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individually and as a proxy for the State of
California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
[UNLIMITED CIVIL]

KARLA SANTIAGO, an individual,

Plaintiff,

vs.

GRACE BURR, an individual; CODY LIEBEL,
an individual; and DOES 1 through 5, inclusive,

Defendants.

Case No.: 21STCV35865

*Assigned for all purposes to the Hon. Judge
Elaine Lu*

FIRST AMENDED COMPLAINT FOR:

- 1. Failure to Pay Overtime Wages in Violation of Labor Code § 510**
- 2. Unpaid Overtime Wages**
- 3. Unpaid Wages and Failure to Pay Minimum Wages**
- 4. Labor Code § 203 Waiting Time Penalty**
- 5. Failure to Provide Compliant Itemized Wage Statements**
- 6. Failure to Reimburse and Indemnify for Expenditures**
- 7. Labor Code § 1102.5 Retaliation**
- 8. Wrongful Discharge in Violation of Public Policy**
- 9. Labor Code § 1198.5(k) Penalty**
- 10. Labor Code § 226(f) Penalty**
- 11. Failure to Provide Meal and Rest Periods or Compensation in Lieu Thereof in Violation of Labor Code § 226.7**
- 12. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

Plaintiff, KARLA SANTIAGO, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful acts alleged herein occurred in California.

2. Venue is proper in this Court because of the defendants' residence in this county.

PARTIES

3. Plaintiff is an individual who at, all relevant times, has resided in California.

4. Defendant GRACE BURR ("BURR") is an individual who, at all relevant times, has resided in the State of California.

5. Defendant CODY LIEBEL ("LIEBEL"), an individual who, at all relevant times, has resided in the State of California.

6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities. Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's injuries were proximately caused by the conduct of such defendant. All of the Defendants, including DOES 1-5, are alleged to be co-conspirators with each other, in that each agreed to participate, and participated in, the furtherance of the objective of civil wrongs as alleged in this Complaint.

7. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the others.

8. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-Defendants and was acting within the course and scope of such agency, employment, and/or joint

venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant and/or Defendants confirmed and ratified said conduct and omissions.

9. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, Defendants had the right to control, and controlled, Plaintiff's wages, hours and working conditions, and has the right to control the manner in which Plaintiff performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all relevant times alleged herein.

GENERAL ALLEGATIONS

10. Defendants employed Plaintiff, as an hourly non-exempt worker, from at least around March 16, 2020, to July 7, 2021. Defendants employed her to care for their young child and their pets, purchase groceries, cook, run errands, and perform other household duties.

11. As a regular practice, most of the time Defendants required Plaintiff and its other non-exempt employees to work for over 5 hours without being given a 30-minute meal break. When Plaintiff and the other non-exempt workers did start a meal break, it was regularly interrupted.

12. As a regular practice, Defendants required Plaintiff and its other non-exempt employees to work shifts over 3.5 hours without being provided with a duty-free uninterrupted rest break.

13. As a regular practice, Defendants required Plaintiff and its other non-exempt employees to work over 8 hours per day and/or forty per week, without being paid an overtime premium pay of 1.5 times their regular rate of pay.

14. As a regular practice, Defendants required that Plaintiff and its other non-exempt employees to use their personal cell phones for work purposes but did not pay them any portion for their cell phone expenses.

15. On June 16, 2021, Plaintiff traveled with Defendants to Colorado with the expectation of performing work duties. Defendants placed Plaintiff on-call throughout the night during the trip. Defendants did not pay Plaintiff all wages for being on-call throughout the whole night.

16. On June 17, 2021, Plaintiff began to feel sick. On June 23, 2021, Plaintiff told her co-worker that she was really sick. Defendant told Plaintiff, "I need you this weekend." But eventually

Defendant took Plaintiff to the ER. Plaintiff tested positive for Covid-19. Plaintiff believes that she contracted Covid-19 from Defendants while working.

17. On June 24, 2021, the Colorado Health Department ordered Plaintiff to quarantine until June 27, 2021. Plaintiff was off work from June 28 to July 2, 2021, because she had Covid-19. On July 2, 2021, Defendants placed an ad to replace Plaintiff.

