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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 24 2022

BY _____
MELISSA PEREZ, DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JASMIN GONZALEZ, an individual, on behalf of herself, others similarly situated, and as a private attorney general on behalf of the state of California,

PLAINTIFF,

v.

AUTISM SPECTRUM THERAPIES, LLC., a California Limited Liability Company, LEARN-IT SYSTEMS, LLC, a Maryland Limited Liability Company and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO.: CIV SB 2206648

CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT

1. Failure to Pay Minimum Wages In Violation of Labor Code §§ 1194 and 1194.2
2. Failure to Pay Overtime Wages In Violation of Labor Code § 510
3. Penalties Pursuant to Labor Code § 226(e)
4. Waiting Time Penalties Pursuant to Labor Code § 203
5. Failure to Reimburse Business Expenses In Violation of Labor Code § 2802
6. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§ 201, 202, 203, 204, 210, 212, 226, 226.3, 510, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and IWC Wage Order Nos. 4-2001 and 5-2001

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MAR 24 2022
SUPERIOR COURT
SAN BERNARDINO COUNTY

Plaintiff JASMIN GONZALEZ, an individual, on behalf of herself and others similarly situated, and as a private attorney general on behalf of the State of California complains of Defendants AUTISM SPECTRUM THERAPIES, LLC and LEARN-IT SYSTEMS, LLC and the Doe Defendants ("Defendants") and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This lawsuit only covers the period from September 2, 2021 and continuing into the present. It does not cover the period before September 2, 2021.

2. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of Plaintiff and the following classes and subclasses:

(1) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities as a non-exempt, hourly employee or other similar position in California for one or more pay periods from September 2, 2021 and continuing into the present ("Non-Exempt Class");

(2) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities as an employee in California for one or more pay periods from September 2, 2021 and continuing into the present ("Wage Statement Class");

(3) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from September 2, 2021 and continuing into the present ("Non-Exempt Overtime Subclass").

(4) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and received either piece rate compensation, an incentive payment, shift differential, non-discretionary bonuses, production bonuses, efficiency

bonuses, piece rate compensation, pay under the pay code "Language Premium," or attendance bonuses from September 2, 2021 and continuing into the present. ("Incentive Pay Non-Exempt Overtime Subclass");

Collectively, aggrieved employee groups three (3) and four (4) may be referred to as the "Overtime Subclass."

(5) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities in California who was employed as an employee in California for one or more pay periods and who received at least one check (not direct deposit) at any point between September 2, 2021 and continuing into the present. ("Paper Check Subclass"); and

(6) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities in California as a non-exempt, hourly employee and whose employment concluded at any time between September 2, 2021 and continuing into the present; ("Former Employee Subclass").

These Classes and Subclasses may all collectively be referred to herein as the "Class" where appropriate and for ease of reference.

3. This is also a representative action brought pursuant to Labor Code § 2698, *et seq*., on behalf of the State of California and several groups of aggrieved employees defined as follows:

(1) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities as a non-exempt, hourly employee or other similar position in California for one or more pay periods from September 2, 2021 and continuing into the present ("Non-Exempt Aggrieved Employees");

(2) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities as an employee in California for one or more pay periods from September 2, 2021 and continuing into the present ("Wage Statement Aggrieved Employees");

(3) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It

Systems LLC or their predecessor, merged, or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from September 2, 2021 and continuing into the present ("Non-Exempt Overtime Aggrieved Employees").

(4) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and received either piece rate compensation, an incentive payment, shift differential, non-discretionary bonuses, production bonuses, efficiency bonuses, piece rate compensation, pay under the pay code "Language Premium," or attendance bonuses from September 2, 2021 and continuing into the present. ("Incentive Pay Non-Exempt Overtime Aggrieved Employees");

Collectively, aggrieved employee groups three (3) and four (4) may be referred to as the "Overtime Aggrieved Employees."

(5) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities in California who was employed as an employee in California for one or more pay periods and who received at least one check (not direct deposit) at any point between September 2, 2021 and continuing into the present. ("Paper Check Aggrieved Employees"); and

(6) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities in California as a non-exempt, hourly employee and whose employment concluded at any time between September 2, 2021 and continuing into the present; ("General Late Payment Aggrieved Employee").

These groups may all collectively be referred to herein as aggrieved employees and/or all aggrieved employees where appropriate.

4. Plaintiff, the Classes, and the aggrieved employees were employed by Defendants Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities and Does 1 through 50 (who include individuals acting on behalf an employer within the meaning of

Labor Code § 558.1) within the State of California as a non-exempt, hourly employees at some point within four (4) years of the filing of the Complaint and continuing into the present. Plaintiff is a former employee of Defendants who worked for Defendants throughout Southern California including in in San Bernardino County in Hesperia.

5. At times throughout their employment with Defendants from September 2, 2021 and continuing into the present and within the past year, Plaintiff, the Class, and the aggrieved employees worked shifts in excess of six (6) hours in a day, worked shifts in excess of eight (8) hours in a day, ten (10) hours in a day, twelve (12) hours in a day and/or worked in excess of forty (40) hours in a week or more.

6. At times throughout their employment with Defendants from September 2, 2021 and continuing into the present and within the past year, Plaintiff, the Classes, and the aggrieved employees worked enough hours to be eligible to receive overtime wages under IWC Wage Order Nos. 4-2001 and 5-2001 and/or Labor Code section 510.

7. Defendants hire employees to work within the state of California who are covered by California Industrial Welfare Commission Occupational Wage Order Nos. 4-2001 and 5-2001. Based upon information and belief, Defendants classified Plaintiff, the Classes, and the aggrieved employees as non-exempt for the purposes of overtime, meal periods, and rest periods.

