

MICHAEL R. CROSNER (SBN 41299)
mike@crosnerlegal.com
ZACHARY M. CROSNER (SBN 272295)
zach@crosnerlegal.com
BLAKE R. JONES (SBN 211221)
blake@crosnerlegal.com
CHAD SAUNDERS (SBN 257810)
chad@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (310) 496-5818
Fax: (310) 510-6429

Attorneys for Plaintiff LILIYA GOTISHAN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

LILIYA GOTISHAN, as an individual and
on behalf of all others similarly situated,

Plaintiff,

v.

KYO AUTISM THERAPY, LLC, a
California limited liability company; and
DOES 1-50, inclusive,

Defendants.

Case No.: CGC-21-596378

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Recovery of Unpaid Minimum Wages and Liquidated Damages**
- 2. Recovery of Unpaid Overtime**
- 3. Failure to Provide Meal Periods or Compensation in Lieu Thereof**
- 4. Failure to Provide Rest Periods or Compensation in Lieu Thereof**
- 5. Failure to Furnish Accurate Itemized Wage Statements**
- 6. Failure to Timely Pay All Wages Due Upon Separation of Employment**
- 7. Failure to Reimburse Business Expenses**
- 8. Unfair Competition and**
- 9. Violation of Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
11/19/2021
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

1 Plaintiff, LILIYA GOTISHAN (“Plaintiff”), as an individual and on behalf of all others
2 similarly situated and aggrieved, hereby files this Complaint against Defendant KYO AUTISM
3 THERAPY, LLC (“Defendant” or “Kyo”). Plaintiff is informed and believes and thereon alleges
4 as follows:

5 **JURISDICTION AND VENUE**

6 1. This court possesses original subject matter jurisdiction over this matter. Venue is
7 proper in San Francisco County, California, because Defendant maintains its principal place of
8 business in San Francisco County.

9 **THE PARTIES**

10 2. Plaintiff resides in the State of California. Plaintiff worked for Defendant in the State
11 of California as a non-exempt, hourly-paid employee during the relevant time period.

12 3. Defendant KYO AUTISM THERAPY, LLC is a California limited liability company
13 that, at all relevant times, was authorized to do business within the State of California and is doing
14 business in the State of California. Kyo was formerly known as Gateway Learning Group.

15 4. The true names and capacities of the DOE Defendants sued herein as DOES 1
16 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendants
17 by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for
18 the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect
19 the true names and capacities of the Doe Defendants when such identities become known.

20 5. Plaintiff is further informed and believes, and on that basis alleges, that, at all relevant
21 times, each Defendant was the principal, agent, partner, joint venturer, joint employer, officer,
22 director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest
23 and/or predecessor in interest of some or all of the other Defendants, and was engaged with some
24 or all of the other defendants in a joint enterprise for profit, and bore such other relationships to
25 some or all of the other Defendants so as to be liable for their conduct with respect to the matters
26 alleged in this complaint. Plaintiff is further informed and believes and thereon alleges that each
27 Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all
28 relevant times, each Defendant knew or should have known about, authorized, ratified, adopted,

1 approved, controlled, aided and abetted the conduct of all other Defendants.

2 6. Whenever and wherever reference is made in this complaint to any act or failure to
3 act by a Defendants or co-Defendant, such allegations and references shall also be deemed to mean
4 the acts and/or failures to act by each Defendants acting individually, jointly and severally.

5 **CLASS ALLEGATIONS**

6 7. Plaintiff brings this action on behalf of herself and all others similarly situated as a
7 class action pursuant to Code of Civil Procedure section 382. The class Plaintiff seeks to represent
8 is defined as follows: “all non-exempt workers who were employed by Defendant in California at
9 any time within the four years prior to the filing of the initial complaint (the “Class Members”).”

10 a. Numerosity: The class is so numerous that the individual joinder of all members is
11 impractical under the circumstances of this case. While the exact number of Class
12 Members is unknown to Plaintiff, Plaintiff is informed and believes, and based thereon
13 alleges, that the class consists of at least 100 individuals. The identities of Class Members
14 are ascertainable through Defendant’s records.

15 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment because
16 common questions of law and fact predominate over individual issues. Common
17 questions include, but are not limited to, the following:

18 (1) whether Defendant understated hours worked and failed to pay all amounts due
19 to Plaintiff and the Class Members for wages earned, including minimum and
20 overtime wages, under California law;

21 (2) whether Defendant provided Plaintiff and the Class Members with all meal
22 periods or premium payments in lieu thereof in compliance with California law;

23 (3) whether Defendant provided Plaintiff and the Class members with all rest periods
24 or premium payments in lieu thereof, in compliance with California law;

25 (4) whether Defendant provided Plaintiff and the Class Members with accurate,
26 itemized wage statements in compliance with California law;

27 (5) whether Defendant timely paid Plaintiff and the Class Members all wages due
28 upon separation of employment;

1 (6) whether Defendant reimbursed Plaintiff and the Class Members for all business
2 expenses as required under Labor Code Section 2802; and

3 (7) whether Defendant violated California Business and Professions Code sections
4 17200, et seq.

