a lesser wage, any employee receiving less than the legal minimum wage . . . is entitled to recover
7 in a civil action the unpaid balance of the full amount of this minimum wage . . . , including interest
8 thereon, reasonable attorney’s fees, and costs of suit.”

9 73. Defendants employed Plaintiff and other non-exempt Aggrieved Employees as non-
10 exempt employees who were entitled to the protections of Labor Code Sections 1182.12, 1194, 1197
11 and 1198 and IWC Wage Order 4-2001.

12 74. As set forth above, in violation of Labor Code Sections 1182.12, 1194, 1197 and 1198
13 and IWC Wage Order 4-2001, Defendants failed to pay Plaintiff and other non-exempt Aggrieved
14 Employees the applicable minimum wages for all hours worked because Defendants required,
15 permitted or suffered Plaintiff and other non-exempt Aggrieved Employees to work off-the-clock,
16 and/or because Defendants edited and shaved the time records of Plaintiff and other non-exempt
17 Aggrieved Employees to eliminate and/or reduce regular and overtime hours worked.

18 75. Defendants’ failure to pay Plaintiff and other non-exempt Aggrieved Employees
19 minimum wages violates Labor Code Sections 1182.12, 1194, 1197 and 1198. Plaintiff and other
20 non-exempt Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
21 Code Sections 1197.1 and/or 2699(a), (f), and (g).

22 **FAILURE TO PAY OVERTIME WAGES**

23 **(Labor Code §§ 510, 1198)**

24 76. Plaintiff asserts this portion of the claim with respect to only non-exempt Aggrieved
25 Employees.

26 77. Labor Code Section 510 provides that “Any work in excess of eight hours in one
27 workday and any work in excess of 40 hours in any one workweek . . . shall be compensated at the
28 rate of no less than one and one-half times the regular rate of pay for an employee.”

1 78. An employee's regular rate of pay includes all remuneration for employment paid to,
2 or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

3 79. Labor Code Section 1198 provides that it is unlawful to employ persons for longer
4 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
5 applicable IWC Wage Order.

6 80. Section 3 of IWC Wage Order No. 4-2001 provides in pertinent part that:

7 [E]mployees shall not be employed more than eight (8) hours in any
8 workday or more than 40 hours in any workweek unless the employee
9 receives one and one-half (1½) times such employee's regular rate of
10 pay for all hours worked over 40 hours in the workweek. Eight (8)
11 hours of labor constitutes a day's work. Employment beyond eight (8)
hours in any workday or more than six (6) days in any workweek is
permissible provided the employee is compensated for such overtime
at not less than:

12 (a) One and one-half (1½) times the employee's regular rate of pay for
13 all hours worked in excess of eight (8) hours up to and including 12
14 hours in any workday, and for the first eight (8) hours worked on the
seventh (7th) consecutive day of work in a workweek; and

15 (b) Double the employee's regular rate of pay for all hours worked in
16 excess of 12 hours in any workday and for all hours worked in excess
17 of eight (8) hours on the seventh (7th) consecutive day of work in a
workweek.

18 81. Labor Code Section 1194(a) provides that "Notwithstanding any agreement to work
19 for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime
20 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of
21 the full amount of this minimum wage or overtime compensation, including interest thereon,
22 reasonable attorney's fees, and costs of suit."

23 82. Defendants employed Plaintiff and other non-exempt Aggrieved Employees who
24 were entitled to the protections of Labor Code Sections 510, 1194, 1198 and IWC Wage Order 4-
25 2001.

26 83. As noted above, Defendants failed to compensate Plaintiff and other non-exempt
27 Aggrieved Employees for all overtime hours worked pursuant to Labor Code Sections 510, 1194,
28 1198 and IWC Wage Order 4-2001 because Defendants required, permitted or suffered Plaintiff and

1 other non-exempt Aggrieved Employees to work off-the-clock, and/or because Defendants edited
2 and shaved the time records of Plaintiff and other non-exempt Aggrieved Employees to eliminate
3 and/or reduce regular and overtime hours worked.

4 84. When Plaintiff and other non-exempt Aggrieved Employees worked eight or more
5 hours on-the-clock, the off-clock work clearly constituted work in excess of eight hours in workday
6 and should have been paid at the applicable overtime rate. When Plaintiff's and other non-exempt
7 Aggrieved Employees' time records indicate that they worked close to eight hours in a workday on
8 the clock—e.g., when their time cards reflect that they worked 7.9 or 7.93 total hours—the off-the-
9 clock work also caused Plaintiff's and other non-exempt Aggrieved Employees' total hours worked
10 to exceed eight (8) hours on such a workday and, likewise, should have been paid at the applicable
11 overtime rate.

