

STANSBURY BROWN LAW, PC
DANIEL J. BROWN (SBN 307604)
dbrown@stansburybrownlaw.com
2610 ½ Abbot Kinney Blvd.
Venice, CA 90291
Tel: 323-207-5925

Attorneys for Plaintiff

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 4/15/2022 9:45 AM
Reviewed By: R. Walker
Case #22CV393952
Envelope: 8760809**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MAYRA CORINA GONZALEZ, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

FLIGHT SERVICES & SYSTEMS, INC., an
Ohio corporation; and DOES 1 through 100,

Defendants.

Case No.: 22CV393952

Amended as a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

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

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 551, 552, 558,
1194, AND 1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (5) FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (6) FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (7) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (8) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (9) VIOLATION OF LABOR CODE §
(§§ 204, 210, 558, and 558.1); and**
- (10) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 17200 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Mayra Corina Gonzalez (“Plaintiff”), as an individual and on behalf of all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“FAC”) against Flight Services & Systems, Inc.; and, DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 512, 510, 516, 558, 558.1,
9 1182.12, 1194, 1194.2, 1196, 1198, 2802, 2698 *et seq.*; and Industrial Welfare Commission Wage
10 Order 9 (“Wage Order 9”), in addition to seeking declaratory relief and restitution. This
11 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
13 controversy exceeds this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in Santa Clara County because Defendants’ principal place of
16 business is in Ohio, is incorporated under the laws of Ohio, does business in Santa Clara County,
17 and has not registered a California place of business with the California Secretary of State. As
18 such, venue is proper in any county in California.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was and currently is, a California resident. During the four years immediately preceding
22 the filing of the Complaint in this action and within the statute of limitations periods applicable
23 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
24 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
25 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
26 §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1198,
27 2802, and 2698 *et seq.*; California Business & Professions Code § 17200 *et seq.* (“Unfair
28 Competition Law”); and Wage Order 9.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
2 years preceding the filing of the Complaint and continuing to the present, Defendants are an Ohio
3 corporation that did (and continue to do) business by employing individuals at various airports in
4 the United States, and employed Plaintiff, and other similarly-situated non-exempt employees,
5 within the state of California and, therefore, were (and are) doing business in the State of
6 California.

7 5. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
11 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
12 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
13 and proximately caused Plaintiff and the Classes (as defined herein) to be subject to the unlawful
14 employment practices, wrongs, injuries and damages complained of herein.

15 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

17 7. At all times herein mentioned, each of said Defendants participated in the doing
18 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
19 Defendants, and each of them, were the agents, servants, and employees of each and every one of
20 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
21 were acting within the course and scope of said agency and employment. Defendants, and each
22 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
23 omissions complained of herein.

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
28 members of the Classes.

1 **GENERAL FACTUAL ALLEGATIONS**

2 9. Defendants are in the business of staffing employees to perform work at various
3 airports around the country. Plaintiff commenced employment with Defendants as a non-exempt
4 employee in a customer service position from approximately July 2018 until approximately May
5 31, 2021, when she resigned out of frustration of not receiving all of her meal & rest periods along
6 with minimum & overtime wages, despite previously submitting multiple complaints to her
7 supervisors on the issue. Plaintiff physically worked at the Fresno Yosemite International Airport
8 and her duties included handling the concerns, questions, and complaints of the “Aeromexico”
9 airline’s customers, the airline for which she was placed to work for by Defendants.

10 10. During Plaintiff’s employment with Defendants, Plaintiff was paid on an hourly
11 basis at a rate of \$16.50 per hour. Defendants utilized a computerized timekeeping system to
12 keep track of the hours worked by Plaintiff and the other non-exempt employees.