5 c. Typicality. Plaintiff's claims are typical of the claims of the Class Members. Plaintiff
6 suffered a similar injury as the other Class Members as a result of Defendant's common
7 practices regarding, *inter-alia*, failure to calculate and pay all owed minimum and
8 overtime wages, failure to provide proper meal and rest periods or premium
9 compensation in lieu thereof, failure to reimburse for business expenses, failure to
10 provide accurate wage statements, and failure to timely provide payment of all wages
11 due upon termination. In addition, Plaintiff will fairly and adequately protect the interests
12 of the Class Members. Plaintiff has no interests adverse to the interests of the other class
13 members.

14 d. Superiority. A class action is superior to other available means for the fair and efficient
15 adjudication of this controversy since individual joinder of all members of the class is
16 impractical. Class action treatment will permit a large number of similarly situated
17 persons to prosecute their common claims in a single forum simultaneously, efficiently,
18 and without the unnecessary duplication of effort and expense that numerous individual
19 actions would engender. Furthermore, as the damages suffered by each individual
20 member of the class may be relatively small, the expenses and burden of individual
21 litigation would make it difficult or impossible for individual members of the class to
22 redress the wrongs done to them, while an important public interest will be served by
23 addressing the matter as a class action. The cost to the court system of adjudication of
24 such individualized litigation would be substantial. Individualized litigation would also
25 present the potential for inconsistent or contradictory judgments.

26 **FACTUAL AND LEGAL ALLEGATIONS**

27 8. During the four-year period preceding filing of this complaint, Plaintiff, and each of
28

1 the Class Members, were employed by Defendant in the State of California as non-exempt, hourly-
2 paid workers. At all times referenced herein, Defendant exercised control over Plaintiff and each of
3 the Class Members and suffered and/or permitted them to work.

4 9. Plaintiff was employed by Defendant as a non-exempt, hourly-paid, billing
5 coordinator, from approximately June 2019 to October 2020. Plaintiff's assigned shifts were
6 typically eight (8) hours in length.

7 10. Plaintiff was not paid for all hours worked by virtue of Defendant's automatic
8 deduction policy and practice for missed or improper meal periods described in further detail below.
9 Additionally, Defendant implemented a time-shaving/time-rounding system that as applied
10 systematically deprived Plaintiff of compensable time because the time-rounding system
11 implemented by Defendant would almost always, if not always, understate actual compensable work
12 time. Specifically, Defendant required Plaintiff to round the start times of her shifts which resulted
13 in Plaintiff not being paid for all hours worked. Defendant further rounded the start and end times
14 of employee meal periods resulting in Plaintiff not being paid for all time worked. Plaintiff is
15 informed and believes and thereon alleges that Defendant had actual or constructive knowledge that
16 its time-rounding and auto-deduction policies and practices resulted in the underpayment of
17 minimum and overtime wages owed to Plaintiff, in violation of California's minimum and overtime
18 wage laws.

19 11. Defendant's failure to pay for all hours worked (i.e., per Defendant's time-
20 rounding/time-shaving policy and automatic deduction policy applied to on-duty or shortened meal
21 periods) resulted in Plaintiff working more than eight (8) hours per day or more than 40 hours per
22 workweek without being compensated at the proper overtime rate for this time. Moreover,
23 Defendant failed to apply the correct overtime premium wage rate to overtime worked. For
24 example, during pay periods Defendant paid overtime wages and also compensated with non-
25 discretionary pay, such as, but not limited to, bonus pay, Defendant failed to incorporate said non-
26 discretionary remuneration into the regular rate of pay for purposes of calculating the owed overtime
27 rate, resulting in the underpayment of owed overtime wages.

1 12. Plaintiff was consistently unable to take timely, off duty, thirty-minute uninterrupted
2 meal periods. To meet work deadlines, Plaintiff was required to take meal periods past the fifth hour
3 of work or was forced to work through part or all of her meal periods. As a result of these
4 missed/improper meal periods, Plaintiff was entitled to premium pay. Defendant did not pay
5 Plaintiff one additional hour of pay at her regular rate of compensation for each workday that one
6 or more statutory meal period was not properly provided and or did not pay the meal period premium
7 at the proper rate for failure to incorporate all non-discretionary remuneration, including but not
8 limited to, bonus pay, into the regular rate for purposes of calculating the meal period premium.
9 Notably, Defendant automatically deducted thirty minutes for these missed or improper meal
10 periods and or rounded employee meal period times resulting in Plaintiff receiving late or shortened
11 meal periods in policy and practice.

