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6 Attorneys for Plaintiff
YOLANDA GUZMAN FLORES

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

8 **COUNTY OF LOS ANGELES**

9 YOLANDA GUZMAN FLORES, as a
10 private attorney general on behalf of all
aggrieved employees,

11 Plaintiff,

12 vs.

13 CINERGY CONSTRUCTION CORP., a
14 California corporation; GRAHAM
OSBORNE, an individual; and DOES 1
15 through 10, inclusive,

16 Defendants.
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Case No. 22STCV01180

REPRESENTATIVE ACTION COMPLAINT

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

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

3 **INTRODUCTION**

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

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

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

18 4. This Complaint seeks civil penalties and other relief pursuant to the PAGA for
19 Defendants’ violations of Labor Code Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558,
20 1174(d), 1182.12, 1194, 1197, 1197.1, 1198 and 2802.

21 **THE PARTIES**

22 5. Plaintiff Yolanda Guzman Flores (“Plaintiff”) is and at all times relevant to this
23 Complaint was an individual residing in Los Angeles County, California.

24 6. Defendant Cinergy Construction Corp. (“Cinergy”) is and at all times relevant to this
25 Complaint was a California limited liability company with its principal place of business located in
26 Los Angeles County, California.

27 7. Defendant Graham Osborne (“Osborne”) is and at all times relevant to this Complaint
28 was an individual residing in Los Angeles County, California. Mr. Osborne is and at all times relevant

1 to this Complaint was an owner, director, officer and/or managing agent of Defendant Cinergy, and,
2 therefore, is liable in his individual capacity as an employer pursuant to Labor Code Section 558.1.

3 8. Plaintiff is unaware of the true names and capacities, whether individual, corporate,
4 associate, or otherwise of the defendants sued herein as Doe 1 through 10. Plaintiff therefore sues
5 those defendants by fictitious names. Plaintiff will amend this Complaint to show the true names and
6 capacities of each Doe Defendant when such information has been ascertained.

7 9. Except as otherwise noted, a reference to “Defendants” in this Complaint shall include
8 the named Defendants and the Doe defendants.

9 10. Upon information and belief, Defendants acted as the employers and/or joint
10 employers of Plaintiff, and directly or indirectly, or through actual agents, ostensible agents and/or
11 other persons, employed Plaintiff, and exercised control over her wages, hours, and working
12 conditions. Defendants’ control included, but was not limited to, the authority to hire and fire, assign
13 work tasks and engage in day-to-day supervision.

14 11. Upon information and belief, at all relevant times, each of the Defendants is and was
15 the agent, partner, joint venturer, principal, alter ego, employee, co-conspirator, and/or aider or
16 abettor of each of the other Defendants, and in doing the things alleged was acting within the course
17 and scope of their agency or employment and with the knowledge and consent of each of the other
18 Defendants. Upon information and belief, the acts and conduct of each of the Defendants was known
19 to, and authorized and ratified by, the remaining Defendants, and each of the Defendants is jointly
20 and severally responsible and liable for the damages alleged herein.

21 **JURISDICTION AND VENUE**

22 12. This Court has subject matter jurisdiction over all causes of action alleged in this
23 Complaint pursuant to the California Constitution, Article VI, Section 10, which grants the Superior
24 Court “original jurisdiction in all causes except those given by statute to other courts.” Plaintiff’s
25 claims arise under the laws of the State of California and are not statutorily assigned to any other trial
26 court.

27 13. The amount in controversy under this Complaint exceeds the minimal jurisdictional
28 limit of the Superior Court and will be established according to proof at trial.

14. This Court has personal jurisdiction over all Defendants because Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

15. Venue is proper in this Court pursuant to Code of Civil Procedure Sections 395 and 395.5 because the principal place of business of Defendant Cinergy is located in Los Angeles County, Plaintiff resides in Los Angeles County and the liability for the alleged wrongs described herein arose in Los Angeles County.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. On November 4, 2021, Plaintiff provided written notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendant Cinergy of the specific provisions of the Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with Labor Code Section 2699.3. A true and correct copy of Plaintiff's PAGA Notice is attached hereto as **Exhibit 1**.