13 **Off-The-Clock/Overtime**

14 11. Defendants have failed to record employees’ total hours worked each workday
15 accurately. Plaintiff and other non-exempt employees were not paid for all straight time and
16 overtime they worked due to Defendants’ unlawful policies and practices including, but not
17 limited to, Defendants’ practice of requiring employees to pass through security screenings before
18 they clocked in at the start of their shift and after they clocked out at the conclusion of their shifts.
19 Despite requiring Plaintiff and other non-exempt employees to undergo pre- and post-shift
20 security screenings, Defendants never compensated Plaintiff and other non-exempt employees for
21 this time spent necessarily under the control of Defendants. Furthermore, Defendants utilized an
22 unlawful timekeeping system which functionally served to deny Plaintiff and other non-exempt
23 employees all due overtime wages. For example, while Plaintiff’s shifts were generally from 6:00
24 p.m. until 12:00 a.m., she frequently would work past 12:00 a.m. especially during the high season
25 in the summer. On those occasions that Plaintiff would work past 12:00 a.m., Defendants would
26 automatically clock Plaintiff out for the day and clock her back in for the next day so the work
27 would not count towards her daily overtime and instead count towards the next day’s hours
28 worked at a straight time rate. Furthermore, on those occasions where Defendants’ system

utilized this underhanded tactic to attempt to avoid paying overtime hours by carrying over the time worked past midnight to a separate shift on the following day, Defendants would still refuse to pay Plaintiff overtime hours worked in excess of 8.0 hours in a given 24-hour period despite this frequent occurrence. Additionally, while Plaintiff occasionally was tasked with working up to seven days in a given week, which should have entitled her to overtime pay, she did not ever receive overtime compensation from Defendants for those seventh-day overtime and double-time hours worked. Plaintiff does not recall ever receiving overtime payment despite frequently working enough hours to be entitled to overtime pay. As such, Defendants failed to ensure that Plaintiff and other non-exempt employees were being paid at least the minimum wage for all hours actually worked and failed to ensure that Plaintiff and other non-exempt employees received proper overtime wages for all overtime hours worked in compliance with Wage Orders.

Rest Periods

12. Plaintiff and other non-exempt employees were not authorized to take all legally required rest periods. For example, Plaintiff and other non-exempt employees were generally not permitted to exercise the use of their second rest period in a timely manner, if at all. Plaintiff cannot recall ever being able to exercise the use of a rest period nor ever being advised of her legal right to do so throughout the entirety of her employment with Defendants. Despite Defendants' failure to authorize and permit Plaintiff and other non-exempt employees to take all lawful paid rest periods, due to their uniform and unlawful practices, Defendants did not always provide Plaintiff and other non-exempt employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Defendants maintained no payroll code or another mechanism for the payment of rest period premiums in the event Plaintiff and other non-exempt employees were not authorized to take lawful rest periods.

Meal Periods

13. Defendants also failed to provide Plaintiff and other non-exempt employees with all full thirty-minute meal periods when they worked shifts in excess of 6.0 hours and/or a second meal period after 10.0 hours, as required by California law. Rather, Plaintiff and other non-

1 exempt employees would not be entitled to exercise the use of their meal periods due to intense
2 understaffing issues and a company culture of not providing meal periods and instead be tasked
3 with working through them off-the-clock. Furthermore, Defendants maintained an unlawful
4 practice/policy of deducting thirty minutes from Plaintiff's and other non-exempt employees'
5 timecards on each shift they worked which falsely served to indicate that meal periods were being
6 exercised, when in reality they were not and Plaintiff and other non-exempt employees were
7 working off-the-clock. Moreover, Plaintiff and other non-exempt employees were required to
8 take on-duty meal periods, to the extent that they were ever encouraged or provided, constituting
9 a non-compliant meal period. Furthermore, Plaintiff and other non-exempt employees were not
10 at any point permitted to exercise the use of second meal periods, resulting in systemic second
11 meal period violations.

12 14. Despite Defendants' failure to provide Plaintiff and other non-exempt employees
13 with all lawful meal periods due to their uniform and unlawful practices, Defendants did not
14 always provide Plaintiff and other non-exempt employees with an hour of pay at their regular rate
15 for each meal period violation as required by Labor Code § 226.7. Upon information and belief,
16 during at least a portion of the class period, Defendants maintained no payroll code or another
17 mechanism for the payment of meal period premiums in the event Plaintiff and other non-exempt
18 employees were not authorized to take lawful meal periods.