12 13. Plaintiff did not always receive timely 10 (ten)-minute rest periods for every four (4)
13 hours worked or major fraction thereof. Defendant set work assignment deadlines that prohibited
14 Plaintiff from taking compliant rest periods. Plaintiff was never paid a rest period premium for any
15 missed/improper rest period.

16 14. Defendant failed to furnish Plaintiff with complete and accurate wage statements in
17 compliance with Labor Code section 226. Defendant's wage statements do not accurately reflect,
18 the total gross and net wages earned, including, all earned minimum and overtime wages, and do
19 not accurately reflect all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate. Due to Defendant's failure to accurately
21 record hours worked per Defendant's time rounding/time shaving policies described herein, the
22 wage statements fail to display the actual total hours worked, a requirement of Labor Code section
23 226. Moreover, Defendant's wage statements show it paid overtime and double time by including
24 the hours in the straight time/as regular hours, and then paying another .5 or 1x the straight time rate
25 on the overtime and double time hours. Accordingly, Defendant's wage statements do not list the
26 correct overtime and double time rates, and the wage statements appear to result in including the
27 hours twice making it impossible to determine or requiring Plaintiff to resort to outside
28 materials/perform extensive calculations to determine what her pay rate was for each corresponding

1 hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). Moreover,
2 Defendant's wages statements fail to display accurate overtime and double time rates for failure to
3 incorporate all non-discretionary remuneration, including but not limited to, bonus pay, into the
4 listed overtime and double time rates.

5 15. Defendant regularly failed to reimburse and indemnify Plaintiff for business
6 expenses. Defendant improperly required Plaintiff to pay for business expenses that are supposed to
7 be the responsibility of the employer, including but not limited to, cell phone/data plan charges,
8 costs associated with purchasing items for Defendant, and costs associated with having to use her
9 personal vehicle on the job. For example, Defendant regularly required Plaintiff to go to the post
10 office to purchase stamps; Plaintiff would submit receipts/requests for reimbursement to Human
11 Resources and was only once reimbursed. Moreover, Plaintiff was required to use her personal
12 vehicle during work time to perform errands on behalf of Defendant, such as, but not limited to, to
13 making trips to the post office. Defendant would not reimburse Plaintiff for this personal vehicle
14 use. Moreover, Defendant failed to reimburse Plaintiff for personal-cell phone related expenses
15 despite requiring Plaintiff to use her personal cell phone in the performance of her job duties.

16 16. Upon separation of employment, Defendant failed to timely furnish Plaintiff a final
17 paycheck containing all owed and unpaid wages, including, all owed and unpaid minimum and
18 overtime wages.

19 17. Plaintiff is informed and believes, and based thereon alleges, that Defendant engaged
20 in these same unlawful practices with regard to all Class Members, and that Defendant applied these
21 unlawful practices to all of its employees that it applied to Plaintiff.

22 **FIRST CAUSE OF ACTION**

23 **Recovery of Unpaid Minimum Wages and Liquidated Damages** 24 **(Against All Defendants)**

25 18. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

26 19. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
27 Commission ("IWC") Wage Orders, an employer must pay its employees for all hours worked, up
28 to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.

Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

20. Defendant violated California's minimum wage laws by failing to compensate Plaintiff and the Class Members for all hours worked. Plaintiff and the Class Members were not paid for all hours worked by virtue of Defendant's automatic deduction policy and practice for missed or improper meal periods described herein. Additionally, Defendant implemented a time-shaving/time-rounding system that as applied systematically deprived Plaintiff and the Class Members of compensable time because the time-rounding system implemented by Defendant would almost always, if not always, understate actual compensable work time. Specifically, Defendant required Plaintiff and the Class Members to round the start times of their shifts which resulted in Plaintiff and the Class Members not being paid for all hours worked. Defendant further rounded the start and end times of employee meal periods resulting in Plaintiff and the Class Members not being paid for all time worked. Plaintiff is informed and believes and thereon alleges that Defendant had actual or constructive knowledge that its time-rounding and auto-deduction policies and practices resulted in the underpayment of minimum wages owed to Plaintiff and the Class Members, in violation of California's minimum wage laws.

21. Defendant knew or should have known that Plaintiff and the Class Members worked hours for which they were not properly compensated.

22. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff and the Class Members are entitled to recover all unpaid minimum time wages and liquidated damages thereon, plus attorney's fees and costs, in an amount to be proved at trial.