17. As of the filing date of this Complaint, over 65 days have passed since Plaintiff sent the November 4, 2021 LWDA Notice, and the LWDA has not responded that it intends to investigate Plaintiff's claims, and Defendants have not cured the violations. Plaintiff has thus satisfied the administrative prerequisites under Labor Code Sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in addition to other remedies, for violations of Labor Code Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198 and 2802.

GENERAL ALLEGATIONS

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

All current and former non-exempt employees who worked at least one pay period for Cinergy Construction Corp. in California at any time during the PAGA Period ("Aggrieved Employees").

19. The PAGA Period is defined as the period of time beginning on November 4, 2020 and continuing to the present ("PAGA Period").

20. Defendants operate a specialty construction company that completes full-scale remodels and new construction projects.

21. In October 2019, Defendants hired Plaintiff to work as a non-exempt accounts receivable/accounts payable manager.

22. Defendants employed other employees as construction workers and office personnel.

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

24. On information and belief, Defendants subjected Plaintiff and other Aggrieved Employees to the same policies, practices and procedures governing the control and payment of wages and hours worked, the reimbursement of business expenses, and uniformly denied Plaintiff and other Aggrieved Employees the rights afforded to them under the California Labor Code and IWC Wage Order No. 16-2001.

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

26. Defendants continue to employ Aggrieved Employees in California.

27. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other Aggrieved Employees were not paid for all hours worked because all hours worked were not recorded.

28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other Aggrieved Employees were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other Aggrieved Employees were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and

1 other Aggrieved Employees were not paid at least minimum wages for work done off-the-clock.

2 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other Aggrieved Employees were entitled to meal periods in
4 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular rate of
5 pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that
6 Plaintiff and other Aggrieved Employees were not provided with all meal periods or payment of one
7 (1) additional hour of pay at her regular rate of pay when she did not receive a timely, uninterrupted,
8 thirty (30) minute meal period.

9 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other Aggrieved Employees were entitled to rest periods in
11 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1) additional
12 hour of pay at their regular rate of pay when she was not provided with a compliant rest period and
13 that Plaintiff and other Aggrieved Employees were not provided compliant rest periods or payment
14 of one (1) additional hour of pay at her regular rate of pay when she was not provided a compliant
15 rest period.

16 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other Aggrieved Employees were entitled to receive complete
18 and accurate wage statements in accordance with California law. In violation of the California Labor
19 Code, Defendants did not provide Plaintiff and other Aggrieved Employees with complete and
20 accurate wage statements.

21 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that they had a duty to maintain accurate and complete payroll records in
23 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly, and
24 intentionally failed to do so.

25 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other Aggrieved Employees were entitled to timely payment of
27 all wages earned upon termination of employment. In violation of the California Labor Code,
28 Defendants did not pay Plaintiff and other Aggrieved Employees all wages due, including, but not

1 limited to, minimum wages, overtime wages, separate payment for rest periods and other non-
2 productive time, and meal and rest period premium wages, within permissible time periods.

3 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other Aggrieved Employees were entitled to timely payment of
5 wages during their employment. In violation of the California Labor Code, Defendants did not pay
6 Plaintiff and other Aggrieved Employees all wages due, including, but not limited to, minimum
7 wages, overtime wages, separate payment for rest periods and other non-productive time, and meal
8 and rest period premium wages, within statutorily permissible time periods.

9 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other Aggrieved Employees were entitled to receive full
11 reimbursement for all business-related expenses and costs they incurred during the course and scope
12 of her employment and that they did not receive full reimbursement of applicable business-related
13 expenses and costs incurred.

14 **FIRST CAUSE OF ACTION**

15 **For Civil Penalties for Violations of the California Labor Code**

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

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

18 **Against all Defendants and Osborne)**

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

20 38. This claim is brought against all Defendants and Individual Defendants Osborne.

21 39. Labor Code Section 2698, *et seq.* permits Plaintiff to recover civil penalties for the
22 violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5. Section 2699.5
23 enumerates Labor Code Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174(d), 1194, 1197,
24 1197.1, 1198 and 2802. Labor Code Section 2699.3(c) permits aggrieved employees, including
25 Plaintiff, to recover civil penalties for violations of those Labor Code Sections not found in Section
26 2699.5, including Section 1182.12.

