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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 04 2022

BY Charlene Johnson
CHARLENE JOHNSON, DEPUTY

Attorneys for Plaintiff KATIA ARELLANO
on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

KATIA ARELLANO, on behalf of herself and
other aggrieved employees,

Plaintiff,

vs.

ULTA SALON, COSMETICS &
FRAGRANCE, INC.; and DOES 1 to 100,
inclusive,

Defendants.

Case No. **CIV SB 2209151**

PAGA ACTION

**PLAINTIFF KATIA ARELLANO'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTION 2698, et seq.**

COME NOW Plaintiff KATIA ARELLANO ("Plaintiff"), who alleges and complains
against Defendants ULTA SALON, COSMETICS & FRAGRANCE, INC. and DOES 1 to 100,
inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code § 2698, et seq.
("PAGA"). representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly, non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all

1 hours worked at the employees' minimum wage rate or overtime rate, failure to provide all legally
2 required and legally compliant meal and rest periods, failure to indemnify employees for
3 employment-related losses/expenditures, failure to timely pay earned wages during employment,
4 failure to provide complete and accurate wage statements, and failure to timely pay all unpaid
5 wages following separation of employment. Plaintiff seeks on a representative basis, following
6 notice to the Labor and Workforce Development Agency, civil penalties, reasonable attorney's
7 fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State
8 of California, and others aggrieved.

9 **II. JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
11 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
12 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
13 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
14 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
15 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
16 aggrieved California-based hourly non-exempt employees occurred in locations throughout
17 California, including but not limited to San Bernardino County, at 27461 San Bernardino
18 Ave., Ste. 150, Redlands, CA 92374.

19 **III. PARTIES**

20 3. Plaintiff brings this action as a representative of the Labor and Workforce
21 Development Agency on behalf of herself and other current and former employees subject to
22 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
23 filed include current, former and/or future employees of Defendants who worked, work, or will
24 work for Defendants as non-exempt hourly employees in California. At all times mentioned
25 herein, the currently named Plaintiff is and was domiciled and a resident and citizen of California
26 and was employed by Defendants in an hourly position at Defendants' location in San Bernardino
27 from approximately June 4, 2021 until his termination on or about December 23, 2021.

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1 4. Plaintiff is informed and believes and thereon alleges that Defendant ULTA
2 SALON, COSMETICS & FRAGRANCE, INC. is authorized to do business within the State of
3 California and is doing business in the State of California and/or that Defendant DOES 1-50 are,
4 and at all times relevant hereto were persons acting on behalf of Defendant ULTA SALON,
5 COSMETICS & FRAGRANCE, INC. in the establishment of, or ratification of, the
6 aforementioned illegal wage and hour practices or policies. Defendant ULTA SALON,
7 COSMETICS & FRAGRANCE, INC. operates in San Bernardino County and employed Plaintiff
8 and aggrieved employees in San Bernardino County, including but not limited to, at 27461 San
9 Bernardino Ave., Ste. 150, Redlands, CA 92374.

10 5. Plaintiff is informed and believes and thereon alleges that Defendant DOES 1
11 through 50 are corporations, or are other business entities or organizations of a nature unknown to
12 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
13 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
14 working conditions of employment of Plaintiff and aggrieved employees.

15 6. Plaintiff is informed and believes and thereon alleges that Defendant DOES 51
16 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
17 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
18 supervisor, independent contractor and/or employee of each defendant who violated or caused to
19 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
20 the Industrial Welfare Commission's wage orders regulating hours and days of work.

21 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
22 sues said defendants by said fictitious names, and will amend this complaint when the true names
23 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
24 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
25 named defendants is in some manner responsible for the events and allegations set forth in this
26 complaint.

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8. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS

GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.

(Against all Defendants)

9. Plaintiff incorporates all paragraphs above as though fully set forth herein.

10. During the period beginning one-year period preceding the sending of the initial notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, and Sections 14 and 15 of the applicable Wage Orders.

11. Specifically, Defendants have committed the following violations of California Labor Code:

12. **Failure to pay wages for all hours worked at the legal minimum wage:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all “hours worked,” which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

13. Labor Code sections 1194 and 1197 require an employer to compensate employees for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the Wage Orders.