SECOND CAUSE OF ACTION

Recovery of Unpaid Overtime

(Against Defendants KYO AUTISM THERAPY, LLC and DOES 1-50, inclusive)

23. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

24. California law provides employees in California must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or (8) eight per day and must be paid double wages for all hours worked in excess of 12 per day, unless they are

1 exempt. Plaintiff and the Class Members worked overtime hours for which they were not
2 compensated by Defendants by virtue of Defendant's meal period auto-deduction and time-
3 rounding/time-shaving policies and practices described herein. Defendant's failure to pay for all
4 "hours worked" (i.e., per Defendant's time-rounding/time-shaving policies described above and the
5 automatic deduction policy applied to on-duty or shortened meal periods) resulted in Plaintiff and
6 the Class Members working more than eight (8) hours per day or more than 40 hours per workweek
7 without being compensated at the proper overtime rate for this time. Moreover, Defendant failed to
8 apply the correct overtime premium wage rate to time worked. For example, during pay periods
9 Defendant paid overtime wages and also compensated with non-discretionary pay, such as, but not
10 limited to, bonus pay, Defendant failed to incorporate said non-discretionary remuneration into the
11 regular rate of pay for purposes of calculating the owed overtime rate, resulting in the underpayment
12 of owed overtime wages.

13 25. Defendant's conduct described above is in violation of California Labor Code
14 sections 510 and 1194, and all applicable IWC Wage Orders.

15 26. Plaintiff and the Class Members are entitled to recover all unpaid overtime wages,
16 plus attorney's fees and costs, in an amount to be proved at trial.

17 **THIRD CAUSE OF ACTION**

18 **Failure to Provide Meal Periods or Compensation in Lieu Thereof** 19 **(Against Defendants KYO AUTISM THERAPY, LLC and DOES 1-50, inclusive)**

20 27. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

21 28. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders, Defendant
22 was required to provide Plaintiff and the Class Members with one 30-minute meal break free from
23 all duties for all shifts longer than five (5) hours, and a second 30-minute meal break free from all
24 duties for all shifts longer than 10 hours.

25 29. Plaintiff and the Class Members were consistently unable to take timely, off duty,
26 thirty-minute uninterrupted meal periods. In order to submit work product on time, Plaintiff and the
27 Class Members were required to take meal periods past the fifth hour of work or was forced to work
28 through part or all of her meal periods. As a result of these missed/improper meal periods, Plaintiff

was entitled to premium pay. Defendant did not pay Plaintiff and the Class Members one additional hour of pay at their regular rate(s) of compensation for each workday that one or more statutory meal period was not properly provided and or did not pay the meal period premium at the proper rate for failure to incorporate all non-discretionary remuneration, including but not limited to, bonus pay, into the regular rate for purposes of calculating the meal period premium. Notably, Defendant automatically deducted thirty minutes for these missed improper meal periods and or rounded employee meal period times resulting in Plaintiff and the Class Members receiving late or shortened meal periods in policy and practice.

30. Defendant failed to provide Plaintiff and the Class Members with all required meal periods, or with proper compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff and the Class Members are entitled to one additional hour's pay at the proper premium pay rate for each day a meal period was missed, late or interrupted, all in an amount to be proved at trial.

FOURTH CAUSE OF ACTION

**Failure to Provide Rest Periods or Compensation in Lieu Thereof
(Against Defendants KYO AUTISM THERAPY, LLC and DOES 1-50, inclusive)**

31. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

32. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period “insofar as practicable.” The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257. Accordingly, an employer cannot require employees to stay on the work premises nor may an employer require employees to monitor their cell phones and/or radios and/or other dispatch equipment during their rest periods as “one cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to *particular locations* or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods. [emphasis added].” *Id.* at 269. If the employer fails to

1 provide any required rest period, the employer must pay the employee one hour of pay at the
2 employee's regular rate of compensation for each workday the employer did not provide at least one
3 legally required rest period, pursuant to Labor Code section 226.7.

4 33. Plaintiff and the Class Members did not receive compliant, timely 10 (ten)-minute
5 rest periods every four (4) hours worked or major fraction thereof. Rest periods were taken as time
6 permitted and were improper irrespective of the fact that they were not always timely. Based on
7 information and belief, Plaintiff and the Class Members were required to remain on the work
8 premises during any rest periods thus remaining under employer control and rendering any said rest
9 periods on-duty and thereby improper. Defendant further employed policies and procedures which
10 ensured Plaintiff and the Class Members did not receive any premium wages to compensate them
11 for workdays that they did not receive all legally required rest periods.

12 34. Defendant is therefore liable to Plaintiff and the Class Members for one hour of
13 additional pay at the regular rate of compensation for each workday that a require rest periods was
14 not provided, pursuant to California Labor Code section 226.7 and the applicable Wage Order, plus
15 pre-judgment interest.