27 40. Defendants' conduct, as alleged herein, violates numerous sections of the California
28 Labor Code, including, but not limited to, the following:

- a. Violation of Labor Code Sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for failure to compensate Plaintiff and other Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;
 - b. Violation of Labor Code Sections 510 and 1198, and the applicable IWC Wage Order, for failure to compensate Plaintiff and other Aggrieved Employees with all required overtime wages to Plaintiff and other Aggrieved Employees, as set forth below;
 - c. Violation of Labor Code Sections 226.7 and 1198, and the applicable IWC Wage, Order for failure to authorize and permit Plaintiff and other Aggrieved Employees to take compliant rest periods, as set forth below;
 - d. Violation of Labor Code Sections 226.7, 512(a), and 1198, and the applicable IWC Wage Order, for failure to provide Plaintiff and other Aggrieved Employees with compliant meal periods, as set forth below;
 - e. Violation of Labor Code Section 2802 for failure to reimburse Plaintiff and other Aggrieved Employees for all business expenses necessarily incurred, as set forth below;
 - f. Violation of Labor Code Sections 226(a) and 1198, and the applicable IWC Wage Order, for failure to provide accurate and complete wage statements to Plaintiff and other Aggrieved Employees, as set forth below;
 - g. Violation of Labor Code Sections 1174(d) and 1198, and the applicable IWC Wage Order, for failure to maintain payroll records, as set forth below;
 - h. Violation of Labor Code Section 204 for failure to pay all earned wages during employment, as set forth below; and
 - i. Violation of Labor Code Sections 201 and 202 for failure to pay all earned wages upon termination, as set forth below.
41. Labor Code Section 558(a) provides that “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid

1 employee for each pay period for which the employee was underpaid . . . ; (2) For each subsequent
2 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the
3 employee was underpaid. . . .” Labor Code Section 558(c) provides “[t]he civil penalties provided
4 for in this section are in addition to any other civil or criminal penalty provided by law.” Plaintiff,
5 acting in the public interest as a private attorney general, seeks assessment and collection of civil
6 penalties under Labor Code Section 558 for herself, all other Aggrieved Employees, and the State of
7 California against Defendants for violations of Labor Code Section 510, 512(a), 1198, and the
8 applicable IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does
9 not seek the recovery of unpaid wages under Labor Code Section 558 from Defendants for violations
10 of Labor Code sections 510, 512(a), 1198, and the applicable IWC Wage Order.

11 42. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff, acting in the public interest
12 as a private attorney general, may recover and hereby seeks civil penalties on behalf of herself, the
13 State of California and all Aggrieved Employees for Defendants’ violation of Labor Code Sections
14 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198 and 2802.

15 **FAILURE TO PAY MINIMUM WAGE**

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

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

20 44. Compensable work time is defined by the applicable wage order as “the time during
21 which an employee is subject to the control of an employer, and includes all the time the employee
22 is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11160
23 (2)(J) (defining “Hours Worked”).

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

28 46. Defendants employed Plaintiff and other Aggrieved Employees as non-exempt

employees who were entitled to the protections of Labor Code Sections 1182.12, 1194, 1197 and 1198 and IWC Wage Order 16-2001.

47. Within the previous twelve months and beyond, in violation of Labor Code Sections 1182.12, 1194, 1197 and 1198 and IWC Wage Order 16-2001, Defendants maintained a policy and practice of failing to pay Plaintiff and other Aggrieved Employees the applicable minimum wage for all hours worked because (a) Defendants required Plaintiff and other Aggrieved Employees to work off-the-clock without compensation by requiring them to access and use an app on their personal cell phones for work purposes while off the clock; (b) Defendants required Plaintiff and other Aggrieved Employees to respond to work-related emails and text messages while off the clock; and (c) Defendants required Aggrieved Employees to travel to distant worksites but failed to compensate the Aggrieved Employees for their travel time.

48. In addition, on information and belief, instead of paying certain Aggrieved Employees that provided construction services to Defendants the requisite minimum wage for all hours worked, Defendants paid them a daily rate of \$100, or another daily rate, regardless of the number of hours worked by the Aggrieved Employees; when such Aggrieved Employees worked in excess of 6.67 hours, or some other amount less than 8 hours, in a day, as they often did, the effective hourly rate paid to such Aggrieved Employees dropped below the requisite minimum wage.

