

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Steven Kleifield

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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]

ERNESTO SANDOVAL, an individual, and as
a proxy for the State of California,

Plaintiff,

vs.

CAPELLA, INC., a corporation; and SHIRAN
ARNALDES a/k/a SHIRAN MOSHEHAI, an
individual; DOES 1 through 5, inclusive,

Defendants.

Case No.: 22STCV27600

COMPLAINT FOR:

- 1. Failure to Provide Meal and Rest Periods or Compensation in Lieu Thereof in Violation of Labor Code § 226.7**
- 2. Failure to Provide Accurate Itemized Wage Statements**
- 3. Labor Code § 226(f) Penalty**
- 4. Labor Code § 1198.5(k) Penalty**
- 5. Labor Code § 203 Waiting Time Penalty**
- 6. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

Plaintiff, ERNESTO SANDOVAL, 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 business acts alleged herein occurred in California. Plaintiff's claims arise out of and are related to all Defendant's contacts with California.

2. Venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred. Venue is proper in this Court because all or some of the violations of law and unlawful practices alleged herein occurred and are occurring in the County of Los Angeles.

PARTIES

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

4. Defendant CAPELLA, INC., (“CAPELLA”) is a corporation that conducted, and is conducting, business in the State of California. CAPELLA, INC., registered the address 9810 Owensmouth, Ave Ste. 7 Chatsworth, CA 91311 the California Secretary of State as its principal place of business in California.

5. Defendant SHIRAN ARNALDES a/k/a SHIRAN MOSHEHAI (“ARNALDES”) is 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.

7. 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.

8. 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.

9. 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.

10. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the corporate Defendants, and each of them, 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.

11. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

GENERAL ALLEGATIONS

12. Defendant employed Plaintiff, as an hourly non-exempt worker, from at least around June 1, 2021 to October 27, 2021. As a company-wide practice, Defendant regularly required Plaintiff and its other non-exempt employees to be denied meal and rest breaks. As a company-wide practice, Defendant regularly provided bounced checks to Plaintiff and its other employees. As a company-wide practice, Defendant regularly required Plaintiff and its other employees to use their personal cell phones for work purposes without providing any payments for the expenses associated with such usage. As a company-wide practice, Defendant regularly required its other non-exempt employees to work over eight hours per day without being provided overtime compensation for such hours over eight per day.

13. The relevant period of the below allegations for this notice is from one year preceding this letter, to present and ongoing.

FIRST 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)

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

15. 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).

16. “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).

17. Relevant Wage Orders of the Industrial Welfare Commission (“IWC”), applicable to Defendant, such as Wage Order No. 4-2001 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.”

18. Relevant Wage Orders of the IWC, applicable to Defendant, such as Wage Order No. 4-2001 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.”

19. 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.

20. Defendants regularly required Plaintiff to work without being provided the opportunity to have an uninterrupted rest break. Defendants regularly did not allow her the opportunity to be relieved

of Plaintiff's duties to take a rest break. Defendant did not compensate Plaintiff in lieu of providing her with rest breaks.

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

22. 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 Plaintiff's 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).

23. "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 Industrial Welfare Commission, 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).

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS AND DOES 1-5)

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

25. California Labor Code section 226(a) provides that every employer shall, at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing accurate: (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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. . .” A copy of the itemized statement shall be kept on file by the employer for at least three years. Lab. Code § 226(a). A “copy” includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by Labor Code Section 226(a). Lab. Code § 226(a).

26. Defendant knowingly and intentionally failed to provide an itemized statement in writing showing accurate information required by Labor Code section 226(a).

27. “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

28. An employee is deemed to suffer injury for purposes of section 226(e) if the employer fails to provide an itemized wage statement showing the accurate gross wages earned and total hours worked, and the employee cannot promptly and easily determine from the wage statement alone the amount of the gross wages or total hours worked. Lab. Code § 226(e)(2)(B)(i).

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

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

31. “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

Industrial Welfare Commission, 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).

THIRD CAUSE OF ACTION

LABOR CODE § 226(f) PENALTY

(AGAINST CAPELLA AND DOES 1-5)

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

33. 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).

34. Defendant violated Labor Code § 226(b)(c) by failing to timely provide Plaintiff with the requested itemized wage statements within 21 days of request.

35. 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).

FOURTH CAUSE OF ACTION

LABOR CODE § 1198.5(k) PENALTY

(AGAINST CAPELLA AND DOES 1-5)

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

37. 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).

38. Defendant did not timely provide Plaintiff’s personnel records.

39. “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).