19 **Reimbursements**

20 15. Defendants failed to adequately reimburse Plaintiff for all reasonable and
21 necessary work expenditures, including but not limited to, requiring Plaintiff and other non-
22 exempt employees incur expenses related to the use of their cellular phones to conduct their
23 everyday work. Defendants did not provide Plaintiff and other non-exempt employees with
24 walkie-talkies to engage in daily business communications and instead relied on them to
25 communicate all work-related business amongst themselves in a "Whatsapp" group chat on their
26 personal cellular phones.

27 **Wage Statement Violations/Waiting Time Penalties**

28 16. As a result of Defendants' failure to provide all required meal periods and

1 authorize all rest periods or pay premium pay in lieu thereof and pay all due minimum & overtime
2 wages, Defendants have maintained inaccurate payroll records, failed to timely pay all wages
3 owed to separating employees at the time of their separation, and issued inaccurate wage
4 statements.

5 **Failure to Timely Pay Wages Twice Monthly**

6 17. Finally, Defendants maintained a uniform policy/practice that served to ensure that
7 Plaintiff and other non-exempt employees were not timely paid their wages at least twice monthly
8 in violation of Labor Code § 204. For example, in March of 2021, the pay period ran from March
9 16, 2021 until March 31, 2021, and Plaintiff was not paid until April 15, 2021. Additionally, for
10 the pay period between April 1, 2021 until April 15, 2021, Plaintiff was not paid until April 30,
11 2021. This failure to comply with the Labor Code was consistent throughout Plaintiff's
12 employment and applied to all other non-exempt employees as well.

13 **CLASS ACTION ALLEGATIONS**

14 18. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
15 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 16 a. The Off-The-Clock-Class consists of all Defendants' current and former non-
17 exempt employees in California who were not permitted to record their actual
18 hours worked, during the four years immediately preceding the filing of the lawsuit
19 through the present.
- 20 b. The Overtime Class consists of all Defendants' current and former non-exempt
21 employees in California who worked more than eight (8) hours per shift and/or
22 forty (40) hours per week and were subject to Defendants' timekeeping systems
23 and/or practices during the four years immediately preceding the filing of the
24 Complaint through the present.
- 25 c. The Rest Period Class consists of all of Defendants' current and former non-
26 exempt employees in California who worked at least one shift of 3.5 hours or more,
27 during the four years immediately preceding the filing of the Complaint through
28 the present.

1 d. The Meal Period Class consists of all of Defendants' current and former non-
2 exempt employees in California who: (i) worked at least one shift in excess of 5.0
3 hours without a meal period of at least 30 minutes in duration commencing prior
4 to the conclusion of the fifth hour of work, and who do not have a corresponding
5 meal period premium payment made for such shifts and/or (ii) worked at least one
6 shift in excess of 10.0 hours without a second meal period of at least 30 minutes
7 in duration commencing prior to the conclusion of the tenth hour of work, and who
8 do not have a corresponding meal period premium payment made for such shifts
9 during the four years preceding the filing of this lawsuit through the present.

10 e. The Employee Expense Class consists of all of Defendants' current and former
11 non-exempt employees in California who were not reimbursed for expenses
12 related to the purchase and use of their personal cellular phones necessary for the
13 performance of their job duties during the four years immediately preceding the
14 filing of this lawsuit to the present.

15 f. The Wage Statement Class consists of all members of the Off-The-Clock,
16 Overtime Class, Rest Period Class, and/or Meal Period Class who received a wage
17 statement from Defendants during the one year immediately preceding the filing
18 of this lawsuit through the present.

19 g. The Untimely Wage Class consists of all of Defendants' current and former non-
20 exempt employees in California during the four years immediately preceding the
21 filing of this lawsuit through the present.