16 **FIFTH CAUSE OF ACTION**

17 **Failure to Furnish Accurate Itemized Wage Statements** 18 **(Against Defendants KYO AUTISM THERAPY, LLC and DOES 1-50, inclusive)**

19 35. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

20 36. Pursuant to California Labor Code § 226, subdivision (a), Plaintiff and the Class
21 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
22 wage statement accurately stating the following:

23 (1) gross wages earned, (2) total hours worked by the employee,
24 except for any employee whose compensation is solely based on a
25 salary and who is exempt from payment of overtime under
26 subdivision (a) of Section 515 or any applicable order of the Industrial
27 Welfare Commission, (3) the number of piece-rate units earned and
28 any applicable piece rate if the employee is paid on a piece-rate basis,
(4) all deductions, provided that all deductions made on written orders
of the employee may be aggregated and shown as one item, (5) net
wages earned, (6) the inclusive dates of the period for which the
employee is paid, (7) the name of the employee and his or her social
security number, except that by January 1, 2008, only the last four
digits of his or her social security number or an employee

1 identification number other than a social security number may be
2 shown on the itemized statement, (8) the name and address of the
3 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.

4 37. Defendant failed to furnish Plaintiff and the Class Members with complete and
5 accurate wage statements in compliance with Labor Code section 226. Defendant's wage statements
6 do not accurately reflect, the total gross and net wages earned, including, all earned minimum and
7 overtime wages, and do not accurately reflect all applicable hourly rates in effect during the pay
8 period and the corresponding number of hours worked at each hourly rate. Due to Defendant's
9 failure to accurately record hours worked per Defendant's time rounding/time shaving policies
10 described herein, the wage statements fail to display the actual total hours worked, a requirement of
11 Labor Code section 226. Moreover, Defendant's wage statements show it paid overtime and double
12 time by including the hours in the straight time/as regular hours, and then paying another .5 or 1x
13 the straight time rate on the overtime and double time hours. Accordingly, Defendant's wage
14 statements do not list the correct overtime and double time rates, and the wage statements appear to
15 result in including the hours twice making it impossible to determine or requiring Plaintiff and the
16 Class Members to resort to outside materials/perform extensive calculations to determine what the
17 pay rate was for each corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d
18 1222 (C.D. Cal. 2011). Moreover, Defendant's wages statements fail to display accurate overtime
19 and double time rates for failure to incorporate all non-discretionary remuneration, including but
20 not limited to, bonus pay, into the listed overtime and double time rates.

21 38. As a result of Defendant's unlawful conduct, Plaintiff and the Class Members have
22 suffered injury. The absence of accurate information on their wage statements has prevented earlier
23 challenges to Defendant's unlawful pay practices, will require discovery and mathematical
24 computations to determine the amount of wages owed, and will cause difficulty and expense in
25 attempting to reconstruct time and pay records. Defendant's conduct led to the submission of
26 inaccurate information about wages and amounts deducted from wages to state and federal
27 government agencies. As a result, Plaintiff and the Class Members are required to participate in this
28

lawsuit and create more difficulty and expense for Plaintiff and the Class Members from having to reconstruct time and pay records than if Defendant had complied with its legal obligations.

39. Pursuant to California Labor Code section 226(e), Plaintiff and the Class Members are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226 violation occurred and one hundred dollars per employee per violation for each subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

40. Pursuant to California Labor Code § 226(h), Plaintiff and the Class Members are entitled to bring an action for injunctive relief to ensure Defendant's compliance with California Labor Code § 226(a). Injunctive relief is warranted because Defendant continues to provide currently employed Class Members with inaccurate wage statements in violation of California Labor Code § 226(a) and currently employed Class Members have no adequate legal remedy for the continuing injuries that will be suffered as a result of Defendant's ongoing unlawful conduct. Injunctive relief is the only remedy available for ensuring Defendant's compliance with California Labor Code § 226(a).

41. Pursuant to California Labor Code §§ 226(e) and 226(h), Plaintiff and the Class Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable attorneys' fees, and costs of suit.