14. In this case, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more minutes per shift than Defendants credited them with having worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages at the applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but

1 not limited to:

2 (a) Requiring Plaintiff and other current and former aggrieved California-based
3 hourly non-exempt employees to clock in for their shift and then wait at the timeclock to ensure
4 that system processed the punch in, which could take up to three minutes. Plaintiff and other
5 current and former aggrieved California-based hourly non-exempt employees were not
6 compensated for the time spent waiting for their clock in punch to register time resulting in
7 Defendants' failure to pay minimum wage for all the hours Plaintiff and other current and former
8 aggrieved California-based hourly non-exempt employees;

9 (b) Requiring Plaintiff and other current and former aggrieved California-based
10 hourly non-exempt employees who worked the closing shift to clock out at the end of their
11 scheduled shift, gather and wait at the front of the store for all employees to clock out, undergo a
12 security bag check, wait for all other employees to undergo the security bag check, and then wait
13 for the closing shift manager to arm the alarm system and lock the store doors before being
14 relinquished from Defendants' control;

15 (c) Beginning at the outbreak of COVID-19 through on or around July 2021,
16 Defendants required Plaintiff and other current and former aggrieved California-based hourly non-
17 exempt employees to undergo off-the-clock COVID-19 medical screenings including but not
18 limited to temperature checks and/or medical questionnaires prior to being permitted to clock in
19 for the start of their shift;

20 (d) Requiring Plaintiff and other current and former aggrieved California-based
21 hourly non-exempt employees to review and approve their timesheets every other Friday after
22 clocking out from their shift, which could take up to twenty minutes; and

23 (e) Requiring Plaintiff and other current and former aggrieved California-based
24 hourly non-exempt employees to check application Work Jam daily for schedule changes while
25 off-the-clock, which could take up to fifteen minutes.

26 15. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
27 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
28 control without paying wages for that time. This resulted in Plaintiff and other current and former

aggrieved California-based hourly non-exempt employees working time for which they were not compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable Wage Order.

16. **Failure to pay wages for overtime hours worked at the overtime rate of pay:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all “hours worked,” which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services that inure to the benefit of the employer.’

17. Labor Code sections 510 and 1194 require an employer to compensate employees a higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

18. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants’ policies, practices, and/or procedures including, but not limited to:

(a) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to clock in for their shift and then wait at the timeclock to ensure that system processed the punch in, which could take up to three minutes. Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were not compensated for the time spent waiting for their clock in punch to register time resulting in Defendants’ failure to pay minimum wage for all the hours Plaintiff and other current and former aggrieved California-based hourly non-exempt employees;

1 (b) Requiring Plaintiff and other current and former aggrieved California-based
2 hourly non-exempt employees who worked the closing shift to clock out at the end of their
3 scheduled shift, gather and wait at the front of the store for all employees to clock out, undergo a
4 security bag check, wait for all other employees to undergo the security bag check, and then wait
5 for the closing shift manager to arm the alarm system and lock the store doors before being
6 relinquished from Defendants' control;

7 (c) Beginning at the outbreak of COVID-19 through on or around July 2021,
8 Defendants required Plaintiff and other current and former aggrieved California-based hourly non-
9 exempt employees to undergo off-the-clock COVID-19 medical screenings including but not
10 limited to temperature checks and/or medical questionnaires prior to being permitted to clock in
11 for the start of their shift;

12 (d) Requiring Plaintiff and other current and former aggrieved California-based
13 hourly non-exempt employees to review and approve their timesheets every other Friday after
14 clocking out from their shift, which could take up to twenty minutes; and

15 (e) Requiring Plaintiff and other current and former aggrieved California-based
16 hourly non-exempt employees to check application Work Jam daily for schedule changes while
17 off-the-clock, which could take up to fifteen minutes.

18 19. The foregoing policies, practices, and/or procedures resulted in time during each
19 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
20 employees were under the control of Defendants but were not compensated. To the extent that the
21 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
22 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
23 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
24 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
25 sections 510 and 1194 and the applicable Wage Order.

26 20. **Failure to pay wages to hourly non-exempt employees for workdays that**
27 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
28 current and former aggrieved California-based hourly non-exempt employees regularly worked

1 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

2 21. California law requires an employer to authorize or permit an employee an
3 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
4 all duties and the employer relinquishes control over the employee's activities prior to the
5 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 4 at §11; *Brinker*
6 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
7 employee for a work period of more than ten (10) hours per day without providing the employee
8 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
9 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
10 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
11 period is only permitted when: (1) the nature of the work prevents an employee from being
12 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

13 22. If an employer fails to provide an employee a meal period in accordance with the
14 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
15 for each workday that a legally required and compliant meal period was not provided. Labor Code
16 section 226.7; Wage Order 4 at §11.

