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Electronically Filed
Superior Court of California
County of San Bernardino
Victorville District

04/10/2025
By: Jonathan Luna, DEPUTY

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

MICHELLE D. GONZALEZ, an
individual, on her own behalf and on
behalf of all others similarly situated,

Plaintiffs,

vs.

HEAVY HITTERS INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CIVVS2502968

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM OVERTIME WAGES DUE (Cal. Labor Code §§ 510, 1198; IWC Wage Order No. 2);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 2);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 2)**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 2);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; IWC Wage Order No. 2);**
- 6. FAILURE TO PAY WAGES ON TERMINATION AND/OR RESIGNATION (Cal. Labor Code §§201-203);**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code § 2802);**
- 8. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5); and**
- 9. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.)**

DEMAND FOR A JURY TRIAL

All allegations in this Complaint are based upon information and belief except for those allegations which pertain to the Plaintiff named herein and her counsel. Each allegation has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

Michelle D. Gonzalez ("Plaintiff") alleges the following:

1. This is a class action brought under California law by an individual who was employed by Heavy Hitters Inc. ("HH" or "Defendant") (along with DOES 1 through 100, collectively "Defendants"). Plaintiff brings this action on behalf of herself and others similarly situated to recover wages from Defendant due to Defendant's systematic failure to pay overtime wages, failure to pay minimum wages, failure to provide meal and rest breaks (or pay the statutory compensation due), failure to issue accurate wage statements, failure to pay wages on termination, failure to reimburse business expenses and failure to allow inspection of employment records.

2. Plaintiffs have worked as employees for Defendant at its barber shop in Victorville, California. While working, Plaintiffs have been forced to endure stressful and illegal workplace conditions created by Defendant's efforts to maximize profits and tightly control labor costs.

3. Plaintiff, like her co-workers whom Defendant also employed during the applicable limitations period, spend their workdays at Defendant's barber shop in Victorville, California under illegal and highly regimented circumstances. That regimen results from Defendant's insistence to strictly monitor and curtail labor costs, which Defendant accomplishes by not paying for all labor costs, failing to pay overtime, failing to pay minimum wages, refusing to provide meal periods, refusing to provide rest breaks, not paying the required extra hour for missed meal and rest breaks, failing to issue accurate wage statements,

1 failing to pay wages on termination, failing to reimburse business expenses, failing to allow
2 inspection of employment records, and by using other unlawful stratagems to ensure that labor
3 costs remain artificially low.

4 4. Plaintiff brings this class action to recover, among other things, wages and
5 penalties from unpaid wages earned and due, including but not limited to, premium overtime
6 wages, minimum wages, late and missed meal/rest break wages, wages due to discharged or
7 quitting employees, penalties for failure to provide accurate itemized wage statements,
8 penalties for failure to pay wages on termination, damages for failure to reimburse business
9 expenses, damages for failure to allow inspection of employment records and interest,
10 attorneys' fees, costs, and expenses.

11 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
12 himself and all members of the class, to compensate these workers for the unpaid wages and to
13 protect current and future workers of Defendant from being subjected to similar wage theft and
14 otherwise unlawful working conditions.

15 6. Plaintiff also brings an action seeking relief for Defendant's violations of
16 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
17 disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair
18 business practices, as well as injunctive relief.

19 7. Pursuant to the California Labor Code, on or about January 23, 2025, Plaintiff
20 filed a notice with Labor and Workforce Development Agency (LWDA) of her intent to
21 pursue claims against Defendant under the Private Attorney General Act (PAGA). As such,
22 Plaintiff further reserves the right to amend this Complaint once she completes and complies
23 with the provisions under the law.

24 JURISDICTION AND VENUE

25 8. This Court has jurisdiction over this Complaint under Code of Civil Procedure
26 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
27 *Professions Code* §§ 17200 *et seq.* Plaintiff Michelle D. Gonzalez brings this Complaint on her
28 own behalf and on behalf of all persons in the Class as defined in paragraph 17 below.

9. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of San Bernardino and because Defendant owned and operated its barber shop in the County of San Bernardino.