22 h. The Waiting Time Class consists of all Defendants' formerly employed members
23 of the Off-The-Clock, Overtime Class, Rest Period Class and Meal Period Class
24 who separated from employment during the three years immediately preceding the
25 filing of this lawsuit through the present.

26 19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
27 joinder of all members would be unfeasible and not practicable. The membership of the Classes
28 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes

number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

20. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants paid at least the minimum wages owed for all hours worked to members of the Off-The-Clock Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 9 by requiring members of the Off-The-Clock Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iii. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- iv. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- v. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;
- vi. Whether Defendants failed to timely pay all wages at least twice per month in compliance with Labor Code § 204;
- vii. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- viii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

21. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common

1 questions of law set forth above are numerous and substantial and stem from Defendants' policies
2 and/or practices applicable to each individual class member, such as Defendants' uniform meal
3 and rest period policies and practices, timekeeping policies and practices, non-reimbursement,
4 wage statement, and payment of final wages policies and practices. As such, the common
5 questions predominate over individual questions concerning each individual class member's
6 showing as to his or her eligibility for recovery or as to the amount of his or her damages.

7 22. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
8 Plaintiff was employed by Defendants as a non-exempt employee in California during the
9 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
10 herein, Plaintiff, like the members of the Classes was subject to Defendants' meal and rest period
11 and time keeping policies and practices, was subjected to Defendants' unlawful failure to
12 reimburse business expenses, was furnished with inaccurate and incomplete wage statements, and
13 was not paid all wages earned at the time of her separation of employment.

14 23. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
15 to represent fairly and adequately the interests of the members of the Classes. Moreover,
16 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
17 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
18 and-hour class actions in state and federal courts in the past and are committed to vigorously
19 prosecuting this action on behalf of the members of the Classes.

20 24. **Superiority:** The California Labor Code is broadly remedial in nature and serves
21 an important public interest in establishing minimum working conditions and standards in
22 California. These laws and labor standards protect the average working employee from
23 exploitation by employers who have the responsibility to follow the laws and who may seek to
24 take advantage of superior economic and bargaining power in setting onerous terms and
25 conditions of employment. The nature of this action and the format of laws available to Plaintiff
26 and members of the Classes make the class action format a particularly efficient and appropriate
27 procedure to redress the violations alleged herein. If each employee were required to file an
28 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they

1 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
2 their vastly superior financial and legal resources. Moreover, requiring each member of the
3 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
4 employees who would be disinclined to file an action against their former and/or current employer
5 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
6 employment. Further, the prosecution of separate actions by the individual class members, even
7 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
8 with respect to the individual class members against Defendants herein; and which would
9 establish potentially incompatible standards of conduct for Defendants; and/or legal
10 determinations with respect to individual class members which would, as a practical matter, be
11 dispositive of the interest of the other class members not parties to adjudications or which would
12 substantially impair or impede the ability of the class members to protect their interests. Further,
13 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
14 individual prosecution considering all of the concomitant costs and expenses attending thereto.
15 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
16 Civil Procedure.

17 **FIRST CAUSE OF ACTION**

18 **MINIMUM WAGE VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

20 25. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 26. The Wage Orders and California Labor Code §§ 1197 and 1182.12 establish the
22 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
23 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
24 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
25 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
26 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
27 their pay practices to the requirements of the law by failing to pay Plaintiff and the Off-The-Clock
28 Class for all hours actually worked including, but not limited to, all hours they were subject to the

control of Defendants and/or suffered or permitted to work under the California Labor Code and the Wage Orders.

27. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

28. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Off-The-Clock Class have sustained economic damages, including but not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and the Wage Orders.

29. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Off-The-Clock Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

32. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California

1 Labor Code § 1194 and the Wage Orders. The Wage Orders requires an employer to pay overtime
2 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
3 in the Wage Orders.

4 33. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
5 employees to work overtime hours but did not compensate Plaintiff or members of the Overtime
6 Class at one and one-half times their regular rate of pay for such hours.