SIXTH CAUSE OF ACTION

Failure to Timely Pay All Wages Due Upon Separation of Employment (Against Defendants KYO AUTISM THERAPY, LLC and DOES 1-50, inclusive)

42. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

43. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

44. California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has

given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

45. Defendant failed to timely pay Plaintiff and the Class Members all wages that were due and owing upon termination or resignation. Upon separation of employment, Defendant failed to timely furnish Plaintiff and the Class Members their final paychecks containing all owed and unpaid wages, including, all owed and unpaid minimum and overtime wages. Under Labor Code section 203, Plaintiff and the Class Members who no longer are employed with Defendant are entitled to recover waiting time penalties of up to 30 days' pay, plus attorney's fees and costs, in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION
Failure to Reimburse Business Expenses
(Against Defendants KYO AUTISM THERAPY, LLC and DOES 1-50, inclusive)

46. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

47. Pursuant to California Labor Code section 2802, Plaintiff and the Class Members were entitled to be reimbursed for all necessary expenses associated with carrying out orders by their employer and/or carrying out the duties assigned by their employers. Defendant regularly failed to reimburse and indemnify Plaintiff and the Class Members for business expenses. Plaintiff and the Class Members were improperly required to pay for business expenses that are supposed to be the responsibility of the employer, including but not limited to, cell phone/data plan charges, costs associated with purchasing items for Defendant, and costs associated with having to use their personal vehicles on the job. Defendant's failure to provide Plaintiff and the Class Members with full reimbursement for all reasonable expenses associated with carrying out their duties required that Plaintiff and the Class Members subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

48. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered injury in that they were not completely reimbursed as mandated by California law.

49. Pursuant to California Labor Code section 2802, Plaintiff and the Class Members are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable

1 attorneys' fees, and costs of suit.

2 **EIGHTH CAUSE OF ACTION**

3 **Unfair Competition**

4 **(Against Defendants KYO AUTISM THERAPY, LLC and DOES 1-50, inclusive)**

5 50. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

6 51. The unlawful conduct of Defendant alleged herein constitutes unfair competition
7 within the meaning of California Business and Professions Code section 17200. This unfair conduct
8 includes *inter-alia*, Defendant's failure to pay minimum and overtime wages by virtue of its illegal
9 meal period auto-deduction and rounding policies and practices, failure to authorize or permit, or
10 provide, all required meal and rest periods or pay proper premiums in lieu thereof, failure to furnish
11 complete and accurate itemized wage statements, failure to properly accrue and pay all earned sick
12 leave wages, failure to reimburse business expenses, and failure to timely pay all wages due upon
13 separation of employment. Due to its unfair and unlawful business practices in violation of the
14 California Labor Code, Defendant has gained a competitive advantage over other comparable
15 companies doing business in the State of California that comply with their obligations to authorize
16 or permit rest and meal periods or pay proper meal and rest period premiums in lieu thereof, to
17 provide complete and accurate itemized wage statements, to reimburse for business expenses, to pay
18 all owed minimum and overtime wages, and to pay all wages due upon separation of employment
19 of their employees.

20 52. As a result of Defendant's unfair competition as alleged herein, Plaintiff and the
21 Class Members have suffered injury in fact and lost money or property, as described in more detail
22 above. Pursuant to California Business and Professions Code section 17200, et seq., Plaintiff and
23 the Class Members are entitled to restitution of all wages and other monies rightfully belonging to
24 them that Defendants failed to pay and wrongfully retained by means of its unlawful and unfair
25 business practices. Plaintiff also seeks an injunction against Defendant on behalf of the Class
26 Members enjoining Defendants, and any and all persons acting in concert with it, from engaging in
27 each of the unlawful practices, policies and patterns set forth herein.
28

NINTH CAUSE OF ACTION

**Violation of the Private Attorneys General Act of 2004
(Against Defendants KYO AUTISM THERAPY, LLC and DOES 1-50, inclusive)**

53. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

54. Plaintiff brings this cause of action under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of the State of California, regarding violations of the Labor Code as to all similarly aggrieved individuals employed by Defendant in the State of California as a non-exempt employee. This cause of action is brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

55. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations within 65 days of the date of Plaintiff’s written notice. Plaintiff has complied with the administrative exhaustion procedures for bringing suit specified in Labor Code sections 2699.3 and 2699.5. Plaintiff gave timely written notice by certified mail to Defendant of the violation of various provisions of the California Labor Code as alleged in this complaint and filed notice of the violations online with the Labor and Workforce Development Agency (“LWDA”). Plaintiff filed her notice with the LWDA on September 15, 2021, and served Defendant via certified mail. The LWDA assigned Plaintiff the following case number: LWDA-CM-844739-21.

56. The LWDA did not provide notice of its intention to investigate Plaintiff’s claims on behalf of the State of California and the Aggrieved Employees after expiration of the 65-day waiting time period, or at any time. Defendant also did not cure any of the alleged Labor Code violations within the time allotted by PAGA. Consequently, Plaintiff has exhausted all administrative remedies and Plaintiff’s right to file the instant lawsuit then duly accrued.