THE PARTIES

PLAINTIFF

10. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Adelanto, California;
- (b) Employed on a piece-rate basis for Defendant in Victorville, California;
- (c) Did not receive overtime compensation required by *Labor Code* §§510 and 1194 and IWC Wage Order No. 2;
- (d) Did not receive minimum wages due in violation of *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and IWC Wage Order No. 2:
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and IWC Wage Order No. 2;
- (f) Did not receive the rest periods required by *Labor Code* §266.7 and IWC Wage Order No.2;
- (g) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (h) Was not paid wages on termination and/or resignation in violation of *Labor Code* §§201-203;
- (i) Was not reimbursed business expenses in violation of *Labor Code* §2802; and
- (j) Was not provided her personnel records. Each of these was a violation of the *Labor Code*.

DEFENDANT

11. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant HH is, and at all times mentioned herein was:

- (a) A California corporation, with a principal place of business at 14689 Valley Center Dr. Victorville, California 92395. Defendant has been authorized to do business and has been doing business in the County of San Bernardino;
- (b) The former employer of Plaintiff and the current and former employer of the putative Class members;
- (c) Paid Plaintiff and all Class Members on a piece-rate basis;
- (d) Failed to pay Plaintiff and all putative Class members premium overtime wages;
- (e) Failed to pay Plaintiff and all putative Class members minimum wages;
- (f) Failed to provide Plaintiff and all putative Class members with meal and rest periods, failed to provide Plaintiff and all putative Class members with accurate itemized wage statements;
- (g) Failed to pay Plaintiff and all putative Class members wages on termination;
- (h) Failed to reimburse Plaintiff and all putative Class members with their necessary business expenses; and
- (i) Did not provide Plaintiff's personnel records. Each of these was a violation of the *Labor Code*.

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of Civil Procedure* § 474. Plaintiff will seek leave to amend her Complaint to allege the true names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

13. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which reside in or are authorized to do, or are otherwise doing, business in the State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and

1 conduct business in the County of San Bernardino. Each of the Defendants DOES 1 through
2 100 was the managerial agent, employee, predecessor, successor, joint-venturers, co-
3 conspirator, alter ego and/or representative of one or more of the other Defendants named
4 herein, and acting with permission, authorization, and/or ratification and consent of the other
5 Defendants.

6 14. Plaintiff is informed and believes, and based on that information and belief
7 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
8 inclusive, are responsible in some manner for one or more of the events and happenings that
9 proximately caused the injuries and damages hereinafter alleged.

10 15. Plaintiff is informed and believes, and based on that information and belief
11 alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive,
12 are, and at all times mentioned herein were, the agents, servants, and/or employees of each of
13 the other Defendants and that each Defendant was acting within the course and scope of his,
14 hers or its authority as the agent, servant and/or employee of each of the other Defendants.
15 Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the
16 Class, for the damages sustained as a proximate result of their conduct.

17 16. Plaintiff is informed and believes, and based on that information and belief
18 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
19 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
20 themselves and entered into a combination and systemized campaign of activity to *inter alia*
21 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
22 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
23 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their
24 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
25 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
26 the actions of one Defendant was accomplished in concert with, and with the knowledge,
27 ratification, authorization and approval of each of the other Defendants.

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CLASS ALLEGATIONS

A. The Definition of the Class

17. The Class (“the Class”) is defined as follows:

(a) “All current and former employees who were piece-rate paid employees of Defendant and worked for Defendant in California at any time during the period commencing on the date that is four (4) years prior to the filing of this Complaint and continuing through the present date (the “Class Period”).”

(b) “All persons who were piece-rate paid employees of Defendant and worked for Defendant in California and left the employ of Defendant at any time during the period commencing on the date that is within one (1) year prior to the filing of this Complaint and continuing through the present date (the “Class Period”).”

18. Plaintiff reserves her right under Rule 3.765 of the California Rules of Court to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

B. Maintenance of the Action

19. Plaintiff brings this action individually and on behalf of herself and as representative of all similarly situated persons under *Business & Professions Code* §§ 17203 and 17204 and *Code of Civil Procedure* § 382.

C. The Class Requisites

20. At all material times, Plaintiff was a member of the Class.

21. The Class action meets the statutory prerequisites for maintaining a class action under Code of Civil Procedure § 382 in that:

(a) The persons who comprise the Class are so numerous that the joinder of all those persons is impracticable and the disposition of their claims as a Class will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the Class and will apply uniformly to every Class member;

- 1 (c) The claims of the representative Plaintiff are typical of the claims of each
2 Class member. Plaintiff, like all Class members, has sustained damages
3 arising from Defendant's violations of the laws of the State of California.
4 Plaintiff, and the Class members, were and are similarly or identically
5 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
6 pattern of misconduct engaged in by the Defendant;
- 7 (d) The representative Plaintiff has, and will continue to, fairly and adequately
8 represent and protect the interests of the Class and has retained counsel
9 who are competent and experienced in class action litigation. There are no
10 material conflicts between the claims of the representative Plaintiff and the
11 Class members that would make class certification inappropriate. Counsel
12 for the Class will vigorously assert the claims of all Class members.