49. Defendants' failure to pay Plaintiff and other Aggrieved Employees the applicable minimum wage for all hours worked violates Labor Code Sections 1182.12, 1194, 1197 and 1198. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code Sections 1197.1 and/or 2699(a), (f), and (g).

FAILURE TO PAY OVERTIME WAGES

(Labor Code §§ 510, 1198)

50. Labor Code Section 510 provides that "Any work in excess of eight hours in one workday and any work in excess of 40 hours 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."

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

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

4 53. Section 3 of IWC Wage Order No. 16-2001 provides in pertinent part that:

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

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

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

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

21 55. Defendants employed Plaintiff and other Aggrieved Employees as non-exempt
22 employees who were entitled to the protections of Labor Code Sections 510, 1194, 1198 and IWC
23 Wage Order 16-2001.

24 56. Within the previous twelve months and beyond, in violation of Labor Code Sections
25 510, 1194, 1198 and IWC Wage Order 16-2001, Defendants maintained a policy and practice of
26 failing to pay Plaintiff and other Aggrieved Employees the applicable overtime wages for all
27 overtime hours worked because (a) Defendants required Plaintiff and other Aggrieved Employees to
28 work off-the-clock without compensation by requiring them to access and use an app on their

1 personal cell phones for work purposes while off the clock; (b) Defendants required Plaintiff and
2 other Aggrieved Employees to respond to work-related emails and text messages while off the clock;
3 and (c) Defendants required Aggrieved Employees to travel to distant worksites but failed to
4 compensate the Aggrieved Employees for their travel time.

5 57. In addition, within the previous twelve months and beyond, on information and belief,
6 instead of paying certain Aggrieved Employees that provided construction services to Defendants
7 the requisite overtime wages for all overtime hours worked, Defendants paid them a daily rate of
8 \$100, or another daily rate, regardless of the number of hours worked by the Aggrieved Employees;
9 when such Aggrieved Employees worked in excess of 8 hours in a single workday, Defendants failed
10 to pay such Aggrieved Employees the applicable overtime wages due.

11 58. In addition, within the previous twelve months and beyond, Defendants knowingly
12 required, suffered and permitted Plaintiff and other Aggrieved Employees to perform duties off-the-
13 clock and failed to compensate them for all hours worked, including all overtime hours worked.
14 Because Plaintiff and other Aggrieved Employees often worked close to eight (8) hours in a single
15 day, in excess of eight (8) hours in a single day, and/or in close to and/or close to and/or in excess of
16 forty (40) hours in week, some of the off-the-clock work performed by Plaintiff and other Aggrieved
17 Employees qualified as overtime, and should have been paid at the applicable overtime rate.

18 59. Defendants' failure to pay Plaintiff and other Aggrieved Employees all earned
19 overtime compensation, as required by California law, violates the provisions of Labor Code Sections
20 510 and 1198. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
21 penalties pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

22 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

23 **(Labor Code §§ 226.7, 1198 and IWC Wage Order No. 16-2001, § 12)**

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

26 61. IWC Order No. 16-2001(11)(A) provides, in pertinent part:

27 Every employer shall authorize and permit all employees to take rest
28 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

63. Upon information and belief, Plaintiff and other Aggrieved Employees were subject to the same policies, practices and procedures governing the provision of rest periods.

64. Within the previous twelve months and beyond, Defendants required Plaintiff and other Aggrieved Employees to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

65. Within the previous twelve months and beyond, and as a result of Defendants' scheduling and staffing policies and practices, or lack thereof, Defendants prevented Plaintiff and other Aggrieved Employees from being relieved of all duty in order to take compliant, off-duty rest periods.

66. Notwithstanding any formal written policy to the contrary, Defendants' actual custom and business practice was to undermine any formal policy of providing legally required rest periods by pressuring employees to perform their duties in ways that omitted breaks, including, but not limited to, scheduling a heavy workload that made taking rest periods extremely difficult, maintaining an informal anti-rest-period policy enforced through pressure, failing to schedule rest periods, failing to provide rest-period coverage, and otherwise discouraging employees from taking legally compliant, off-duty rest periods.