57. Plaintiff is an “aggrieved employee” as that term is defined under the Labor Code section 2699(c), as Plaintiff was employed by Defendant during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

58. Plaintiff has standing to bring a PAGA action on behalf of the defined

1 Aggrieved Employees, as she was employed by Defendant and affected by one or more of the
2 alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745,
3 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by the
4 employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

5 59. Plaintiff brings this PAGA action on behalf of Plaintiff and all similarly aggrieved
6 employees. The Aggrieved Employees shall be defined as follows: “All non-exempt workers who
7 were employed by Defendant in California at any time from September 15, 2020, through the
8 present.”

9 60. From one year prior to Plaintiff’s filing of the required PAGA notice with the
10 Labor Workforce and Development Agency, and continuing through the present, as alleged herein,
11 Defendant violated the California Labor Code sections discussed above. Defendant further failed to
12 maintain records as required by Labor Code section 1174 and the applicable IWC Wage Order.
13 Defendant failed to maintain accurate records of the start and end times of Aggrieved Employees’
14 workdays and failed to record the true start and end times of Aggrieved Employees’ meal periods.
15 Moreover, by virtue of its violations with respect to meal period, rest period, recordkeeping
16 provisions and minimum and overtime wage laws, Defendant further violated Labor Code sections
17 1198 and 1199, which together make unlawful any employment of any employee under conditions
18 of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any
19 provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or
20 order or ruling of the commission. Defendant also violated Labor Code section 216, which declares
21 unlawful an employer’s refusal to pay wages due and payable and/or denial of the validity of any
22 claim to wages due by failing to pay Plaintiff and the other Aggrieved Employees for all hours
23 worked at the proper wage rate and by failing to pay Plaintiff and the other Aggrieved Employees
24 an additional hour of pay for each meal/rest period not provided/that was invalid. In violation of
25 California Labor Code section 223, Defendant also willfully and systematically denied Plaintiff and
26 the other Aggrieved Employees minimum and overtime wage compensation for all hours worked
27 which resulted in the payment of less than statutorily required wages to them.

28 61. The California Labor Code places certain procedural and substantive limits on

1 employers' ability to conduct employee background checks and on how employers can use the
2 information they obtain through those background checks. Labor Code section 1024.5 states that
3 employers, except for financial institutions, may order a credit check only if the individual works
4 (or is applying to work) in certain positions, and Labor Code section 432.7 prohibits an employer
5 from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then,
6 certain limitations apply. Additionally, the ("ICRAA") and the Fair Credit Reporting Act, 15 U.S.C.
7 sections 1681, et seq. ("FCRA") mandate several requirements prior to and following an employee
8 background check, including but not limited to, identifying an appropriate reason for the background
9 check, a separate consent form with required disclosures and certain formatting requirements,
10 additional forms such as a summary of rights, as well as proper notice of adverse actions taken,
11 among other statutory Investigative Consumer Reporting Agencies Act, Civil Code sections 1786,
12 et seq. Based on information and belief, Defendant required Plaintiff and the Aggrieved Employees
13 to submit to an unlawful criminal and/or financial background check as a condition of obtaining
14 and/or holding employment in violation of Labor Code sections 1024.5 and/or 432.7. Based on
15 further information and belief, Defendant also required Plaintiff and the other Aggrieved Employees
16 to agree in writing to unlawful background checks not in conformance with the requirements
17 ICRAA and/or FCRA, and Defendant also asked about arrests not resulting in convictions on its
18 employment application. These violations subject Defendant to civil penalties under the Labor
19 Code, including without limitation Labor Code sections 432.5, 432.7 and 2699. Each violation of
20 each Labor Code section and Wage Order provision, for each aggrieved employee, results in a
21 separate civil penalty.

22 62. Moreover, Defendant violated California's paid sick leave laws including, Labor
23 Code sections 245-248.5; Defendant did not provide Plaintiff and the other Aggrieved Employees
24 with any sick leave pay, or Defendant improperly accrued the amount of sick leave pay owed for
25 failure to base the owed sick leave pay on the correct number of hours worked due to Defendant's
26 meal period auto-deduction and time-rounding policies and practices described herein and failure to
27 incorporate all forms of non-discretionary remuneration, including but not limited to, non-
28 discretionary bonuses, into the regular pay rate for purposes of calculating the owed sick pay.

1 Defendant further failed to put Aggrieved Employees on notice of their paid sick leave rights or put
2 their entitlement to sick leave in a Labor Code section 2810.5 notice.

3 63. In addition, Defendant failed to maintain accurate records of used sick leave and
4 the balance of paid sick leave left to the employee throughout the relevant time period. Throughout
5 the relevant time period, Defendant failed to provide notice of sick leave amount balance left for
6 Plaintiff and the other Aggrieved Employees, thus affecting their intelligent exercise of their paid
7 sick leave. But for this failure, Plaintiff and the other Aggrieved Employees would have used their
8 paid sick leave at least prior to their respective separations, for as on several occasions thereafter,
9 he or she would have been entitled to use the banked sick leave and earn appropriate compensation.
10 This illegal retention of paid sick leave is unlawful and Plaintiff seeks all forms of injunctive relief,
11 restitution, and declaratory relief as permitted by California law, on behalf of herself and the other
12 Aggrieved Employees.