8. Plaintiff and the Wage Statement Class received at least one wage statement between September 2, 2021 and continuing into the present.

9. Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage…to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order Nos. 4-2001 and 5-2001 obligate employers to pay each employee minimum wages for all hours worked.

10. In addition, Labor Code § 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. 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."

11. At times between September 2, 2021 and continuing into the present including the pay period ending on March 19, 2022, Defendants assigned the Class and aggrieved employees to work in a number of different counties and municipalities throughout the state of California. Many of the municipalities (including Los Angeles, West Hollywood, Santa Monica, and many others throughout the state) and unincorporated areas within counties maintain minimum wage ordinances that apply to any work performed in their borders.

12. At times between September 2, 2021 and continuing into the present, Defendants failed to pay Plaintiff, the Class, and the aggrieved employees were required by Defendants to work at rates less than the local municipal wage ordinances in effect for their job assignments and situs where the work was performed. This includes, but is not limited to, the pay period ending March 19, 2022.

13. At times between September 2, 2021 and continuing into the present, Plaintiff, the Class, and the aggrieved employees were assigned to work in a number of different counties and municipalities throughout the state of California. Many of the municipalities (including Los Angeles, West Hollywood, Santa Monica, and many others throughout the state) and unincorporated areas within counties maintain minimum wage ordinances that apply to any work performed in their borders.

14. Between September 2, 2021 and continuing into the present, Defendants maintained a central scheduling process and platform that contains information relevant to the location of each appointment, but failed to undertake efforts to comply with the local minimum wage ordinances in effect. In accordance with Labor Code §§ 1194 and 1198, Plaintiff, the Class, and the other aggrieved employees could not agree to work for a lesser wage. As such, at times Defendants failed to pay Plaintiff, the Class, and all aggrieved employees at times for hours worked at the local minimum wage ordinance then in effect for the period of September 2, 2021 and continuing into the present. This includes but is not limited to the pay period ending March 19, 2022.

15. At times between September 2, 2021 and continuing into the present including for the pay period ending March 19, 2022, Defendants failed to pay minimum wages as required by local municipal wage ordinances when calculating and paying Drive Time. This resulted from Defendants' practice of sometimes paying Drive Time to Plaintiff, some of the Class Members, and some of the aggrieved employees at the lower state minimum wage rate then in effect for some of the shifts that they worked.

16. At times between September 2, 2021 and continuing into the present, Defendants also required and/or suffered and permitted or expected Plaintiff, the Class, and the aggrieved employees to perform work-off-the-clock including responding to inquiries from clients while off-the-clock. This includes the pay period ending March 19, 2022.

17. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

18. Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful.

19. Similarly, Labor Code § 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. 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."

20. At times between September 2, 2021 and continuing into the present including the pay period ending on March 19, 2022, Defendants sometimes failed to pay Plaintiff, the Class, and the aggrieved employees for some hours worked at the local municipal wage ordinances in

effect for their job assignments and sometimes failed to include such owed renumeration when calculating and paying overtime wages (including double time wages).

21. At times between September 2, 2021 and continuing into the present including the pay period ending on March 19, 2022, Defendants also failed to include additional compensation other than Plaintiff, the Class, and the aggrieved employees' base rate, when calculating and paying overtime.

22. At times between September 2, 2021 and continuing into the present including the pay period ending on March 19, 2022, Defendants failed to include piece rate compensation, an incentive payment, shift differential, non-discretionary bonuses, production bonuses, efficiency bonuses, piece rate compensation, pay under the pay code "Language Premium," or attendance bonuses. For instance, for the pay period ending March 19, 2022, Defendants failed to include Plaintiff's Language Premium when calculating and paying her overtime and instead only paid her overtime wages at $36.28 or 1.5x her hourly base rate of $24.18 resulting in the underpayment of wages:

EARNINGS

Pay Type	Hours	Current	YTD	Ded
Additional Hours	6.00	145.08	145.08	Aetn
Admin Time	0.50	12.09	36.26	Eyel
Bereavment			386.88	Metl
Bonus			303.75	Mile
Cancel Pay			189.81	
Drive Time	1.35	20.25	85.00	
Holiday			193.44	
Language Premium	2.50	60.45	1,283.96	
Overtime 1.5	0.25	9.07	71.34	
PTO			338.52	
Regular Pay	45.00	1,088.10	5,224.88	
Supplemental Sick Pay			967.20	
Training	2.00	48.36	145.08	

23. As a result of such practices, at times between September 2, 2021 and continuing into the present including the pay period ending on March 19, 2022, Defendants failed to pay Plaintiff and all aggrieved employees overtime wages at one and one-half times their regular rate and/or under their double-time rates in violation of Labor Code §§ 510, 1197, 1197.1, and 1198 and IWC Wage Order Nos. 4-2001 and 5-2001.

24. At times between September 2, 2021 and continuing into the present including the pay period ending on March 19, 2022 required and/or suffered and permitted or expected Plaintiff, the Class, and the other aggrieved employees to perform work-off-the-clock including, but not limited to, responding to inquiries from Defendants' clients while off-the-clock. This practice included regular hours for which employees should have received at least minimum wages , but also led to the misclassification of some overtime hours to be improperly classified as regular hours.