12 85. Defendants' failure to pay Plaintiff and other non-exempt Aggrieved Employees all
13 earned overtime compensation, as required by California law, violates the provisions of Labor Code
14 Sections 510 and 1198. Plaintiff and other non-exempt Aggrieved Employees are therefore entitled
15 to recover civil penalties pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

16 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

17 **(Labor Code §§ 226.7, 1198 and IWC Wage Order No. 4-2001, § 12)**

18 86. Plaintiff asserts this portion of the claim with respect to only non-exempt Aggrieved
19 Employees.

20 87. Labor Code Section 226.7 provides that no employer shall require an employee to
21 work during any rest period mandated by an applicable order of the California IWC.

22 88. IWC Order No. 4-2001(12)(A) provides, in pertinent part:

23 Every employer shall authorize and permit all employees to take rest
24 periods, which insofar as practicable shall be in the middle of each
25 work period. The authorized rest period time shall be based on the total
26 hours worked daily at the rate of ten (10) minutes net rest time per four
27 (4) hours or major fraction thereof. However, a rest period need not be
28 authorized for employees whose total daily work time is less than three
and one-half (3 1/2) hours. Authorized rest period time shall be
counted as hours worked for which there shall be no deduction from
wages.

1 89. Labor Code Section 226.7 further provides that, “If an employer fails to provide an
2 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
3 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
4 Commission . . . , the employer shall pay the employee one additional hour of pay at the employee’s
5 regular rate of compensation for each workday that the meal or rest or recovery period is not
6 provided.”

7 90. During the relevant time period, Defendants failed to provide rest periods to Plaintiff
8 and other non-exempt Aggrieved Employees as required under Labor Code Section 226.7 and IWC
9 Wage Order No. 4-2001, Section 12. To the contrary, Defendants actively discouraged and prohibited
10 Plaintiff and other non-exempt Aggrieved Employees from taking rest periods when rest periods
11 were required.

12 91. During the relevant time period, Defendants required Plaintiff and other non-exempt
13 Aggrieved Employees to work four (4) or more hours without authorizing or permitting a ten (10)
14 minute rest period per each four (4) hour period worked.

15 92. Defendants failed to authorize and permit Plaintiff and other non-exempt Aggrieved
16 Employees to take all required rest periods on a duty free basis, failed to provide the rest periods as
17 close as is feasible to the middle of each four hour work period, failed to provide a second rest break
18 to Plaintiff and other non-exempt Aggrieved Employees when they worked shifts of seven hours or
19 greater, and failed to schedule rest breaks and to provide rest break coverage.

20 93. Because Defendants required that Plaintiff and other non-exempt Aggrieved
21 Employees to remain on-duty, and/or because they did not provide them with rest period coverage,
22 Plaintiff and other non-exempt Aggrieved Employees were subject to Defendant’s control and
23 required, permitted and suffered to work during rest periods.

24 94. Defendants as a matter of practice and/or policy also failed to pay Plaintiff and other
25 non-exempt Aggrieved Employees an additional one hour of compensation at their regular rate of
26 pay for each day that they were not provided with a compliant, off-duty, uninterrupted 10-minute
27 rest period as required by Labor Code Sections 226.7 and Section 12 of IWC Wage Order No. 4-
28 2001.

95. Defendants' conduct violates Labor Code Sections 226.7, 1198 and the applicable IWC Wage Order. Plaintiff and other non-exempt Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7, 512(a) and 1198)

96. Plaintiff asserts this portion of the claim with respect to only non-exempt Aggrieved Employees.

97. Labor Code Section 512(a) provides in pertinent part that:

An employer shall 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 shall 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, 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.

98. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1041-1042.

99. Labor Code Section 226.7 provides in pertinent part that:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission . . . , the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

100. Labor Code Section 1198 provides that it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the

1 applicable IWC Wage Order.

2 101. IWC Wage Order No. 4-2001, Section 11 provides, in pertinent part:

3 (A) No employer shall employ any person for a work period of more
4 than five (5) hours without a meal period of not less than 30 minutes,
5 except that when a work period of not more than six (6) hours will
6 complete the day's work the meal period may be waived by mutual
7 consent of the employer and the employee.