18. On July 5, 2021, Plaintiff and Defendant had a conversation about Plaintiff's duties. Plaintiff explained that she did not want to travel with Defendants any longer. On July 6, 2021, Defendant emailed Plaintiff stating, among other things, "I do not think it is healthy for my kids to be with a caregiver who does not like her job." Defendants terminated Plaintiff's employment that day. Plaintiff believes that Defendants terminated her employment because she complained about having to travel without being paid for all wages worked.

19. On July 16, 2021, Plaintiff requested from Defendants her personnel records and all documents she had signed relating to her employment. To date Defendants have not provided the requested records and documents.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE § 510

(AGAINST ALL DEFENDANTS AND DOES 1-5)

20. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

21. Any employee receiving less than the California legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including interest and reasonable attorney's fees. Lab. Code § 1194(a).

22. "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any

seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Lab. Code § 510(a).

23. Plaintiff regularly worked more than eight hours per workday and more than 40 hours per workweek and was not compensated at an overtime rate for those overtime hours worked more than eight per day and 40 per week. Plaintiff also frequently worked more than 12 hours per workday and was compensated at an overtime rate for those overtime hours worked more than 12 per day. As such, Defendant violated Labor Code Sections 510 and 1198 because it violated the above-referenced as Industrial Welfare Commission Orders, as applicable.

24. Any “person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections . . . 1194 . . . may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

25. If the defendant does not keep accurate records of the hours worked by the plaintiff, then the plaintiff may prove the number of overtime hours worked by making a reasonable estimate of those hours. CACI 2703. As a direct and proximate result of the violations of law by Defendant, Plaintiff has worked a substantial number of hours without receiving overtime compensation, at the applicable rate, from Defendants, in accordance with California law.

26. Plaintiff has been damaged in an amount equal to the compensation to which she was entitled but was unlawfully deprived by Defendants, subject to proof at trial.

27. Pursuant to California Labor Code section 1194(a) Plaintiff is entitled to interest at the legal rate on the overtime wages owed to Plaintiff by Defendants.

28. Pursuant to California Labor Code section 1194(a), Plaintiff is entitled to an award of attorneys’ fees, and costs.

SECOND CAUSE OF ACTION

UNPAID OVERTIME WAGES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

29. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

30. Any employee receiving less than the legal overtime compensation, pursuant to the Fair Labor Standards Act at 29 United States Code section 201, *et seq.*, applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including liquidated damages and reasonable attorney's fees. 29 U.S.C. § 216(b). Thus, Plaintiff is also entitled to liquidated damages in amount equal to unpaid overtime wages.

THIRD CAUSE OF ACTION

UNPAID WAGES AND FAILURE TO PAY MINIMUM WAGES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

31. "Wages" includes all amounts for labor performed by employees of every description, including commission basis. Lab. Code § 200(a).

32. "All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Lab. Code § 204(a).

33. "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage . . ., including interest thereon, reasonable attorney's fees, and costs of suit." Lab. Code § 1194(a).

34. Defendants failed to pay Plaintiff's wages for the on call time. As a result, Defendants failed to pay Plaintiff the legal minimum wage.

35. Plaintiff has been harmed by Defendants' failure to minimum wages due in an amount according to proof at trial.

36. An employee receiving less than the legal minimum wage or legal overtime compensation "is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Lab. Code § 1194.

37. An employee receiving less than the minimum wage set by an IWC order "shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon." Lab. Code § 1194.2.

38. Plaintiff is entitled to the unpaid balance of the full wages due, minimum wages due, liquidated damages, interest, and attorneys' fees.

FOURTH CAUSE OF ACTION

LABOR CODE § 203 WAITING TIME PENALTY

(AGAINST DEFENDANTS AND DOES 1-5)

39. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

40. "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced." Lab. Code § 203(a).

41. Defendant failed to timely pay Plaintiff her final wages (including all owed wages for unpaid overtime) on her last date of work, in violation of Labor Code § 201, and failed to pay her the additional continuing wages as a penalty from the original due date, in violation of Labor Code § 203.

42. Plaintiff has been harmed by Defendant's conduct and is entitled to a statutory waiting time penalty, in an amount according to proof at trial, interest thereon, and an award of attorneys' fees, and costs.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE COMPLIANT ITEMIZED WAGE STATEMENTS

(AGAINST DEFENDANTS AND DOES 1-5)

43. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

44. "An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing" Lab. Code § 226(a).

45. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the

IWC, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

46. Defendant knowingly and intentionally failed to provide an itemized statement in writing.

47. “An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.” Lab. Code § 226(e)(2)(A).

48. As a result of the knowing and intentional failure to provide compliant wage statements, Plaintiff has suffered an injury pursuant to section 226(e). As a result, Defendant is liable to Plaintiff for the amounts provided by California Labor Code § 226(e).

49. Pursuant to California Labor Code § 226(e), Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE AND INDEMNIFY FOR EXPENDITURES

(AGAINST DEFENDANTS AND DOES 1-5)

50. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

51. California Labor Code § 2802(a) provides that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties”

52. Labor Code “Section 2802 is designed to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

53. Defendants violated Labor Code Section 2802 by passing on their operating expenses to Plaintiff, in violation of Labor Code § 2802(a).

54. Plaintiff has been damaged by Defendant’s failure to pay or reimburse work expenses in an amount according to proof at trial.

55. Pursuant to California Labor Code § 2802, and other applicable statutes, Plaintiff is entitled to payment or reimbursement of expenditures, in an amount according to proof at trial, interest thereon, and an award of attorneys’ fees, and costs.

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3 **SEVENTH CAUSE OF ACTION**4 **LABOR CODE § 1102.5 RETALIATION**5 **(AGAINST DEFENDANTS AND DOES 1-5)**

6 56. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as
7 though set forth herein in full again.

8 57. An employer, or any person acting on behalf of the employer, shall not retaliate against an
9 employee for disclosing information, or because the employer believes that the employee disclosed or
10 may disclose information, to a person with authority over the employee or another employee who has the
11 authority to investigate, discover, or correct the violation or noncompliance, if the employee has
12 reasonable cause to believe that the information discloses a violation of state or federal statute, or a
13 violation of or noncompliance with a local, state, or federal rule or regulation.

14 58. Plaintiff disclosed information that she reasonably believed a violation of state or federal
15 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

16 59. Plaintiff disclosed that information to a person with authority over her and to another
17 employee who has the authority to investigate, discover, or correct the violation or noncompliance.

18 60. Defendant believed that Plaintiff disclosed information to a person with authority over her
19 or another employee who has the authority to investigate, discover, or correct the violation or
20 noncompliance, that Plaintiff reasonably believed disclosed a violation of state or federal statute, or a
21 violation of or noncompliance with a local, state, or federal rule or regulation.

22 61. Defendant terminated Plaintiff's employment.

23 62. Plaintiff's disclosures were a substantial motivating factor in Defendant's decision to
24 discharge Plaintiff.

25 63. Plaintiff was harmed.

26 64. Defendant's conduct was a substantial factor in causing her harm.

27 65. An aggrieved employee may bring a civil action for damages for violations of Labor
28 Code section 1102.5. Lab. Code §§ 1102.6, 1105.

66. Plaintiff is informed, believes, and thereon alleges that Defendant, by and through its respective corporate officers, directors, and managing agents, ordered, authorized, approved, and/or ratified the conduct herein alleged with intent to interfere with, restrain or deny the exercise of, or the attempt to exercise, Plaintiff's rights under the Labor Code.

67. Plaintiff is informed, believes, and thereon alleges that in doing, ordering, authorizing, approving, and ratifying the acts, policies, and practices alleged herein, Defendant, by and through its officers, directors and managing agents acted in conscious and intentional disregard for the rights, health, and welfare of Plaintiff.

68. Defendant acted with oppression, as such term is defined in Civil Code section 3294(c)(2), in that it engaged in despicable conduct that subjected Plaintiff to cruel and unjust hardship in conscious disregard of her Labor Code rights.

69. Defendant acted with malice, as such term is defined in Civil Code section 3294(c)(1), in that it engaged in despicable conduct carried out with a willful and conscious disregard for Plaintiff's Labor Code rights.

70. Pursuant to Civil Code section 3294, as a consequence of Defendant, by and through its owners, officers, directors and managing agents' promulgation and enforcement of the oppressive and malicious workplace policies and practices described hereinabove, Plaintiff is entitled to recover her actual damages, as well as exemplary damages against Defendant, in an amount deemed by the trier of fact sufficient to punish, deter, and make an example of said Defendant.