25. Based upon the foregoing, Defendant violated Labor Code § 510 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experience a violation of Labor Code § 510 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers "who violates, or causes to be violated…any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee." For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

26. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty,

restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid….[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendant failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

27. As to Plaintiff, the Class, and the Wage Statement Class, and the aggrieved employees, at times from September 2, 2021 and continuing into the present including the pay period ending March 19, 2022, Defendants failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, 6, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

> (1) gross wages earned;
> (2) total hours worked by the employee;
> (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
> (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…;
> (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…

Similarly, Labor Code § 226(e) provides:

> (e) (1) 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.
> (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

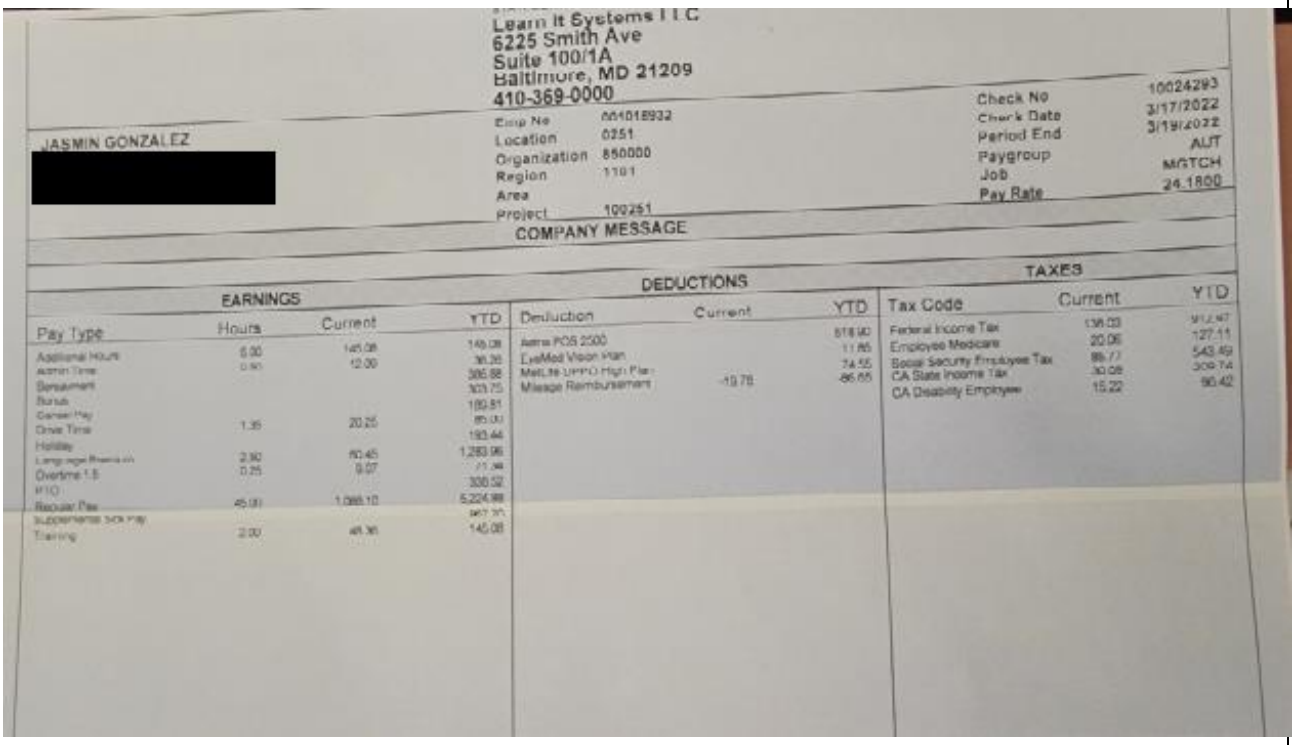
(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).
(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).
(iii) The name and address of 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 during the pay period.
(iv) 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.

28. At times between September 2, 2021 and continuing into the present including the pay period ending on March 19, 2022, due to Defendants' failure to pay Plaintiff, the Class, the Wage Statement Class and all aggrieved employees all minimum wages and overtime wages, the wage statements issued by Defendants sometimes do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Further, due to Defendants' failure to record all hours worked at times between September 2, 2021 and continuing into the present including the pay period ending on March 19, 2022, Defendants also failed to advise Plaintiff, the Class, and the aggrieved employees of the actual total number of hours they worked during the pay period in violation of Labor Code § 226(a)(2). Thus, Defendants have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff, the Class, the Wage Statement Class, and the aggrieved employees.

29. At times between September 2, 2021 and continuing into the present including the pay period ending on March 19, 2022, Defendants sometimes issued itemized wage statements to Plaintiff, the Class, and the aggrieved employees that did not include the inclusive dates (start date of the pay period). As such, the wage statements issued to Plaintiff, the Class, the Wage Statement Class, and the aggrieved employees did not always contain "the inclusive dates of the period for which the employee is paid." This practice included some regular wage statements

issued when direct deposit payments were made, some paper wage statements issued when Defendants provided checks, and on some of the last or final wage statements issued to such employees. For instance, for the pay period ending on March 19, 2022, Defendants issued Plaintiff an itemized wage statement that did not contain the start date for the pay period:


Learn It Systems LLC
6225 Smith Ave
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410-369-0000

JASMIN GONZALEZ
[redacted]

Emp No 001018932
Location 0251
Organization 850000
Region 1101
Area
Project 100251

Check No 10024293
Check Date 3/17/2022
Period End 3/19/2022
Paygroup AUT
Job MGTCH
Pay Rate 24.1800