8 (B) An employer may not employ an employee for a work period of
9 more than ten (10) hours per day without providing the employee with
10 a second meal period of not less than 30 minutes, except that if the
11 total hours worked is no more than 12 hours, the second meal period
12 may be waived by mutual consent of the employer and the employee
13 only if the first meal period was not waived.

14 (C) Unless the employee is relieved of all duty during a 30 minute meal
15 period, the meal period shall be considered an "on duty" meal period
16 and counted as time worked. An "on duty" meal period shall be
17 permitted only when the nature of the work prevents an employee from
18 being relieved of all duty and when by written agreement between the
19 parties an on-the-job paid meal period is agreed to. The written
20 agreement shall state that the employee may, in writing, revoke the
21 agreement at any time.

22 (D) If an employer fails to provide an employee a meal period in
23 accordance with the applicable provisions of this order, the employer
24 shall pay the employee one (1) hour of pay at the employee's regular
25 rate of compensation for each workday that the meal period is not
26 provided.

27 102. Upon information and belief, Plaintiff and other non-exempt Aggrieved Employees
28 were subject to the same policies, practices and procedures governing the provision of meal periods.

103. Plaintiff and other non-exempt Aggrieved Employees regularly worked more than
five (5) hours per shift and were entitled to an uninterrupted, off-duty meal period of not less than
thirty (30) minutes.

104. Nevertheless, as detailed above, Defendants engaged in a company-wide practice
and/or policy of failing to provide Plaintiff and other non-exempt Aggrieved Employees with
uninterrupted, timely off-duty meal periods when required.

105. Upon information and belief, Plaintiff and other non-exempt Aggrieved Employees
did not validly or legally waive their first meal periods by mutual consent with Defendants or

1 otherwise.

2 106. Upon information and belief, Plaintiff and other non-exempt Aggrieved Employees
3 did not enter into any written agreement with Defendants agreeing to an on-the-job paid meal period.

4 107. Thus, Defendants failed to provide Plaintiff and other non-exempt Aggrieved
5 Employees with meal periods as required by Labor Code Sections 226.7 and 512, and IWC Wage
6 Order No. 4-2001.

7 108. Defendants have also engaged in a company-wide practice and/or policy of not paying
8 meal periods premium wages owed when compliant meal periods are not provided. As a result,
9 Plaintiff and other non-exempt Aggrieved Employees were denied meal periods and Defendants
10 failed to pay Plaintiff and other non-exempt Aggrieved Employees the meal period premiums due,
11 in violation of Labor Code Sections 226.7 and 512, and IWC Wage Order No. 4-2001.

12 109. Defendants' conduct violates Labor Code Sections 226.7, 512(a), 1198 and the
13 applicable IWC Wage Order. Plaintiff and other non-exempt Aggrieved Employees are therefore
14 entitled to recover civil penalties pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

15 **FAILURE TO REIMBURSE BUSINESS EXPENDITURES**

16 **(Labor Code § 2802)**

17 110. Plaintiff asserts this portion of the claim with respect to both non-exempt and exempt
18 Aggrieved Employees.

19 111. Labor Code Section 2802(a) provides that an employer "shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
21 the discharge of his or her duties, or of his or her obedience to the directions of the employer."

22 112. Defendants had and, on information and belief, continue to have, a company-wide
23 policy and/or practice of not reimbursing non-exempt and exempt Aggrieved Employees for
24 expenses necessarily incurred.

25 113. As detailed above, Defendants as a matter of practice and/or policy violated Labor
26 Code Section 2802 by denying Plaintiff and non-exempt and exempt Aggrieved Employees
27 reimbursement for necessary expenditures that they incurred as a result of discharging their duties
28 and/or obeying the directions of Defendants. Plaintiff and both non-exempt and exempt Aggrieved

1 Employees were required to incur out-of-pocket expenses, including, expenses to obtain and
2 maintain a personal cell phone and the data usage, and a personal computer and personal Internet
3 plan, that was used at Defendants' direction for work purposes.

4 114. Defendants could have provided Plaintiff and non-exempt and exempt Aggrieved
5 Employees with the actual tools required for use on the job, including company phones and/or work
6 computers or tablets. Defendants also could have reimbursed Plaintiff and other Aggrieved
7 Employees for the costs they incurred in obtaining and maintaining a personal cell phone and cell
8 data plan, and personal computers and Internet data plans. Instead, Defendants passed those operating
9 costs off onto Plaintiff and other Aggrieved Employees in violation Labor Code Section 2802.