EIGHTH CAUSE OF ACTION

WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

(AGAINST DEFENDANTS AND DOES 1-5)

71. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

72. Defendant's discharge of Plaintiff's employment violated fundamental public policies articulated in the federal and state statutes and regulations.

73. The following factors played substantial or motivating roles in Defendant's decision to discharge Plaintiff: Plaintiff's protected activity.

1 74. Plaintiff was harmed by Defendant's conduct. As a direct and proximate result of the
2 actions of Defendant, Plaintiff suffered losses in earnings and benefits. The exact amount of such losses
3 is presently unknown, and Plaintiff will seek leave of Court to amend this Complaint to set forth the
4 exact amount when it is ascertained.

5 75. As a direct, proximate and foreseeable result of Defendant's conduct, Plaintiff has
6 suffered, and continues to suffer, general damages and emotional distress, and other incidental and
7 consequential damages and expenses in an amount according to proof at trial, and in excess of this
8 Court's minimal jurisdiction.

9 76. The conduct of Defendant, and their managing agents and employees, constituted
10 oppression, fraud, malice and was motivated by hostility and ill will, thereby entitling Plaintiff to an
11 award of punitive damages against Defendant in an amount appropriate to punish and make an example
12 of said Defendant.

13 77. Plaintiff is informed, believes, and thereon alleges that Defendant, by and through its
14 respective corporate officers, directors, and managing agents, ordered, authorized, approved, and/or
15 ratified the conduct herein alleged with intent to discriminate against her in violation of fundamental
16 public policies.

17 78. Plaintiff is informed, believes, and thereon alleges that in doing, ordering, authorizing,
18 approving, and ratifying the acts, policies, and practices alleged herein, Defendant, by and through its
19 officers, directors and managing agents acted in conscious and intentional disregard for the rights,
20 health, and welfare of Plaintiff.

21 79. Defendant acted with oppression, as such term is defined in Civil Code section
22 3294(c)(2), in that they engaged in despicable conduct that subjected Plaintiff to cruel and unjust
23 hardship in conscious disregard of her rights.

24 80. Defendant acted with malice, as such term is defined in Civil Code section 3294(c)(1), in
25 that they engaged in despicable conduct carried out with a willful and conscious disregard for Plaintiff's
26 rights.

27 81. Pursuant to Civil Code section 3294, as a consequence of Defendant, by and through its
28 owners, officers, directors and managing agents' promulgation and enforcement of the oppressive and

malicious workplace policies and practices described hereinabove, Plaintiff is entitled to recover her actual damages, as well as exemplary damages against Defendant, in an amount deemed by the trier of fact sufficient to punish, deter, and make an example of said Defendant.

NINTH CAUSE OF ACTION

LABOR CODE § 1198.5(k) PENALTY (AGAINST ALL DEFENDANTS AND DOES 1-5)

82. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

83. The employer shall make personnel records available for inspection to the former employee, or his or her representative, at reasonable intervals and at reasonable times, but “not later than 30 calendar days from the date the employer receives a written request.” Lab. Code § 1198.5(b).

84. Defendants did not timely provide Plaintiff’s personnel records.

85. “If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.” Lab. Code § 1198.5(k).

86. Because Defendant failed to timely provide the personnel records, Plaintiff is entitled to injunctive relief, for an order that Defendants turn over the records, and for an award of attorneys’ fees pursuant to Lab. Code § 1198.5(l).

TENTH CAUSE OF ACTION

LABOR CODE § 226(f) PENALTY (AGAINST ALL DEFENDANTS AND DOES 1-5)

87. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

88. An employer that is required to keep the information required by Labor Code § 226(a) shall afford current and former employees the right to inspect or copy records pertaining to their employment. Lab. Code § 226(b). An employer who receives a written or oral request to inspect or copy

records pursuant to Labor Code § 226(b) shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. Lab. Code § 226(c). Defendant violated Labor Code § 226(b)(c) by failing to timely provide Plaintiff with the complete Lab Code § 226(a) records pertaining to her employment.

89. A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in Labor Code § 226(c) entitles the current or former employee to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer. Lab. Code § 226(f).

ELEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL AND REST PERIODS

OR COMPENSATION IN LIEU THEREOF IN VIOLATION OF LABOR CODE § 226.7

(AGAINST ALL DEFENDANTS AND DOES 1-5)

90. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set forth herein in full again.

91. California Labor Code section 226.7 provides that “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.” Lab. Code § 226.7(b).