COMPANY MESSAGE

EARNINGS

Pay Type	Hours	Current	YTD
Additional Hours	6.00	145.08	145.08
Admin Time	0.50	12.00	36.25
Bereavement			385.88
Bonus			303.75
Career Pay			180.81
Drive Time	1.35	20.25	85.00
Holiday			193.44
Language Premium	2.90	60.45	1,283.06
Overtime 1.5	0.25	9.07	71.44
PTO			300.52
Regular Pay	45.00	1,088.10	5,224.98
Supplemental Sick Pay			967.70
Training	2.00	48.36	145.08

DEDUCTIONS

Deduction	Current	YTD
Aetna POS 2500		518.90
EyeMed Vision Plan		11.85
MetLife UHC Hlth Plan		74.55
Mileage Reimbursement	-19.78	86.65

TAXES

Tax Code	Current	YTD
Federal Income Tax	136.03	912.47
Employee Medicare	20.06	127.11
Social Security Employee Tax	85.77	543.49
CA State Income Tax	30.08	309.74
CA Disability Employee	15.22	90.42

30. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally provide accurate itemized wage statements to Plaintiff, the Class, the Wage Statement Class, and the aggrieved employees.

31. Defendants' conduct was also knowing and intentional in that it had previously been sued for violating Labor Code section 226, although such lawsuits did not include the claim that the wage statements did not contain the inclusive dates of the pay period (start date). As such, Defendants were aware of their obligation to promulgate a policy and/or set of practices ensuring their compliance with Labor Code § 226, but failed to undertake sufficient efforts to ensure compliance with this law. As such, Defendants failure to comply with this law at times after September 2, 2021 and continuing into the present was knowing, intentional, and willful.

32. Moreover, Plaintiff, the Class, the Wage Statement Class, and all aggrieved employees also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they

were unable to readily and easily determine from the wage statements themselves the information required to be set forth by Section 226(a), the information provided by Defendants were confusing and inaccurate. In addition, Plaintiff, the Class, the Wage Statement Class, and the aggrieved employees were unable to determine at all the total hours worked by the employee, the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, and the start date of the pay period for the reasons discussed above.

33. Plaintiff does not allege any injury aside from the statutory violation on the Labor Code section 226 claims at issue and contends that there would be no Article III standing on any Labor Code section 226 claim. Article III standing does not apply to actions in state court.

34. Labor Code § 226.3 provides that "[a]ny 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 violation 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 required in subdivision (a) of Section 226." As explained in detail above, Defendants failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 and/or 2699.3 penalties for Defendants' violations of Labor Code § 226(a).

35. There is currently a split of authority regarding which PAGA penalties apply to violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to a Labor Code § 226.3 penalty). Labor Code § 226.3 provides that "[a]ny 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 violation 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 required in subdivision (a)

of Section 226." As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements at times. Accordingly, to the extent it applies, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 or 2699 penalties for Defendant's violations of Labor Code § 226(a).

36. Labor Code § 204 expressly requires that "[a]ll wages…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." Pursuant to Labor Code § 204(a), "Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Labor Code § 204 also requires for employees paid on a bi-weekly and/or weekly basis that "[a]ll wages…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."

37. Due to Defendants' failure to pay Plaintiff and all aggrieved employees minimum wages and overtime wages on occasion between September 2, 2021 and continuing into the present including the pay period ending March 19, 2022, Defendants failed to always timely pay Plaintiff and all aggrieved employees all wages owed within the time constraints required by Labor Code § 204.

38. Labor Code § 210 provides that "in addition to, an 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 Sections…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, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the other aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA. *See Amaral v. Cintas Corp. No.* 2, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of

Labor Code section 210 penalties under PAGA due to the employer's failure to timely pay wages at the proper rate in accordance with a local wage ordinance).

39. Under Labor Code §§ 201-202, an employer must provide an employee wages at the time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

40. As described in detail above, Defendants failed to pay Plaintiff, the Former Employee Class, and some of the aggrieved employees whose employment concluded between September 2, 2021 and continuing into the present all wages owed, including but not limited to minimum wages and overtime wages within the time constraints proscribed in Labor Code §§ 201-202 or delayed in paying any wages at all for several days at the time of their termination/separation. Thus, as result of Defendants' faulty policies described above, Plaintiff, the Former Employee Class, and some of the aggrieved employees left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

41. Labor Code § 1174 provides that each employer shall keep "payroll records showing the hours worked daily by and the wages paid to…employees employed at…establishments." An employer who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five hundred ($500) dollars under Labor Code § 1174.5.

42. As explained in detail above, at times between September 2, 2021 and continuing into the present including the pay period ending March 19, 2022, Defendants failed to maintain accurate records of the hours worked by Plaintiff and the other aggrieved employees as required by Labor Code § 1174. Thus, Defendants violated Labor Code §§ 1174 and 1174.5.

43. Labor Code § 2802 provides that "[a]n 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,

even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

44. At times between September 2, 2021 and continuing into the present and including the pay period ending March 19, 2022, Defendants required and/or expected Plaintiff, the Class, and the aggrieved employees to use their own personal wifi in the discharge of their duties for which they did not receive compensation in violation of Labor Code § 2802. As part of their job duties, Plaintiff, the Class, and the aggrieved employees were required starting with the COVID-19 pandemic to complete Telehealth sessions with Defendants' clients and sometimes conducted 3-4 telehealth appointments per day or even eight (8) hours a day worth of telehealth appointments without receiving any reimbursement for the use of their wifi. It was not possible for Plaintiff, the Class, and the aggrieved employee to complete these telehealth appointments without wifi such that each incurred a necessary expense and/or loss as a direct result of the fulfillment of their job duties. *See e.g. See Cochran v. Schwan's Home Serv., Inc.,* 228 Cal. App. 4th 113 (2014) ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.").