67. Because Defendants required Plaintiff and other Aggrieved Employees to remain on-duty, and/or because they did not provide them with rest period coverage, Plaintiff and other

1 Aggrieved Employees were subject to Defendant's control and required, permitted and suffered to
2 work during rest periods.

3 68. Defendants as a matter of practice and/or policy also failed to pay Plaintiff and other
4 Aggrieved Employees an additional one hour of compensation at their regular rate of pay for each
5 day that they were not provided with a compliant, off-duty, uninterrupted 10-minute rest period as
6 required by Labor Code Sections 226.7 and IWC Wage Order No. 16-2001.

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

10 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

13 An employer shall not employ an employee for a work period of more
14 than five hours per day without providing the employee with a meal
15 period of not less than 30 minutes, except that if the total work period
16 per day of the employee is no more than six hours, the meal period
17 may be waived by mutual consent of both the employer and employee.
18 An employer shall not employ an employee for a work period of more
19 than 10 hours per day without providing the employee with a second
meal period of not less than 30 minutes, except that if the total hours
worked is no more than 12 hours, the second meal period may be
waived by mutual consent of the employer and the employee only if
the first meal period was not waived.

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

22 72. Labor Code Section 226.7 provides in pertinent part that:

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

27 (c) If an employer fails to provide an employee a meal or rest or
28 recovery period in accordance with a state law, including, but not
limited to, an applicable statute or applicable regulation, standard, or

order of the Industrial Welfare Commission . . . , the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

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

74. IWC Wage Order No. 16-2001, Section 10 provides, in pertinent part:

(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.

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

(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.

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

75. Upon information and belief, Plaintiff and other Aggrieved Employees were subject to the same policies, practices and procedures governing the provision of meal periods.

76. Within the previous twelve months and beyond, Plaintiff and other Aggrieved Employees regularly worked more than five (5) hours per shift and were entitled to an uninterrupted, off-duty meal period of not less than thirty (30) minutes.

1 77. Notwithstanding any formal written policy to the contrary, Defendants’ actual custom
2 and business practice was to undermine any formal policy of providing legally required meal periods
3 by pressuring employees to perform their duties in ways that omitted meal periods, including, but
4 not limited to, scheduling a heavy workload that made taking meal periods extremely difficult,
5 maintaining an informal anti-meal-period policy enforced through pressure, failing to schedule meal
6 periods, failing to provide meal-period coverage, and otherwise discouraging employees from taking
7 legally protected meal periods. Within the last twelve months and beyond, Plaintiff and on
8 information and belief other Aggrieved Employees worked straight through their shifts without
9 receiving a timely meal period and/or without taking an off-duty, uninterrupted thirty (30) minute
10 meal period.

11 78. Within the previous twelve months and beyond, and as a result of Defendants’
12 scheduling and staffing policies and practices, or lack thereof, Defendants prevented Plaintiff and
13 other Aggrieved Employees from being relieved of all duty in order to take compliant, off-duty meal
14 periods.

15 79. Upon information and belief, Plaintiff and other Aggrieved Employees did not validly
16 or legally waive their first meal periods by mutual consent with Defendants or otherwise.

17 80. Upon information and belief, Plaintiff and other Aggrieved Employees did not enter
18 into any written agreement with Defendants agreeing to an on-the-job paid meal period.

19 81. Thus, Defendants failed to provide Plaintiff and other Aggrieved Employees with
20 meal periods as required by Labor Code Sections 226.7 and 512, and IWC Wage Order No. 16-2001.

21 82. Defendants have also engaged in a company-wide practice and/or policy of not paying
22 meal periods premium wages owed when compliant meal periods are not provided. As a result,
23 Plaintiff and other Aggrieved Employees were denied meal periods and Defendants failed to pay
24 Plaintiff and other Aggrieved Employees the meal period premiums due, in violation of Labor Code
25 Sections 226.7 and 512, and IWC Wage Order No. 16-2001.

26 83. Defendants’ conduct violates Labor Code Sections 226.7, 512(a), 1198 and the
27 applicable IWC Wage Order. As a result, Plaintiff and other Aggrieved Employees are therefore
28 entitled to recover civil penalties pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

FAILURE TO REIMBURSE BUSINESS EXPENDITURES

(Labor Code § 2802)

84. Labor Code Section 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, or of his or her obedience to the directions of the employer.”