92. “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 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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.” Lab. Code § 226.7(c).

93. Relevant Wage Orders of the Industrial Welfare Commission (“IWC”), applicable to Defendant, such as Wage Order No. 15-2001 section 12, provide that “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

94. Relevant Wage Orders of the IWC, applicable to Defendant, such as Wage Order No. 15-2001 section 11, provide that “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

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

96. Defendants regularly required Plaintiff to work without being provided the opportunity to have uninterrupted rest breaks. Defendants regularly did not allow her the opportunity to be relieved of her duties to take a rest break. Defendant did not compensate Plaintiff in lieu of providing her with rest breaks.

97. Defendants regularly required Plaintiff to work more than 5 hours without being provided with a duty-free meal period with relief of all duties. Defendants did not compensate Plaintiff in lieu of providing her with meal breaks.

98. Pursuant to Labor Code section 512, Plaintiff is entitled to compensation of one additional hour of pay at her regular rate of compensation for each workday that the meal period was not provided. Pursuant to Labor Code section 226.7, Plaintiff is entitled to compensation of one additional hour of pay at her regular rate of compensation for each workday that the meal period was not provided, *and* one additional hour of pay for each workday that the rest period was not provided pursuant to *United Parcel Serv., Inc. v. Superior Court*, 196 Cal. App. 4th 57, 70 (2011).

TWELFTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS AND DOES 1-5)

99. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

100. Pursuant to the California Labor Code Private Attorneys General Act (“PAGA”), “Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Lab. Code § 2699(a). “For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions.” Lab. Code § 2699(f).

101. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”). An employee who brings such an action is acting as an agent of state enforcement agencies. *Kim v. Reins Intl. Cal., Inc.*, 9 Cal.5th 73, 81 (2020).

102. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

103. This PAGA action is intended to “remediate present violations and deter future ones.” *Williams*, 3 Cal. 5th at 546. The relevant period for the following PAGA allegations in this cause of action is from September 15, 2020, to present and ongoing.

Labor Code Violations Providing Civil Penalties Established Pursuant to §§ 2699(f)(2): §§ 2802, 226.7, 512, 510, 204, 1198, 226(a), 1174(d) § 2802

1 104. “An employer shall indemnify his or her employee for all necessary expenditures or
 2 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
 3 her obedience to the directions of the employer.” Lab. Code § 2802(a). In *Cochran v. Schwan’s*, the
 4 court held:

5 105. If an employee is required to make work-related calls on a personal cell phone, then he or
 6 she is incurring an expense for purposes of section 2802. It does not matter whether the phone
 7 bill is paid for by a third person, or at all. In other words, it is no concern to the employer that the
 8 employee may pass on the expense to a family member or friend, or to a carrier that has to then
 9 write off a loss. It is irrelevant whether the employee changed plans to accommodate work-
 10 related cell phone usage. Also, the details of the employee’s cell phone plan do not factor into
 11 the liability analysis. Not only does our interpretation prevent employers from passing on
 12 operating expenses, it also prevents them from digging into the private lives of their employees
 13 to unearth how they handle their finances vis-à-vis family, friends and creditors. To show
 14 liability under section 2802, an employee need only show that he or she was required to use a
 15 personal cell phone to make work-related calls, and he or she was not reimbursed.

16 106. *Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144–45 (2014), review
 17 denied (Nov. 25, 2014).

18 107. Here, like in *Cochran*, if an employee is required to do work-related activities on a
 19 personal cell phone, then he is incurring an expense for purposes of section 2802. Here, as in *Cochran*,
 20 to show liability under section 2802, an employee need only show that he was required or directed to use
 21 a personal cell phone to do work-related activities and was not reimbursed.

22 108. As set forth above, Defendants did not reimburse or pay Plaintiff or the other aggrieved
 23 employees for any portion of their cell phone expenses, in violation of Labor Code § 2802(a).

24 109. Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor Code
 25 § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each aggrieved
 26 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
 27 employee per pay period for each subsequent violation.

28 § 226.7

110. “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.” Lab. Code § 226.7(b).