17 23. In this case, Defendants failed to authorize or permit legally required and compliant
18 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
19 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
20 limited to:

21 (a) Requiring Plaintiff and other current and former aggrieved California-based
22 hourly non-exempt employees to undergo security bag checks before being relinquished from
23 Defendants' control and prior to being permitted to leave the premises for meal periods.
24 Defendants failed to elongate or extend meal periods to account for the time expended undergoing
25 security bag checks, resulting in meal periods that were not duty-free and/or were less than thirty
26 (30) minutes. Further, Defendants' requirement that Plaintiff and other current and former
27 aggrieved California-based hourly non-exempt employees undergo security bag checks prior to
28 leaving the premises, but after clocking out for a meal period, discouraged Plaintiff and other

1 current and former aggrieved California-based hourly non-exempt employees from leaving the
2 premises during a meal period;

3 (b) Requiring Plaintiff and other current and former aggrieved California-based
4 hourly non-exempt employees to keep their walkie talkies on their person at all times during their
5 meal periods, resulting in meal periods that were not duty-free and/or less than thirty (30) minutes;
6 and

7 (c) Failing to pay meal period premium wages to Plaintiff and other current and
8 former aggrieved California-based hourly non-exempt employees at the proper rate of pay due to
9 Defendants' failure to include shift differential pay when computing the regular rate of
10 compensation for purposes of computing meal period premium wages.

11 24. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
12 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
13 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
14 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
15 employees did not receive legally required and compliant meal periods, in violation of Labor Code
16 section 226.7.

17 25. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
18 and other current and former aggrieved California-based hourly non-exempt employees not
19 receiving wages to compensate them for workdays during which Defendants did not provide them
20 with meal periods in compliance with California law.

21 26. **Failure to pay wages to hourly non-exempt employees for workdays that**
22 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
23 current and former aggrieved California-based hourly non-exempt employees regularly worked
24 shifts of more than three-and-a-half (3.5) hours.

25 27. California law requires every employer to authorize and permit an employee a rest
26 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
27 Code section 226.7; Wage Order 4 at §12. Under California law, "[e]mployees are entitled to 10
28 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more

1 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
2 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
3 section 226.7; Wage Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of
4 each work period. Wage Order 4 at §12. Additionally, the rest period requirement “obligates
5 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
6 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
7 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

8 28. If the employer fails to authorize or permit a required rest period, the employer
9 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
10 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
11 Wage Order 4 at § 12.

12 29. In this case, Defendants failed to authorize or permit all legally required and
13 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
14 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
15 limited to:

16 (a) failing to authorize or permit Plaintiff and other current and former
17 aggrieved California-based hourly non-exempt employees an uninterrupted duty-free rest period of
18 no less than ten (10) minutes for each four-hour period of work as required by law;

19 (b) requiring Plaintiff and other current and former aggrieved California-based
20 hourly non-exempt employees to undergo security bag checks before being relinquished from
21 Defendants’ control and prior to being permitted to leave the premises for rest periods. Defendants
22 failed to elongate or extend rest periods to account for the time expended undergoing security bag
23 checks, resulting in rest periods that were not duty-free and/or were less than ten (10) minutes.
24 Further, Defendants’ requirement that Plaintiff and other current and former aggrieved California-
25 based hourly non-exempt employees undergo security bag checks prior to leaving the premises,
26 but after clocking out for a rest period, discouraged Plaintiff and other current and former
27 aggrieved California-based hourly non-exempt employees from leaving the premises during a rest
28 period;

1 (c) requiring Plaintiff and other current and former aggrieved California-based
2 hourly non-exempt employees to keep their walkie talkies on their person at all times during their
3 rest periods, resulting in rest periods that were not duty-free and/or less than ten (10) minutes; and

4 (d) Failing to pay rest period premium wages to Plaintiff and other current and
5 former aggrieved California-based hourly non-exempt employees at the proper rate of pay due to
6 Defendants' failure to include shift differential pay when computing the regular rate of
7 compensation for purposes of computing rest period premium wages.

8 30. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
9 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
10 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
11 workday they did not receive legally required and compliant rest periods, , in violation of Labor
12 Code section 226.7.