40. 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 Lab. Code § 1198.5(l).

FIFTH CAUSE OF ACTION
LABOR CODE § 203 PENALTY
(AGAINST ALL DEFENDANTS AND DOES 1-5)

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

42. Defendant failed to timely pay Plaintiff all of her owed wages on her last date of work, in violation of Cal. Labor Code § 201, and failed to pay her the additional continuing wages as a penalty from the original due date, in violation of California Labor Code § 203.

43. 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 costs.

SIXTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS AND DOES 1-5)

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

45. 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).

46. 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).

47. 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.”

48. 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 June 20, 2021, to present and ongoing.

Labor Code Violations §§ 2802, 226.7, 512, 226, 510, 204, 226, 1198, 1174(d), 558, 210, 226.3, 1174.5, 226.8

Labor Code § 2802

49. “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.” Lab. Code § 2802(a). In *Cochran v. Schwan’s*, the court held:

If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. In other words, it is no concern to the employer that the employee may pass on the expense to a family member or friend, or to a carrier that has to then write off a loss. It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. Also, the details of the employee’s cell phone plan do not factor into the liability analysis. Not only does our interpretation

prevent employers from passing on operating expenses, it also prevents them from digging into the private lives of their employees to unearth how they handle their finances vis-à-vis family, friends and creditors. To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.

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

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

51. Defendants did not reimburse or pay Plaintiff or the other aggrieved employees for any portion of their cell phone expenses, in violation of Labor Code § 2802(a).

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

Labor Code § 226.7

53. “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). “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). Relevant Wage Orders of the Industrial Welfare Commission, applicable to Defendants, such as Wage Order No. 4-2001 section 12 for example, 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

1 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per
2 four (4) hours or major fraction thereof.”

3 54. As a company-wide practice, Defendant regularly required Plaintiff and its other non-
4 exempt employees to work without being provided the opportunity to have a rest break. As a company-
5 wide practice, Defendant did not allow them the opportunity to be relieved of all duties to take a rest break.
6 As a company-wide practice, Defendant did not compensate them in lieu of providing rest breaks. As
7 such, Defendant violated California Labor Code section 226.7(b) and 226(c).

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

12 ***Labor Code § 512***

13 56. “An employer may not employ an employee for a work period of more than five hours
14 per day without providing the employee with a meal period of not less than 30 minutes, except that if the
15 total work period per day of the employee is no more than six hours, the meal period may be waived by
16 mutual consent of both the employer and employee. An employer may not employ an employee for a
17 work period of more than 10 hours per day without providing the employee with a second meal period
18 of not less than 30 minutes.” Lab. Code § 512(a). As set forth above, Defendants did not permit Plaintiff
19 and other aggrieved employees uninterrupted duty-free meal periods with the opportunity to be relieved
20 of all duties for meal breaks on the days they worked more than five hours.

21 57. As set forth above, Defendants did not permit Plaintiff and other aggrieved employees
22 uninterrupted second duty-free meal periods with the opportunity to be relieved of all duties for meal
23 breaks on the days they worked more than 10 hours.

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

28 ***Labor Code § 510***

59. “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.” Lab. Code § 510(a).

60. Plaintiff’s co-workers regularly worked more than eight hours per workday. They were not compensated with premium overtime pay for those overtime hours worked more than eight per day. As such, Defendants violated Labor Code § 510.

61. 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.

Labor Code § 204

62. Labor Code Section 204(a) provides that “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.”

63. Plaintiff’s co-workers regularly worked more than eight hours per workday. They were not compensated with the earned premium overtime pay for those overtime hours worked more than eight per day. As such, Defendants violated Labor Code Section 204(a) by failing to pay for all the overtime premium wages on regular paydays. 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.

Labor Code § 226

64. “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, except as provided in

subdivision (j), (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.” Lab. Code § 226(a).

65. Due to Defendant’s failure to account for the time worked, Plaintiff and other aggrieved employees’ itemized wage records did not show: (1) the accurate total hours worked; (2) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; (3) the accurate gross wages earned; and (4) the accurate net wages earned. As such, Defendants violated Labor Code Section 226(a)(1)(2)(5)(9). Defendant also failed to keep itemized wage statement records of the foregoing.

66. Labor Code Section 226 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.

Labor Code § 1198

67. 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.

68. 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 employee begins and ends each work period and the total hours worked in the payroll period. As set forth above, Plaintiff and his co-workers regularly worked more than eight hours per workday. They were not compensated with the earned premium overtime pay for those overtime hours worked more than eight per day. Relevant Wage Orders of the IWC, applicable to Defendants, such as Wage Order No. 4- 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."