111. Relevant Wage Orders of the Industrial Welfare Commission (“IWC”), applicable to Defendants, such as Wage Order No. 15-2001 section 12, provide that “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

112. As set forth above, Defendants did not permit Plaintiff and other aggrieved employees to have uninterrupted rest breaks with the opportunity to be relieved of all duties for rest breaks. Defendants did not compensate Plaintiff and the other aggrieved employees in lieu of providing them with rest breaks. As such, Defendants violated Labor Code section 226.7.

113. Relevant Wage Orders of the IWC, applicable to Defendants, such as Wage Order No. 15-2001 section 11, provide that “(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an —on duty meal period and counted as time worked. An —on duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

114. As set forth above, Defendants did not permit Plaintiff and other aggrieved employees uninterrupted duty-free meal periods with the opportunity to be relieved of all duties for meal breaks. Defendants did not compensate Plaintiff and the other aggrieved employees in lieu of providing them with meal breaks relieved of all duties. Defendants did not compensate Plaintiff and the other aggrieved employees for the on-duty meal periods. As such, Defendants violated California Labor Code section

1 226.7.

2 115. California Labor Code section 226.7 does not provide for its own self-contained “civil
3 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
4 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
5 aggrieved employee per pay period for each subsequent violation.

6 **§ 512**

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

13 117. As set forth above, Defendants did not permit Plaintiff and other aggrieved employees
14 uninterrupted duty-free meal periods with the opportunity to be relieved of all duties for meal breaks on
15 the days they worked more than five hours.

16 118. California Labor Code section 512 does not provide for its own self-contained “civil
17 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
18 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
19 aggrieved employee per pay period for each subsequent violation.

20 **§ 510**

21 119. “Any work in excess of eight hours in one workday and any work in excess of 40 hours
22 in any one workweek and the first eight hours worked on the seventh day of work in any one workweek
23 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
24 employee.” Lab. Code § 510(a).

25 120. As set forth above, Plaintiff and the aggrieved employees worked more than eight hours
26 per workday and more than 40 hours per workweek. They were not compensated for those overtime
27 hours worked more than eight per day and 40 per week. As such, Defendants violated Labor Code § 510.

28 121. California Labor Code section 510 does not provide for its own self-contained “civil

penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

§ 204

122. Labor Code Section 204(b)(1) provides that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

123. As set forth above, Plaintiff and the aggrieved employees worked more than eight hours per workday and more than 40 hours per workweek. They were not compensated for those overtime hours worked more than eight per day and 40 per week. As a result, they worked in excess of 40 hours per week but were not paid overtime compensation for the hours over 40 per workweek worked. As such, Defendants violated Labor Code Section 204(b)(1) by failing to pay him for all the overtime wages that they earned which were in excess of the normal work period, by the next payday which followed the overtime work. Labor Code Section 204 does not provide for its own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

§ 1198

124. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. California Labor Code section 1173 defines commission as the IWC. Further, the “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Lab. Code § 1198.

125. Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, Section 3(C) of IWC Order No. 15-2001, and Section 4 of IWC Order No. 17-2001, provide that “employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.” Section 7(A) requires every employer to keep accurate time records showing when the

1 employee begins and ends each work period and the total hours worked in the payroll period.

2 126. As set forth above, Plaintiff's co-workers, aggrieved employees, worked more than eight
3 hours per workday and more than 40 hours per workweek and were not compensated for those overtime
4 hours worked more than eight per day and 40 per week.

5 127. Relevant Wage Orders of the IWC, applicable to Defendants, such as Wage Order No. 15-
6 2001 section 12, provide that "Every employer shall authorize and permit all employees to take rest
7 periods, which insofar as practicable shall be in the middle of each work period. The authorized rest
8 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per
9 four (4) hours or major fraction thereof."

10 128. As set forth above, Defendants did not permit Plaintiff and other aggrieved employees to
11 have uninterrupted rest breaks with the opportunity to be relieved of all duties for rest breaks.

12 129. Relevant Wage Orders of the IWC, applicable to Defendants, such as Wage Order No. 15-
13 2001 section 11, provide that "(A) No employer shall employ any person for a work period of more than
14 five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not
15 more than six (6) hours will complete the day's work the meal period may be waived by mutual consent
16 of the employer and the employee. (C) Unless the employee is relieved of all duty during a 30 minute
17 meal period, the meal period shall be considered an —on duty meal period and counted as time worked.
18 An —on duty meal period shall be permitted only when the nature of the work prevents an employee
19 from being relieved of all duty and when by written agreement between the parties an on-the-job paid
20 meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the
21 agreement at any time."