13 31. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
14 and other current and former aggrieved California-based hourly non-exempt employees not
15 receiving wages to compensate them for workdays in which Defendants did not provide them with
16 rest periods in compliance with California law.

17 32. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
18 **Employment:** California law requires that every employer must indemnify its employees for all
19 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
20 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
21 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
22 2802.)

23 33. Defendants have violated Labor Code Section 2802 by failing to indemnify
24 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'
25 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants
26 employed a policy, practice, and procedure whereby Plaintiff and aggrieved employees were
27 required to use their personal cell phone (including both telephone use and cellular data use) for
28 work-related purposes-- without reimbursing Plaintiff and other current and former aggrieved

1 California-based hourly non-exempt employees for such use. In particular, Plaintiff and other
2 current and former aggrieved California-based hourly non-exempt employees were required to
3 download, maintain, and utilize an application called “Work Jam” on their personal cell phones for
4 work-related purposes.

5 34. Moreover, Defendants employed policies and procedures which ensured Plaintiff
6 and aggrieved employees would not receive indemnification for their employment related
7 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
8 indemnification in compliance with California law.

9 35. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
10 employment related expenses, including but not limited to costs related to use of their personal
11 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

12 36. **Failure to timely pay earned wages during employment:** In California, wages
13 must be paid at least twice during each calendar month on days designated in advance by the
14 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
15 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
16 16th and the 26th day of that month and wages earned between the 16th and the last day,
17 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
18 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
19 paid within seven (7) calendar days following the close of the payroll period in which wages were
20 earned. Labor Code section 204(d).

21 37. As a derivative of Plaintiff’s claims above, Plaintiff alleges that Defendants failed
22 to timely pay Plaintiff’s and other current and former aggrieved California-based hourly non-
23 exempt employees’ earned wages (including minimum wages, overtime wages, meal period
24 premium wages, and/or rest period premium wages), in violation of Labor Code section 204.
25 Defendants’ aforementioned policies, practices, and/or procedures resulted in their failure to pay
26 Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’
27 their earned wages within the applicable time frames outlined in Labor Code section 204.

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1 38. **Failure to provide complete and accurate wage statements:** Labor Code section
2 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
3 employee his or her wages, the employer must “furnish each of his or her employees ... an
4 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
5 employee, except for any employee whose compensation is solely based on a salary and who is
6 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
7 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
8 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
9 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
10 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
11 name of the employee and his or her social security number, (8) the name and address of the legal
12 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
13 the corresponding number of hours worked at each hourly rate by the employee.”

14 39. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
15 and other current and former aggrieved California-based hourly non-exempt employees all wages
16 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
17 period premium wages) rendered Plaintiff’s and other current and former aggrieved California-
18 based hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code
19 section 226.

20 40. **Failure to pay employees all wages due at time of termination/resignation:** An
21 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
22 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
23 hours of resignation (Labor Code section 202).

24 41. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
25 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
26 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
27 and/or rest period premium wages), Defendants failed to pay those employees timely after each
28 employee’s termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

42. Defendants' violations of Wage Order 4 constituted violations of Labor Code section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

43. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved employee, on behalf of himself or herself and other current or former employees, to bring a civil action to recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code section 2699.3.

44. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3. On February 1, 2022, Plaintiff filed notice with LWDA and provided notice to Defendants by certified mail which provided notice of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the violations alleged.

45. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations of the Labor Code within 60 days of the date of the complainant's written notice. The LWDA failed to provide the parties notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate Plaintiff's claims.

46. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802, during the Civil Penalty Period in the following amounts:

a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 2802, 512, and 1198; 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 [penalty amounts established by Labor Code section 2699(f)(2)].

b. For violations of Labor Code section 226, two hundred fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

c. For violations of Labor Code section 510, fifty dollars (\$50) for each employee for each pay period for the initial violation, and for each subsequent violation, one

hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 558] and any unpaid wages.

d. For violations of Labor Code section 1194 and 1197, one hundred dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

47. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with her claims for civil penalties

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON HER BEHALF AND ON OTHER AGGRIEVED PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That the Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to that recoverable under California Labor Code, including but not limited to sections 2699(f).

3. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code section 2699(g); and,

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

Dated: May 4, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: 
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Melissa A. Huether, Esq.
Attorneys for Plaintiff KATIA ARELLANO,
on behalf of herself and current and former
aggrieved employees