85. Within the previous twelve months and beyond, Defendants as a matter of practice and/or policy violated Labor Code Section 2802 by denying Plaintiff and Aggrieved Employees reimbursement for necessary expenditures that they incurred as a result of discharging their duties and/or obeying the directions of Defendants.

86. Within the previous twelve months and beyond, Defendants had a uniform policy and/or practice that required Plaintiff and other Aggrieved Employees to use their personal cell phone and cell phone data plan to carry out their job duties. For example, the Aggrieved Employees were required to download different applications to their personal cell phones and to access them frequently for scheduling, time keeping and communication purposes. These applications include T-Sheets and Buildertrend.

87. Defendants could have provided Plaintiff and Aggrieved Employees with the actual tools required for use on the job, including company phones. Instead, Defendants passed those operating costs off onto Plaintiff and other Aggrieved Employees in violation Labor Code Section 2802.

88. As a result, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code Section 2699(a), (f)-(g).

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Labor Code § 226(a))

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

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 showing (1) gross wages earned, (2) total hours worked by the employee . . . , (3) the number of piece-rate units earned

and 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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee

90. Defendants violated Labor Code Section 226(a) as follows:

- (a) Defendants violated Labor Code Sections 226(a)(1), 226(a)(2), 226(a)(5) by failing to include the accurate amount of “gross wages,” “total hours worked by the employee,” and “net wages” because Defendants did not record all off-the-clock work, as detailed above.
- (b) Defendants violated Labor Code Sections 226(a)(1), 226(a)(5) and 226(a)(9) by failing to include the accurate amount of “gross wages” and “net wages” for each pay period when the Aggrieved Employees and other Aggrieved Employees should have received meal and rest period premium wages pursuant to Labor Code Section 226.7.
- (c) Defendants violated Labor Code Section 226 in its entirety by failing to provide a wage statement to those Aggrieved Employees who were paid a daily rate rather than an hourly rate.

91. As a result, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code Sections 226.3 and/or 2699(a), (f), and (g).

FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS

(Labor Code § 1174(d))

92. Labor Code Section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments”

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

94. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code Sections 1174.5 and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES TIMELY

(Violation of Labor Code § 204)

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

96. Labor Code section 204 also requires 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 Alternatively at all relevant times herein.

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

98. During the relevant time period Defendants willfully failed to pay Plaintiff and other Aggrieved Employees all wages due to them within any time period specified by Labor Code section 204 including but not limited to minimum wages, overtime wages, and meal and rest period premium wages.

99. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code Sections 210 and/or 2699(a), (f), and (g).

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FAILURE TO PAY WAGES TIMELY AT SEPARATION

(Labor Code §§ 201, 202, 203)

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

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

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

103. Within the previous twelve months and beyond, and in violation of Labor Code Sections 201 and 202, Defendants willfully failed to pay Plaintiff and other Aggrieved Employees all their earned and unpaid wages either at the time of discharge, or within seventy-two (72) hours of their separation from employment with Defendants for several reasons:

a. Defendants failed to pay the Aggrieved Employees for all off-the-clock hours worked, as detailed above, including because they worked off the clock, or received an inadequate daily rate that did not compensate them fully for all regular and overtime hours worked.

b. Defendants failed to provide the Aggrieved Employees with statutory meal and rest breaks and to pay meal and rest period premium wages for missed meal and rest breaks, as detailed above.

c. Defendants failed to compensate the Aggrieved Employees for the time they spent working during on-duty rest and meal periods.

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other Aggrieved Employees: 1182.12, 1194, 1197 and 1198 (by failing to pay at least minimum wages for all hours worked); 510 and 1198 (by failing to pay overtime wages); 226.7 and 1198 (by failing to authorize and permit all rest periods); 226.7, 512(a) and 1198 (by failing to provide all meal periods); 226(a) and 1198 (by failing to provide accurate wage statements); 2802 (by failing to reimburse business expenses); 1174(d) and 1198 (by failing to maintain accurate payroll records); 204 (by failing timely to pay all earned wages during employment); and 201 and 202 (by failing timely to pay all earned wages upon termination).

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

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

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

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

Dated: January 11, 2022

CUSTIS LAW, P.C.

By: _____



Keith Custis

Attorneys for Plaintiff

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