7 34. The foregoing policies and practices are unlawful and create entitlement to
8 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
9 premiums owing, including interest thereon, statutory and civil penalties, and attorneys' fees and
10 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, the Wage
11 Orders, and Code of Civil Procedure § 1021.5.

12 **THIRD CAUSE OF ACTION**

13 **MEAL PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

15 35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 failed in their affirmative obligation to provide all of their non-exempt employees in California,
18 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
19 in accordance with the mandates of the California Labor Code and the Wage Orders. Despite
20 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
21 of the Meal Period Class at their respective regular rates of compensation, in accordance with
22 California Labor Code §§ 226.7, and 512.

23 37. As a result, Defendants are responsible for paying premium compensation for meal
24 period violations including interest thereon, as well as statutory penalties, civil penalties, and
25 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, the Wage Orders, and Civil Code
26 §§ 3287(b) and 3289.

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 39. The Wage Orders and California Labor Code §§ 226.7 and 516 establish the right
6 of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes
7 net rest time for each four (4) hour period worked, or major fraction thereof.

8 40. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
9 of the Rest Period Class to take all legally compliant rest periods.

10 41. The foregoing violations create an entitlement to recovery by Plaintiff and
11 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
12 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
13 according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

16 **(AGAINST ALL DEFENDANTS)**

17 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 43. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
19 states that “an employer shall indemnify his or her employees for all necessary expenditures or
20 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
21 his or her obedience to the directions of the employer...”

22 44. Due to Defendants’ unlawful policy and practice of requiring employees to
23 purchase and maintain personal cellular phones necessary for the performance of their job duties,
24 Defendants have violated Labor Code § 2802.

25 45. Plaintiff and members of the Employee Expense Class are entitled to attorneys’
26 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

27 46. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
28 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,

1 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
2 from the date on which they incurred the initial necessary expenditure.

3 **SIXTH CAUSE OF ACTION**

4 **WAGE STATEMENT VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

6 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
9 and the Wage Statement Class with accurate, itemized wage statements that included, among
10 other requirements, accurate total gross wages earned, meal and rest period premiums, and total
11 net wages earned in violation of Labor Code §226 *et seq.*

12 49. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
13 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
14 failures led to, among other things, the non-payment of all of their meal and rest period
15 premiums, minimum & overtime wages, and deprived them of the information necessary to
16 identify discrepancies in Defendants' reported data.

17 50. Defendants' failures created an entitlement to Plaintiff and members of the Wage
18 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
19 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to
20 suit pursuant to Labor Code § 226 *et seq.*

21 **SEVENTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

23 **(AGAINST ALL DEFENDANTS)**

24 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 52. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
26 an employer to pay all wages immediately at the time of termination of employment in the event
27 the employer discharges the employee or the employee provides at least 72 hours of notice of
28 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her

intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

53. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation including, among other things, unpaid meal and rest period premium wages and unpaid overtime and minimum wages owed. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

54. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

56. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to provide Plaintiff and the Classes all overtime and minimum wages, required meal periods and failing to authorize and permit all required rest periods, failing to pay meal and rest period premium wage payments, failing to reimburse for necessary business expenditures, and failing to furnish accurate, itemized wage statements, and willfully failing to timely pay Plaintiff and members of the Waiting Time Class all final wages upon separation of employment.

57. Defendants' utilization of these unfair and/or unlawful business practices deprived

1 Plaintiff and continues to deprive members of the Classes of compensation to which they are
2 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
3 over Defendants' competitors who have been and/or are currently employing workers and
4 attempting to do so in honest compliance with applicable wage and hour laws.

5 58. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
6 herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of
7 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
8 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

9 59. The acts complained of herein occurred within the last four years immediately
10 preceding the filing of the Complaint in this action.

11 60. Plaintiff was compelled to retain the services of counsel to file this court action to
12 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
13 of Defendants' current non-exempt employees, and to enforce important rights affecting the
14 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
15 which she is entitled to recover under Code of Civil Procedure § 1021.5.