69. As set forth above, on numerous occasions, 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.

70. Relevant Wage Orders of the IWC, applicable to Defendants, such as Wage Order No. 4- 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."

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

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

73. California Labor Code section 1198 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.

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

75. California Labor Code section 1198 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.

Labor Code § 1174(d)

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

77. Defendants failed to maintain records showing the actual and accurate hours worked by Plaintiff’s co-workers, aggrieved employees, in violation of Labor Code Section 1174(d). Labor Code Section 1174 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.

Labor Code § 558

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

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

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

80. As discussed above, Defendants violated Labor Code sections 510, 512, and the above-referenced provisions of IWC Wage Orders as applicable. As such, Defendants are subject to pay the pre-determined amount of civil penalties for the initial and subsequent violations.

Labor Code § 210

81. 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.

82. 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).

Labor Code § 226.3

83. “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. This section “sets out a civil penalty for all violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675 (2018). 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.

Labor Code § 1174.5

84. 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

1 Labor Code Section 1174(d). Defendant willfully failed to maintain records showing the accurate hours
2 worked daily by the aggrieved employees. Thus, Defendants are subject to civil penalties.

3 ***Exhaustion of Administrative Remedies***

4 85. On December 16, 2021, Plaintiff provided notice to the California Labor and Workforce
5 Development Agency (“LWDA”), pursuant to Labor Code § 2699.3, detailing the specific provisions of
6 the foregoing Labor Code sections that have been violated, including the facts and theories to support
7 the violations. The LWDA file number is LWDA-CM-857960-21. The notice was sent by certified
8 mail on or about December 15, 2021, to Shiran Arnaldes, CEO, Capella Inc., (Certified Mail No. 7021
9 1970 0000 0044 0621). Plaintiff submitted a \$75.00 fee to the LWDA.

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

18 ***Supplemental PAGA Notice***

19 87. Defendants witfully misclassified Plaintiff as an independent contractor from at least
20 around June 1, 2021, to October 27, 2021. As a company-wide practice, Defendant regularly
21 misclassified its other workers from at least July 8, 2021, through July 2022.

22 88. It is unlawful for any person or employer to engage in . . . [w]illful misclassification of an
23 individual as an independent contractor.” Lab. Code § 226.8(a)(1). Defendant willfully misclassified
24 Plaintiff and other co-workers as independent contractors while in reality they were employees.
25 Defendant retained the right to exercise, and did in fact exercise, control over the wages, hours, and
26 working conditions of Plaintiff and co-workers. In addition, Plaintiff and co-workers performed work
27 that was within the usual course of the Defendant’s business. Civil penalties for violating section
28 226.8(a) range from \$5,000 to \$25,000 per violation. Lab. Code § 226.8(b)(c).

89. On July 8, 2022, Plaintiff submitted a supplemental notice (“Supplemental PAGA Notice”) to the LWDA pursuant to Labor Code § 2699.3, detailing the specific provisions of the California Labor Code §§ 226.8 that have been violated, including the facts and theories to support the violations. The notice was sent to Defendant by certified mail on or about July 8, 2022, (Certified mail No. 7021 1970 0000 0044 0720).

90. 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:

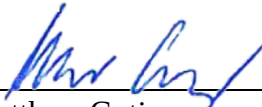
1. For compensatory special damages, in an amount according to proof at the time of trial.
2. For reimbursement and indemnification for all work-related expenditures, in an amount according to proof at the time of trial.
3. For civil penalties pursuant to the California Labor Code.
4. For statutory penalties pursuant to the California Labor Code.
5. For a \$750 statutory penalty pursuant to Labor Code section 1198.5.
6. For a \$750 statutory penalty pursuant to Labor Code section 226.
7. For reasonable attorneys’ fees pursuant to the California Labor Code.
8. For such other and further relief as the Court may deem proper.
9. For injunctive relief, ordering Defendant provide Plaintiff’s personnel and wage statement records pursuant Labor Code sections 226 and 1198.5.
10. For prejudgment interest.
11. For costs of suit including expert witness fees.
12. For such other equitable and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff ERNESTO SANDOVAL hereby demands a trial by jury.

Dated: August 24, 2022

GUTIERREZ DERHAM LAW FIRM LLP

By: 
Matthew Gutierrez
Attorneys for Plaintiff, ERNESTO
SANDOVAL, individually and as a proxy for
the State of California