45. Separate and independent of the foregoing, Defendants made a conscious decision to stop supplying toys, equipment, and other therapeutic materials before September 2, 2021. As a result, Plaintiff, the Class, and the aggrieved employees were sometimes required to expend money on materials which included games, activity books, playdough, and coloring books among other things in order to complete their job duties and treatments. Plaintiff has requested the return of these materials, which include games and toys used during therapy sessions that she purchased with her own money, but Defendants initially refused and currently have not returned these materials to Plaintiff.

46. Under Labor Code § 212, an employer may not "issue in payment of wages due, or to become due….[a]ny order, check, draft, note memorandum, or other acknowledgement of indebtedness, unless it is negotiable and payable in cash, on demand, without discount."

47. At times throughout between September 2, 2021 and continuing into the present and including on March 19, 2022, Defendants issued checks to Plaintiff and the aggrieved employees on a paper check issued directly by the Company and/or that was not drawn on a national association bank and/or California based bank. Such banks did not possess any locations in the state of California. As a result, at times between September 2, 2021 and continuing into the present, Plaintiff and the aggrieved employees could not negotiate the check in cash on demand without discount in violation of Labor Code § 212. Due to Defendants' violation of Labor Code § 212 checks were not timely processed and/or were subject to holds by their banks since the checks were not negotiable within the requirements of Labor Code § 212. As such, Defendants violated Labor Code § 212 at times from September 2, 2021 and continuing into the present by issuing wages in the form of checks that were not negotiable and payable in cash, on demand, without discount in the state of California.

48. Plaintiff filed his PAGA Notice online with the Labor Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendant setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq*. As required by PAGA, Plaintiff submitted the $75.00 filing fee to the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will have been received from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice by the time the San Bernardino Complex stay is entered and Plaintiff is deprived of her legal right to amend the Complaint under Labor Code section 2699.3(a)(2)(C) within 60 days of filing and to complete service within 60 days.

49. As of the filing of this action, Defendant Autism Spectrum Therapies, LLC has been suspended by the California Franchise Tax Board and is not able to conduct any business in California, enter an appearance, or defend itself in this litigation unless and until it is reinstated:

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201405010402 AUTISM SPECTRUM THERAPIES, LLC

Registration Date:	02/19/2014
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC
Status:	FTB SUSPENDED
Agent for Service of Process:	CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE, (C1592199) To find the most current California registered Corporate Agent for Service of Process address and authorized employee(s) information, click the link above and then select the most current 1505 Certificate.

II.

JURISDICTION AND VENUE

50. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds $25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

51. This Court has personal jurisdiction over Defendant Autism Spectrum Therapies, LLC because it is a California limited liability company and has caused injuries in the County of San Bernardino, including in Hesperia, California, through their acts, and by their violation of the California Labor Code and California law in San Bernardino County.

52. The Court has personal jurisdiction over Defendant Learn-It Systems, LLC because Defendant has caused injuries in the County of San Bernardino, including in the city of Hesperia, and State of California through their acts, and by their violation of the California Labor Code and California law in San Bernardino County.

53. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure §395. Defendants operates within California and do business within San Bernardino County. The unlawful acts alleged herein have a direct effect on Plaintiff and the Classes within the State of California and the County of San Bernardino.

54. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will

involve substantial documentary evidence, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III.

PARTIES

A. PLAINTIFF

55. Plaintiff JASMIN GONZALEZ is a former employee of Defendants who worked for Defendants at least part of the time between September 2, 2021 to in or around mid-March 2022 in San Bernardino County including from Hesperia California.

56. At times between September 2, 2021 and continuing into the present, Plaintiff and the Class were required to:

a. Work some hours without receiving compensation and/or minimum wages for all hours worked;

b. Work some overtime hours without receiving any compensation and/or the proper amount of compensation;

c. Work on some occasions without being provided an accurate itemized wage statement that accurately indicates the gross wages earned, the total hours worked by the employee, the net wages earned, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, and the inclusive dates of the pay period for which the employee is paid including the start date of the pay period;

d. Were deprived of wages that Defendants knew were due and owing, yet failed to pay at the time of termination and/or within 72 hours of resignation for those former employees who did not provide advance notice; and

e. Work without being reimbursed for expenses incurred in direct consequence of the discharge of his or her duties.

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B. DEFENDANTS

57. Defendant Autism Spectrum Therapies, LLC is a California limited liability company that has been suspended by the Franchise Tax Board. Defendant's principal place of business is 2550 N Hollywood Way Suite 102, Burbank, CA 91505. Upon information and belief, Defendant employed Plaintiff and the Classes within California and in San Bernardino County, including in Hesperia, California. Defendant has done and does business throughout the State of California and in San Bernardino County.

58. Defendant Learn-It Systems, LLC is believed to be a Maryland Limited Liability Company whose principal place of business is 6225 Smith Avenue, Suite 100/1A, Baltimore, Maryland 21209. Upon information and belief, Defendant employed Plaintiff and the Classes within California and in San Bernardino County, including in Hesperia, California. Defendant has done and does business throughout the State of California and in San Bernardino County.

59. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

60. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Class and/or as alter egos of each other.

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IV.

CLASS ACTION ALLEGATIONS

61. Plaintiff brings this action on behalf of herself and all others similarly situated as a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent a Class and Subclasses composed of and defined as follows:

(1) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities as a non-exempt, hourly employee or other similar position in California for one or more pay periods from September 2, 2021 and continuing into the present ("Non-Exempt Class");

(2) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities as an employee in California for one or more pay periods from September 2, 2021 and continuing into the present ("Wage Statement Class");

(3) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from September 2, 2021 and continuing into the present ("Non-Exempt Overtime Subclass").