16 **NINTH CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE § 204**

18 **(AGAINST ALL DEFENDANTS)**

19 61. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 62. Labor Code § 204 instructs that: "All wages...earned by any person in any
21 employment are due and payable twice during each calendar month, on days designated in
22 advance by the employer as regular paydays. Labor performed between the 1st and 15th days,
23 inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
24 during which the labor was performed, and labor performed between the 16th and last day,
25 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
26 month."

27 63. As detailed above, Defendants maintained a consistently applied policy and
28 practice of not paying all wages earned between the 1st and 15th days of a month between the

1 16th and 26th day and failed to pay all wages earned between the 16th and last day of the month
2 between the 1st and 10th day of the following month.

3 64. All wages due and owing to Plaintiff and the Class Members, including as required
4 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
5 required by Labor Code § 1194 and other sections became due and payable to each Class Member
6 in each pay period that he or she was not provided with a meal period or a rest period or paid
7 straight or overtime wages to which they were entitled.

8 65. Defendants thus violated Labor Code § 204 by systematically refusing to pay
9 wages due under the Labor Code, as addressed above, in addition to their flat-out failures to
10 timely pay said wages within the parameters allowable under the Labor Code. Additionally,
11 under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each
12 employee, on the established payday for the period involved, not less than the applicable
13 minimum wage for all hours worked in the payroll period....” Under Labor Code § 1198 “[t]he
14 employment of any employee for longer hours than those fixed by the order or under conditions
15 of labor prohibited by the order is unlawful.” Plaintiff and the Class Members may therefore
16 pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of the
17 applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC
18 Wage Orders.

19 66. As a result of the unlawful acts of Defendants, Plaintiff and the Class Members
20 seek to represent they have been deprived of wages in amounts to be determined at trial, and they
21 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and
22 costs, pursuant to Labor Code §§ 210, 218.5, 1194, and 1198, and paragraphs 4(B) and 20 of the
23 applicable IWC Wage Orders.

24 **TENTH CAUSE OF ACTION**

25 **PRIVATE ATTORNEYS GENERAL ACT**

26 **(AGAINST ALL DEFENDANTS)**

27 67. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 68. Defendants have committed several Labor Code violations against Plaintiff,

members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code:

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Off-The-Clock Class, and other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;

- e. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- h. Failing to compensate Plaintiff, the Untimely Wage Class, and other aggrieved employees at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

69. On February 3, 2022, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 68 (a)-(i). Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

70. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

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

1 this suit is brought against Defendants, as follows:

- 2 1. For an order certifying the proposed Classes;
- 3 2. For an order appointing Plaintiff as representative of the Classes;
- 4 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 5 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
6 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
7 1197;
- 8 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
9 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198
- 10 6. Upon the Third Cause of Action, for compensatory, consequential, general and
11 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 12 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
13 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 14 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
15 special damages according to proof pursuant to Labor Code § 2802;
- 16 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
17 226, *et seq.*;
- 18 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
19 to Labor Code § 201-203;
- 20 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
21 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
22 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
23 *seq.*;
- 24 12. Upon the Ninth Cause of Action, for restitution and/or damages to Plaintiff and
25 members of the Classes for all amounts unlawfully withheld from the wages for all class members
26 in violation of Labor Code § 204 according to proof;
- 27 13. Upon the Tenth Cause of Action, (1) \$100.00 for each initial violation for each
28 failure to pay each employee and \$200 for each subsequent violation or willful or intentional

violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for the violations of the Labor Code Sections cited in Labor Code § 2699.5.

14. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

15. On all causes of action, for attorneys' fees and costs as provided by Code of Civil Procedure § 1021.5 and all other applicable statutes; and

16. For such other and further relief the Court may deem just and proper.

Dated: April 15, 2022

Respectfully submitted,
STANBURY BROWN LAW, PC

By: 
Daniel J. Brown
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: April 15, 2022

Respectfully submitted,
STANBURY BROWN LAW, PC

By: 
Daniel J. Brown
Attorneys for Plaintiff