10 115. Plaintiff and other non-exempt and exempt Aggrieved Employees are therefore
11 entitled to recover civil penalties pursuant to Labor Code Section 2699(a), (f)-(g).

12 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

13 **(Labor Code § 226(a))**

14 116. Plaintiff asserts this portion of the claim with respect to only non-exempt Aggrieved
15 Employees.

16 117. Labor Code Section 226(a) provides in pertinent part:

17 An employer, semimonthly or at the time of each payment of wages,
18 shall furnish to his or her employee, either as a detachable part of the
19 check, draft, or voucher paying the employee's wages, or separately if
20 wages are paid by personal check or cash, an accurate itemized
21 statement in writing showing (1) gross wages earned, (2) total hours
22 worked by the employee . . . , (3) the number of piece-rate units earned
23 and any applicable piece rate if the employee is paid on a piece-rate
24 basis, (4) all deductions, provided that all deductions made on written
25 orders of the employee may be aggregated and shown as one item, (5)
26 net wages earned, (6) the inclusive dates of the period for which the
employee is paid, (7) the name of the employee and only the last four
digits of his or her social security number or an employee identification
number other than a social security number, (8) the name and address
of the legal entity that is the employer . . . , and (9) all applicable hourly
rates in effect during the pay period and the corresponding number of
hours worked at each hourly rate by the employee

27 118. During the relevant time period, Defendants knowingly and intentionally violated
28 Labor Code Section 226(a) by providing Plaintiff and other non-exempt Aggrieved Employees with

1 uniform incomplete and inaccurate wage statements as follows:

- 2 a. Defendants violated Labor Code Sections 226(a)(1), 2267(a)(2) and 226(a)(5) and
3 226(a)(9) by failing to include the accurate amount of “gross wages,” “net wages” and
4 “total hours worked” because Defendants failed to record and compensate Plaintiff
5 and other Aggrieved Employees for all off-the-clock work;
- 6 b. Defendants also violated Labor Code Sections 226(a)(1) and 226(a)(5) by failing to
7 include the accurate amount of “gross wages” and “net wages” because Defendants
8 shaved time and edited the time records of Plaintiff and other Aggrieved Employees
9 to reduce total hours worked and/or eliminate meal period penalties;
- 10 c. Defendants violated Labor Code Section 226(a)(2) by failing to include the accurate
11 number of “total hours worked by the employee” because Defendants did not include
12 time spent working during on-duty rest and meal periods for which Plaintiff and other
13 Aggrieved Employees should have been compensated; and
- 14 d. Defendants violated Labor Code Section 226(a)(9) by failing to include “all
15 applicable hourly rates in effect during the pay period and the corresponding number
16 of hours worked at each hourly rate by the employee” because Defendants edited and
17 shaved time from the time records of Plaintiff and other Aggrieved Employees to
18 reduce and/or eliminate overtime hours.

19 119. Plaintiff and other non-exempt Aggrieved Employees are therefore entitled to recover
20 civil penalties pursuant to Labor Code Sections 226.3 and/or 2699(a), (f), and (g).

21 **FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS**

22 **(Labor Code § 1174(d))**

23 120. Plaintiff asserts this portion of the claim with respect to only non-exempt Aggrieved
24 Employees.

25 121. Labor Code Section 1174(d) provides that “[e]very person employing labor in this
26 state shall . . . [k]eep a record showing the names and addresses of all employees employed and the
27 ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at
28 which employees are employed, payroll records showing the hours worked daily by and the wages

1 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
2 employed at the respective plants or establishments . . .”

3 122. During the relevant time period, and in violation of Labor Code Section 1174(d),
4 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-exempt
5 Aggrieved Employees showing the daily hours they worked, and the wages paid thereto as a result
6 of failing to record the off-the-clock hours that they worked.

7 123. Plaintiff and other non-exempt Aggrieved Employees are therefore entitled to recover
8 civil penalties pursuant to Labor Code Sections 1174.5 and/or 2699(a), (f), and (g).

9 **FAILURE TO PAY WAGES TIMELY**

10 **(Violation of Labor Code § 204)**

11 124. Plaintiff asserts this portion of the claim with respect to only non-exempt Aggrieved
12 Employees.