(4) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and received either piece rate compensation, an incentive payment, shift differential, non-discretionary bonuses, production bonuses, efficiency bonuses, piece rate compensation, pay under the pay code "Language Premium," or attendance bonuses from September 2, 2021 and continuing into the present. ("Incentive Pay Non-Exempt Overtime Subclass");

Collectively, aggrieved employee groups three (3) and four (4) may be referred to as the "Overtime Subclass."

(5) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum

Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities in California who was employed as an employee in California for one or more pay periods and who received at least one check (not direct deposit) at any point between September 2, 2021 and continuing into the present. ("Paper Check Subclass"); and

(6) all individuals who were employed by Learn-It Systems, LLC, Autism Spectrum Therapies, LLC and/or other entities doing business as these entities or as Learn It Systems LLC or their predecessor, merged, or related entities in California as a non-exempt, hourly employee and whose employment concluded at any time between September 2, 2021 and continuing into the present; ("Late Payment Subclass").

These Classes and Subclasses may all collectively be referred to herein as the "Class" where appropriate and for ease of reference.

62. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

63. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

A. Numerosity

64. The potential members of the Proposed Classes as defined are each so numerous that joinder of all the members of the Proposed Classes is impracticable. While the precise number of proposed Class Members in each Class has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and during the relevant time periods employed to be more than 70 members or more of the Proposed Class and Subclasses at any given time.

65. Plaintiff alleges that Defendants' employment records would provide information as to the number and location of all Proposed Class members. Joinder of all members of the Proposed Class and Subclasses is not practicable.

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B. Commonality

66. There are questions of law and fact common to the Proposed Classes[1] that predominate over any questions affecting only individual Proposed Class Members. These common questions of law and fact include, without limitation:

a. Whether Defendants failed to pay minimum wages for some hours worked as required by Labor Code §§ 1194, 1194.2, and 1197 as well as IWC Wage Order Nos. 4-2001 and 5-2001 to the Class.

b. Whether Defendants failed to pay wages and/or overtime compensation and at the correct rate for some hours as required by Labor Code § 510 to the Overtime Subclass;

c. Whether Defendants violated Labor Code § 226(a) and (e) as well as IWC by failing to provide an accurate itemized wage statements that accurately indicate, the gross wages earned, all deductions from wages, the net wages earned, as well as all applicable hourly rates in effect during the pay period the corresponding number of hours worked at each hourly rate by the employee, as well as the inclusive dates of the pay period (including the start date) to the Wage Statement Class;

d. Whether Defendants violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that the Former Employee Class' employment with Defendants concluded;

e. Whether Defendants violated Labor Code § 2802 by failing to provide Plaintiff and the Class with some of the tools and implements needed to discharge his or her duties;

C. Typicality

67. The claims of Plaintiff are typical of the claims of the Proposed Class and Subclasses. Plaintiff and all members of the Proposed Class and Subclasses sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

[1] Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

D. Adequacy of Representation

68. Plaintiff will fairly and adequately represent and protect the interests of the members of the proposed Classes. Counsel who represents Plaintiff and the Proposed Class and Subclasses is competent and experienced in litigating large employment class actions, and have the financial resources to litigate the claims at issue.

E. Superiority of Class Action

69. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class Members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to pay all wages due and on a timely basis, failing to provide accurate itemized wage statements, and to provide expense reimbursement.

70. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

V.
FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§ 1194 and 1194.2 AND IWC WAGE ORDER NOS. 7-2001 and 9-2001
[Against All Defendants by Plaintiff and the Non-Exempt Class]

71. Plaintiff, on behalf of herself and the Non-Exempt Class re-alleges and incorporates by reference all previous paragraphs.

72. Section 1194 of the Labor Code provides, in relevant part:

> Notwithstanding any agreement to work for a lesser wage, any employee receiving less than minimum wage…applicable to the employee is entitle to recover in a civil action the unpaid balance of the full amount of this minimum wage …, including interest thereon, reasonable attorney's fees, and costs of suit.

73. Section 1194.2 of the Labor Code provides, in relevant part:

> In any action under…Section 1194 to recover wages because of the payment

> of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

74. As set forth above, at times between September 2, 2021 and continuing into the present, including within the pay period ending March 19, 2022, Plaintiff and the Class were not compensated for some hours worked as a result of Defendants' policies and practices described in detail above.

75. In failing to pay Plaintiff and the Non-Exempt Class for some hours worked, for the reasons described above, Defendants willfully and intentionally violated Labor Code § 1194 and acted in bad faith. Accordingly, pursuant to sections 1194 and 1194.2 of the California Labor Code, Plaintiff and the Class are entitled to recover, either their unpaid hourly wages due, or minimum wage plus interest and/or liquidated damages in an additional amount equal to the total amount of wages unlawfully withheld during the Class Period.

VI.
SECOND CAUSE OF ACTION
FAILURE TO PAY WAGES AND/OR OVERTIME UNDER LABOR CODE §§ 510, 1194, and 1199
[Against All Defendants by Plaintiff, the Non-Exempt Class, the Non-Exempt Overtime Subclass, and the Incentive Payment Non-Exempt Overtime Subclass]

76. Plaintiff, on behalf of herself, the Non-Exempt Class, the Non-Exempt Overtime Subclass, and the Incentive Payment Non-Exempt Overtime Subclass realleges and incorporates by reference all previous paragraphs.

77. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the Class could not agree to work for a lesser wage.

78. In addition, Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful.

79. Similarly, Labor Code § 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. 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."

80. As discussed in detail above, at times from September 2, 2021 and continuing into the present, Defendants failed to pay Plaintiff, the Non-Exempt Class, the Non-Exempt Overtime Subclass, and the Incentive Payment Non-Exempt Overtime Subclass with wages for some hours worked (including overtime hours) and failed to pay overtime wages at the proper rate.

81. Based upon information and belief, at times from September 2, 2021 and continuing into the present, Defendants failed to pay Plaintiff, the Non-Exempt Class, the Non-Exempt Overtime Subclass, and the Incentive Payment Non-Exempt Overtime Subclass members at one and one-half times their regular rate and instead underpaid their overtime wages and also underpaid some of their doubletime wages.

82. Defendants conduct, as described above was willful.

83. As a result of the unlawful acts of Defendants, Plaintiff, the Non-Exempt Class, the Non-Exempt Overtime Subclass, and the Incentive Payment Non-Exempt Overtime Subclass have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

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VII.
THIRD CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 226(e)
[Against all Defendants on behalf of Plaintiff, the Non-Exempt Class, and the Wage Statement Class]

84. Plaintiff, on behalf of herself, the Non-Exempt Class, and the Wage Statement Class, realleges and incorporates by reference all previous paragraphs and all subsequent paragraphs.

85. As to Plaintiff, the Class, and the Wage Statement Class, at times from September 2, 2021 and continuing into the present including the pay period ending March 19, 2022, Defendants failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, 6, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

> (1) gross wages earned;
> (2) total hours worked by the employee;
> (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
> (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…;
> (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…

Similarly, Labor Code § 226(e) provides:

> (e) (1) 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.
> (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.
> (B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:
>
> > (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).
(iii) The name and address of 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 during the pay period.
(iv) 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.

86. At times between September 2, 2021 and continuing into the present including the pay period ending on March 19, 2022, due to Defendants' failure to pay Plaintiff, the Class, the Wage Statement Class all minimum wages and overtime wages, the wage statements issued by Defendants sometimes do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Further, due to Defendants' failure to record all hours worked at times between September 2, 2021 and continuing into the present including the pay period ending on March 19, 2022, Defendants also failed to advise Plaintiff and the Non-Exempt Class of the actual total number of hours they worked during the pay period in violation of Labor Code § 226(a)(2). Thus, Defendants have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and the Non-Exempt Class.

87. At times between September 2, 2021 and continuing into the present including the pay period ending on March 19, 2022, Defendants sometimes issued itemized wage statements to Plaintiff, the Non-Exempt Class, and the Wage Statement Class that did not include the inclusive dates (start date of the pay period). As such, the wage statements issued to Plaintiff, the Class, and the Wage Statement Class, did not always contain "the inclusive dates of the period for which the employee is paid." This practice included some regular wage statements issued when direct deposit payments were made, some paper wage statements issued when Defendants provided checks, and on some of the last or final wage statements issued to such employees. For instance, for the pay period ending on March 19, 2022, Defendants issued Plaintiff an itemized wage statement that did not contain the start date for the pay period.

88. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to provide Plaintiff, the Non-Exempt Class, and the Wage Statement Class with accurate itemized wage statements.

89. Defendants' conduct was also knowing and intentional in that it had previously been sued for violating Labor Code section 226, although such lawsuits did not include the claim that the wage statements did not contain the inclusive dates of the pay period (start date). As such, Defendants were aware of their obligation to promulgate a policy and/or set of practices ensuring their compliance with Labor Code § 226, but failed to undertake sufficient efforts to ensure compliance with this law. As such, Defendants failure to comply with this law at times after September 2, 2021 and continuing into the present was knowing, intentional, and willful.

90. Moreover, Plaintiff, the Non-Exempt Class, and the Wage Statement Class also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information required to be set forth by Section 226(a), the information provided by Defendants were confusing and inaccurate. In addition, Plaintiff, the Non-Exempt Class, and the Wage Statement Class were unable to determine at all the total hours worked by the employee, the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, and the start date of the pay period for the reasons discussed above.

91. Defendants also failed to both comply with and create a policy that complied with Labor Code § 226 prior to the filing of this lawsuit. Labor Code § 226(e)(3) provides that when determining whether or not an employer's violation of Labor Code § 226(a) was knowing and intentional, "the relevant factor [is] whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section." Accordingly, Defendants' conduct was knowing and intentional within the meaning of Labor Code § 226(e).

92. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(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 exceeding an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorneys' fees. *See* Lab. Code § 226(e). Plaintiff, the Non-Exempt Class, and the Wage Statement Class seek penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to recovery of such amounts, attorneys' fees, and costs.

VIII.
FOURTH CAUSE OF ACTION
WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203
[Against all Defendants on behalf of Plaintiff and the Former Employee Subclass]

93. Plaintiff on behalf of herself and the Former Employee Subclass re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

94. Sections 201 and 202 of the California Labor Code requires Defendants to pay all compensation due and owing to former employees in the Class from , at or around the time that their employment is terminated and/or concludes.

95. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

96. As described in detail above, Defendants failed to pay Plaintiff and the Former Employee Subclass members whose employment concluded all wages owed, including but not limited to all minimum wages, overtime wages, and other earned wages within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants' faulty policies described above, Plaintiff and all Class Members' left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

97. At the time of Plaintiff, the other members of the Former Employee Subclass' separation from Defendants, the sums were certain and known to Defendants.