22 130. As set forth above, Defendants did not permit Plaintiff and other aggrieved employees to
23 have uninterrupted duty-free meal breaks with the opportunity to be relieved of all duties for meal
24 breaks.

25 131. Based on the foregoing, Defendants violated California Labor Code section 1198 by
26 violating the above-referenced sections of relevant Wage Orders of the IWC.

27 132. California Labor Code section 1198 does not provide for its own self-contained "civil
28 penalty" within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil

1 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
2 aggrieved employee per pay period for each subsequent violation.

3 **§ 226 (a)**

4 133. Labor Code Section 226(a) provides that every employer shall, semimonthly or at the
5 time of each payment of wages, furnish each of his or her employees, either as a detachable part of the
6 check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal
7 check or cash, an accurate itemized statement in writing showing, among other items: (1) gross wages
8 earned, (2) total hours worked by the employee, except for any employee whose compensation is solely
9 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or
10 any applicable order of the Industrial Welfare Commission, (3) net wages earned, and (4) all applicable
11 hourly rates in effect during the pay period and the corresponding number of hours worked at each
12 hourly rate by the employee.

13 134. Defendants did not furnish Plaintiff and other aggrieved employees with any itemized
14 wage statements because Defendants did not keep such records.

15 135. Labor Code Section 226 does not provide for its own self-contained "civil" penalty
16 within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for
17 each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee
18 per pay period for each subsequent violation.

19 **§ 1174 (d)**

20 136. Labor Code Section 1174(d) provides that every person employing labor in this state shall
21 keep payroll records showing the hours worked daily by and the wages paid to employees employed for
22 not less than three years. "Person" means any person, association, organization, partnership, business
23 trust, limited liability company, or corporation. Lab. Code § 18.

24 137. Defendants failed to maintain records showing the actual and accurate hours worked by
25 Plaintiff's co-workers, aggrieved employees, in violation of Labor Code Section 1174. Labor Code
26 Section 1174 does not provide for its own self-contained civil penalty within the statute. Thus, Labor
27 Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay
28 period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent

1 violation.

2 **§ 432**

3 138. Labor Code section 432 provides that “If an employee or applicant signs any instrument
4 relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon
5 request.”

6 139. Defendant failed to provide Plaintiff with the instruments he signed relating to her
7 employment, in violation of section 432. Labor Code section 432 does not provide for its own self-
8 contained “civil” penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a
9 civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
10 each aggrieved employee per pay period for each subsequent violation.

11 140. Other aggrieved employees are any current or former California employees who were not
12 provided with the instruments they signed relating to their employment.

13 **§ 1198.5**

14 141. Labor Code section 1198.5 provides that an employer shall make personnel records
15 available for inspection to the former employee, or his or her representative, at reasonable intervals and
16 at reasonable times, but “not later than 30 calendar days from the date the employer receives a written
17 request.” Lab. Code § 1198.5(b). “Upon a written request from a current or former employee, or his or
18 her representative, the employer shall also provide a copy of the personnel records, at a charge not to
19 exceed the actual cost of reproduction.” Id.

20 142. Defendants failed to provide the personnel records that Plaintiff requested within 30 days
21 from the date of the request. This practice violates Labor Code section 1198.5. Labor Code section
22 1198.5 does not provide for its own self-contained “civil” penalty within the statute. Thus, Labor Code
23 Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period
24 for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent
25 violation.

26 143. Other aggrieved employees are any current or former California employees who were not
27 provided with their personnel records within 30 days from their requests.

28 ***Labor Code Violations Providing Civil Penalties Pursuant to 2699(a): §§ 558, 210, 226.3,***

1 **1174.5**

2 **§ 1102.5**

3 144. “An employer, or any person acting on behalf of the employer, shall not retaliate against
4 an employee for disclosing information, or because the employer believes that the employee disclosed or
5 may disclose information, to a government or law enforcement agency, to a person with authority over
6 the employee or another employee who has the authority to investigate, discover, or correct the violation
7 or noncompliance, or for providing information to, or testifying before, any public body conducting an
8 investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information
9 discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or
10 federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job
11 duties.” Lab. Code § 1102.5(b).