13 125. Labor Code Section 204 requires that all wages earned by any person in any
14 employment between the 1st and the 15th days inclusive of any calendar month other than those
15 wages due upon termination of an employee are due and payable between the 16th and the 26th day
16 of the month during which the labor was performed Labor Code section 204 further provides that all
17 wages earned by any person in any employment between the 16th and the last day inclusive of any
18 calendar month other than those wages due upon termination of an employee are due and payable
19 between the 1st and the 10th day of the following month.

20 126. Labor Code section 204 also requires that all wages earned for labor in excess of the
21 normal work period shall be paid no later than the payday for the next regular payroll period
22 Alternatively at all relevant times herein.

23 127. Labor Code Section 204 further provides that the requirements of this section are
24 deemed satisfied by the payment of wages for weekly biweekly or semimonthly payroll if the wages
25 are paid not more than seven 7 calendar days following the close of the payroll period.

26 128. During the relevant time period Defendants willfully failed to pay Plaintiff and other
27 non-exempt Aggrieved Employees all wages due to them within any time period specified by Labor
28 Code section 204 including but not limited to overtime wages minimum wages and meal and rest

1 period premium wages.

2 129. Plaintiff and other non-exempt Aggrieved Employees are therefore entitled to recover
3 civil penalties pursuant to Labor Code Sections 210 and/or 2699(a), (f), and (g).

4 **FAILURE TO PAY WAGES TIMELY AT SEPARATION**

5 **(Labor Code §§ 201, 202, 203)**

6 130. Plaintiff asserts this portion of the claim with respect to only non-exempt Aggrieved
7 Employees.

8 131. Labor Code Section 201 provides that, if an employer discharges an employee, the
9 wages earned and unpaid at the time of discharge are due and payable immediately.

10 132. Labor Code Section 202 provides that if an employee voluntarily leaves his or her
11 employment, the employee's wages shall become due and payable not later than seventy-two (72)
12 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her
13 intention to resign, in which case the employee is entitled to his or her wages at the time of
14 resignation.

15 133. Labor Code Section 203 provides that if an employer willfully fails to pay
16 compensation as required by Sections 201 and 202, then the employer is liable for waiting time
17 penalties in the form of continued compensation of up to thirty work days.

18 134. As detailed above, Defendants willfully failed to pay non-exempt Aggrieved
19 Employees who separated from their employment with Defendants all their earned wages, including,
20 but not limited to minimum wages, overtime wages and meal and rest period premium wages, either
21 at the time of their discharge, or within seventy-two (72) hours after their resignation.

22 135. Defendants' failure to pay non-exempt Aggrieved Employees who separated from
23 their employment their earned and unpaid wages at the time of discharge, or within seventy-two (72)
24 hours after their resignation, violates Labor Code Sections 201 and 202.

25 136. Plaintiff and non-exempt Aggrieved Employees are therefore entitled to recover civil
26 penalties pursuant to Labor Code Sections 2699(a), (f)-(g).

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this

1 suit is brought against Defendants, jointly and severally, as follows:

2 1. That the Court declare, adjudge and decree that Defendants violated the following
3 California Labor Code provisions as to Plaintiff and/or other Aggrieved Employees: 1182.12, 1194,
4 1197 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7 and 1198 (by
5 failing to authorize and permit all rest periods); 226.7, 512(a) and 1198 (by failing to provide all meal
6 periods); 226(a) and 1198 (by failing to provide accurate wage statements); 2802 (by failing to
7 reimburse business expenses); 226 (by failing to provide accurate wage statements); 1174(d) and
8 1198 (by failing to maintain accurate payroll records); 204 (by failing timely to pay all earned wages
9 during employment); and 201 and 202 (by failing timely to pay all earned wages upon termination).

10 2. For civil penalties pursuant to Labor Code Sections 210, 226.3, 256, 558, 1174.5,
11 1197.1, 2699(a), (f) and (g), for Plaintiff, the State of California and all Aggrieved Employees for
12 Defendants' violations of Labor Code Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1102.5
13 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

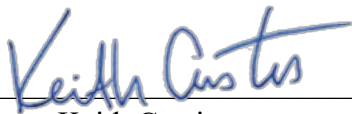
14 3. For attorneys' fees and costs pursuant to Labor Code Section 2699(g)(1), and all other
15 relevant statutes, for Defendants' violations of Labor Code Sections 201, 202, 203, 204, 226, 226.7,
16 510, 512, 1102.5 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

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

19 Dated: October 25, 2021

CUSTIS LAW, P.C.

20
21 By: 
22 Keith Custis

23 Attorneys for Plaintiff
24 COURTNEY CHEEVER
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