13 64. In violation of Labor Code section 247.5, Defendant failed to maintain records
14 documenting the hours worked and paid sick days accrued and used by Plaintiff and the other
15 Aggrieved Employees, permitting the presumption that they were entitled to the maximum number
16 of hours accruable under this article at the time of their termination. Defendant further failed to
17 comply with Labor Code section 246, that is, providing its employees with a 226 statement or
18 separate writing containing amount of paid sick leave available, or paid time off leave an employer
19 provides in lieu of sick leave, at the time it pays its period wages and provides a Labor Code section
20 226 statement. Plaintiff seeks all available relief as a result of the Labor Code violations described
21 herein under PAGA, including PAGA penalties, and attorney's fees and costs in pursuing this
22 PAGA claim.

23 65. Under the provisions of PAGA and the Labor Code sections Labor Code sections
24 201-203, 216, 221-223, 226, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 1024.5, 1174, 1194, 1197,
25 1197.1, 1198, 1199, 2802, and 2810.5, and all relevant sections of the applicable Wage Orders, as
26 well as all interpretations of these laws by California Courts and administrative bodies, as well as
27 any other law that is enforceable through PAGA, Defendant are liable for all statutorily-specified
28 penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions

1 listed herein, or for default PAGA penalties under Labor Code section 2699(f) for any violation of
2 a Labor Code section without a specified civil penalty. Pursuant to Labor Code section 2699(g),
3 and/or any and all other applicable laws, Plaintiff is entitled to recover civil penalties, costs, plus
4 reasonable attorney's fees and costs, all in an amount to be proved.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for relief and judgment on behalf of herself and the Class
7 Members and the Aggrieved Employees as follows:

- 8 a. Certification of the above-described Class as a class action, pursuant to Code of Civil
9 Procedure section 382;
- 10 b. Certification of the above-described Class as a representative class under Business and
11 Professions Code section 17200, et seq.;
- 12 c. Provision of Class Notice to all non-exempt employees who worked for Kyo in
13 California during the Class Period;
- 14 d. A declaratory judgment that Kyo has knowingly and intentionally violated the Business
15 and Professions Code sections 17200-17208, by the conduct set forth above;
- 16 e. A declaratory judgment that Kyo's violations as described above were willful;
- 17 f. An equitable accounting to identify, locate, and restore to all Class Members the wages
18 that are due;
- 19 g. An award to Plaintiff and the Class Members of damages in the amount of unpaid
20 minimum wages and overtime wages, including interest thereon, subject to proof at
21 trial;
- 22 h. An award to Plaintiff and the Class Members of damages in the amount of unpaid meal
23 and rest period premiums, pursuant to Labor Code section 226.7;
- 24 i. An award to Plaintiff and the Class Members of statutory penalties because of Kyo's
25 failure to provide Plaintiff and the Class Members with itemized wage statements that
26 comply with the requirements of Labor Code section 226;
- 27 j. An award of payments due to them as waiting time penalties as to those Class
28 Members who are no longer employed by Kyo, pursuant to Labor Code section 203;

- 1 k. An award of damages to Plaintiff and Class Members for Kyo's failure to reimburse
2 business expenses pursuant to Labor Code section 2802;
- 3 l. An award to Plaintiff and the Class Members of reasonable attorneys' fees and costs,
4 pursuant to Code of Civil Procedure section 1021.5 and Labor Code sections 203,
5 218.5, 226, 512, 1194, and/or other applicable law;
- 6 m. For civil penalties according to proof, including PAGA penalties;
- 7 n. An award to Plaintiff and the Class Members and the Aggrieved Employees of such
8 other and further relief as this Court deems just and proper.

9
10 Dated: November 19, 2021

CROSNER LEGAL, PC

11
12 By: 

13 Michael R. Crosner, Esq.
14 Zachary M. Crosner, Esq.
15 Blake R. Jones, Esq.
16 Chad Saunders, Esq.
17 Attorneys for Plaintiff,
18 LILIYA GOTISHAN

19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff demands a trial by jury on all claims so triable.

22
23 Dated: November 19, 2021

CROSNER LEGAL, PC

24
25 By: 

26 Michael R. Crosner, Esq.
27 Zachary M. Crosner, Esq.
28 Blake R. Jones, Esq.
Chad Saunders, Esq.
Attorneys for Plaintiff,
LILIYA GOTISHAN