12 145. Plaintiff complained to Grace Burr about the unlawful working conditions when Plaintiff
13 would travel with the family to work. In response, Grace Burr terminated Plaintiff’s employment. This
14 was a violation of Labor Code section 1102.5(b) as associational retaliation. Thus, Defendant is liable
15 for a civil penalty not exceeding ten thousand dollars (\$10,000). Lab. Code § 1102.5(f). Other aggrieved
16 employees are any other employees who complained about violations of the Labor Code and were
17 terminated within two weeks.

18 **§ 558**

19 146. Pursuant to Labor Code section 558(a) any employer or other person acting on behalf of
20 an employer who violates, or causes to be violated, [Labor Code sections 510 and 512] or any provision
21 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to
22 a civil penalty as follows:

23 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
24 for which the employee was underpaid.

25 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
26 each pay period for which the employee was underpaid.

27 147. As discussed above, Defendants violated Labor Code sections 510, 512, and the above-
28 referenced provisions of IWC Wage Orders as applicable. As such, Defendants are subject to pay a pre-

determined amount of civil penalties for the initial and subsequent violations, pursuant to Section 558(a)(1)(2).

§ 210

148. Pursuant to Labor Code § 210(a), in addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Section 204 shall be subject to a civil penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

149. As discussed above, Defendants violated Labor Code § 204. As such, Defendants are subject to pay a pre-determined amount of civil penalties for the initial and subsequent violations “plus 25 percent of the amount unlawfully withheld,” as indivisible civil penalties pursuant to Section 210(a).

§ 226.3

150. “Any employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.” Lab. Code § 226.3. Because Defendant violated California Labor Code section 226(a), Defendant is subject to civil penalties under section 226.3 applicable to Plaintiff and other current and former aggrieved employees. Thus, Defendants are subject to civil penalties under section 226.3.

§ 1174.5

151. Pursuant to Labor Code Section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174 shall be subject to a civil penalty of five hundred dollars (\$500). As discussed above, Defendant violated Labor Code Labor Code Section 1174(d). Defendant willfully failed to maintain records showing the accurate hours worked daily by Plaintiff and the aggrieved employees. Thus, Defendants are subject to civil penalties.

Exhaustion of Administrative Remedies

152. On September 13, 2021, Plaintiff provided notice to the California Labor and Workforce Development Agency (“LWDA”), pursuant to Labor Code § 2699.3, detailing the specific provisions of the foregoing Labor Code sections that have been violated, including the facts and theories to support the violations. The LWDA file number is LWDA-CM-844314-21. The notice was sent by certified mail on or about September 10, 2021, to Grace Burr and Cody Leibel, (Certified Mail No. 7021 1970 0000 0044 0584). Plaintiff submitted a \$75.00 fee to the LWDA.

153. The LWDA has not, within 65 days of Plaintiff’s Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff’s administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff’s administrative remedies, pursuant to Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

PRAYER

WHEREFORE, Plaintiff prays:

1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
2. For a \$750 statutory penalty pursuant to Labor Code section 1198.5.
3. For a \$750 statutory penalty pursuant to Labor Code section 226.
4. For liquidated damages pursuant to the California Labor Code.
5. For reasonable attorneys’ fees pursuant to the California Labor Code and Code of Civil Procedure.
6. For compensatory special damages, in an amount according to proof at the time of trial.
7. For compensatory general damages, in an amount according to proof at the time of trial.
8. For statutory penalties pursuant to California Labor Code.
9. For reimbursement and indemnification for all work-related expenditures, in an amount according to proof at the time of trial.

10. For liquidated damages pursuant to the Fair Labor Standards Act and California Labor Code.

11. For exemplary and punitive damages in an amount deemed sufficient by trier of fact to punish, deter, and make an example of the Defendant, in an amount according to proof at the time of trial.

12. For reasonable attorneys' fees pursuant to the California Labor Code and Code of Civil Procedure.

13. For costs of suit including expert witness fees.

14. For prejudgment interest.

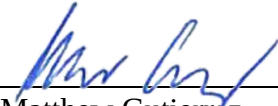
15. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff KARLA SANTIAGO hereby demands a trial by jury.

Dated: November 19, 2021

GUTIERREZ DERHAM LAW FIRM LLP

By: 

Matthew Gutierrez

Amber Derham

Attorneys for Plaintiff, KARLA SANTIAGO,
individually and as a proxy for the State of
California