98. As a result, Defendants are liable to Plaintiff and the Former Employee Subclass who are no longer employed by Defendants for waiting time penalties amounting to up to thirty

(30) days wages for Plaintiff and each Former Employee Subclass member pursuant to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

IX.
FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
(LABOR CODE § 2802)
[Against all Defendants on behalf of Plaintiff and the Non-Exempt Class]

99. Plaintiff on behalf of herself and the Non-Exempt Class re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

100. Labor Code § 2802 provides that "[a]n 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."

101. At times between September 2, 2021 and continuing into the present and including the pay period ending March 19, 2022, Defendants required and/or expected Plaintiff and the Non-Exempt Class to use their own personal wifi in the discharge of their duties for which they did not receive compensation in violation of Labor Code § 2802. As part of their job duties, Plaintiff and the Non-Exempt Class were required starting with the COVID-19 pandemic to complete telehealth sessions with Defendants' clients and sometimes conducted 3-4 telehealth appointments per day or even eight (8) hours a day worth of telehealth appointments without receiving any reimbursement for the use of their wifi. It was not possible for Plaintiff, the Class, and the aggrieved employee to complete these telehealth appointments without wifi such that each incurred a necessary expense and/or loss as a direct result of the fulfillment of their job duties. *See e.g. See Cochran v. Schwan's Home Serv., Inc.,* 228 Cal. App. 4th 113 (2014) ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."). Plaintiff conducted telehealth sessions from Hesperia California.

102. Separate and independent of the foregoing, Defendants made a conscious decision to stop supplying toys, equipment, and other therapeutic materials before September 2, 2021. As a result, Plaintiff, the Class, and the aggrieved employees were sometimes required to expend money on materials which included games, activity books, playdough, and coloring books among other things in order to complete their job duties and treatments. Plaintiff has requested the return of these materials, which include games and toys used during therapy sessions that she purchased with her own money, but Defendants initially refused and currently have not returned these materials to Plaintiff.

103. Defendants' conduct in requiring Plaintiff to engage in the above described activities caused them to incur losses between September 2, 2021 and continuing into the present as a direct consequence of their duties in violation of Labor Code § 2802.

104. Defendants' failure to pay for or reimburse the work-related business expenses of Plaintiff and the non-Exempt Class are entitled to reimbursement for these necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802.

X.
SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203
[Against all Defendants on behalf of Plaintiff and the Former Employee Class]
PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS OF LABOR CODE §§ 1. 201, 202, 203, 204, 210, 212, 226, 226.3, 510, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and IWC Wage Order Nos. 4-2001 and 5-2001

105. Plaintiff, on behalf of the State of California, realleges and incorporates by reference all previous paragraphs.

106. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 212, 226, 226.3, 510, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and IWC Wage Order Nos. 4-2001 and 5-2001.

107. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula unless a civil penalty is already proscribed under the Labor Code:

$100 for the initial violation per employee per pay period; and

$200 for each subsequent violation per employee per pay period.

108. In addition, Plaintiff and the aggrieved employees seek the default penalty provided by Labor Code §§ 226.3 and/or 2699.3 for violations of Labor Code section 226(a).[2] Labor Code § 226.3 provides that "[a]ny 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 violation 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 required in subdivision (a) of Section 226."

109. Labor Code § 210 provides that "in addition to, an 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 Sections…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, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld."

110. As a result of the faulty compensation policies and practices described in detail above, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA.

111. Further, Labor Code § 558 imposes a penalty upon employers "who violates, or causes to be violated…any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid…" Based upon the above factual allegations related to overtime violations, the State of California is entitled to recover civil penalties under

[2] There is a split of authority between the appellate courts regarding which penalty applies for a violation of Labor Code section 226(a) at present.

Labor Code § 558 and not any underpaid wages under PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

112. Labor Code § 1174 provides that each employer shall keep "payroll records showing the hours worked daily by and the wages paid to…employees employed at…establishments." An employer who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five hundred ($500) dollars under Labor Code § 1174.5.

113. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid….[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all aggrieved employees for minimum wages and overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil penalties for violations of Labor Code § 1197.1.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. An Order that this action may proceed and be maintained as a Class Action on behalf of the Classes;

2. For compensatory damages in the amount of unpaid minimum wages not paid to Plaintiff and each Class Member from September 2, 2021 and continuing into the present as may be proven;

3. For compensatory damages in the amount of unpaid overtime wages not paid to Plaintiff, each Class Member from September 2, 2021 and continuing into the present as may be proven;

4. For penalties pursuant to Labor Code § 226(e) for violations of Labor Code § 226(a) in the amount of 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 exceeding an aggregate penalty of four thousand dollars ($4,000) for the inaccurate itemized wage statements issued to Plaintiff, the Non-Exempt Class, and the Wage Statement Class from September 2, 2021 and continuing into the present as may be proven;

5. An award to Plaintiff and the Former Employee Class of waiting time penalties in the amount of up to 30 days' wages;

6. That the Court award to Plaintiff and Class Members all unreimbursed business expenses, and interest thereon, that they are owed, pursuant to Labor Code § 2802, in an amount to be proved at trial;

7. For penalties under Labor Code § 2698, *et seq*. for Plaintiff and all aggrieved employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 212, 226, 226.3, 510, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and IWC Wage Order Nos. 4-2001 and 5-2001;

8. An award of post judgment interest;

9. An award providing for payment of costs of suit;

10. An award of attorneys' fees; and

11. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury for causes of action 1-5, but not claim 6 (PAGA) for which a bench trial is required.

DATED: March 24, 2022

WINSTON LAW GROUP, P.C.

By: _____
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