13 22. The persons who comprise the Class are so numerous that joining all of them is
14 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
15 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
16 will fairly and adequately protect the interests of the Class she seeks to represent. Plaintiff does
17 not have any interests that are antagonistic to the Class she seeks to represent. Counsel for
18 Plaintiff are experienced, qualified and generally able to conduct complex class action
19 litigation.

20 23. The Court should permit the action to be maintained as a class action under
21 *Code of Civil Procedure* § 382 because:

- 22 (a) The questions of law and fact common to the Class predominate over any
23 question affecting only individual members;
- 24 (b) A class action is superior to any other available method for fairly and
25 efficiently adjudicating the claims of the Class;
- 26 (c) The Class members are so numerous that it is impractical to bring all of
27 them before the Court;
- 28

- 1 (d) Plaintiff and other Class members will not be able to obtain effective and
2 economic legal redress unless the action is maintained as a class action;
3 (e) There is a community of interest in obtaining appropriate legal and
4 equitable relief for the statutory violations, and in obtaining adequate
5 compensation for the damages and injuries for which Defendant is
6 responsible in an amount sufficient to adequately compensate the Class
7 members;
8 (f) Without Class certification, the prosecution of separate actions by
9 individual Class members would create a risk of:
10 i. Inconsistent or varying adjudications for individual Class members
11 that would establish incompatible standards of conduct for
12 Defendant; and/or,
13 ii. Adjudication for individual Class members that would, as a
14 practical matter, dispose of other non-party members' interests, or
15 that would substantially impair or impede the non-parties' ability
16 to protect their interests, by, for example, potentially exhausting
17 the funds available from Defendant, and
18 (g) Defendant has acted or refused to act on grounds generally applicable to
19 the Classes, making final injunctive relief appropriate for the Class, as a
20 whole.

21 24. Plaintiff contemplates eventually issuing notice to the proposed Class members
22 that would set forth the subject and nature of the action. The Defendant's own business records
23 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
24 any further notices may be required, Plaintiff would contemplate using additional media and/or
25 mailing.

26 GENERAL ALLEGATIONS

27 25. At all times material hereto, Defendant has been and is, a barber shop.
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1 26. Plaintiff and members of the Class were employed as Barbers by Defendant in
2 California at various times during the Class Period.

3 **THE CONDUCT**

4 27. Plaintiff seeks relief from Defendant's uniform policies and practices of denying
5 Plaintiff and members of the Class wages and compensation owed under California law.

6 28. Starting on or about August 7, 2023 and continuing to October 25, 2024,
7 Defendant employed Plaintiff on a piece-rate basis as a Barber at HH in Victorville, California.

8 29. While employed by Defendant as a Barber, Plaintiff was paid on a piece rate
9 basis; 70% commission per client.

10 30. The employment by Defendant of the Class members, and each them, is
11 governed by Industrial Welfare Commission Wage Order No. 2, which covers those persons
12 employed in the personal service industry.

13 **FAILURE TO PAY OVERTIME/MINIMUM WAGES**

14 31. Under California law, non-exempt employees as defined by Wage Order No. 2,
15 are entitled to premium wages for overtime worked. Under California law, an hourly paid
16 employee is entitled to overtime pay when they exceed eight hours of work in a single day,
17 exceed 40 hours of work in a week or work seven days in a row.

18 32. Under California law, non-exempt employees as defined by IWC Wage Order
19 No. 2 are entitled to minimum wages. Labor Code Section 1197 states the California
20 requirement that employees must be paid at least the minimum wage fixed by the Commission
21 or by any applicable state or local law, and any payment of less than the minimum wage is
22 unlawful. Similarly, Labor Code Section 1194 entitles "any employee receiving less than the
23 legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full
24 amount of this minimum wage." The applicable IWC Wage Order(s), including IWC Wage
25 Order No. 2-2001, obligates employers to pay each employee minimum wages for all hours
26 worked.

27 33. These minimum wage standards apply to each hour employees worked or were
28 subject to control by the employer for which they were not paid. Therefore, an employer's

1 failure to pay for any particular hour of time worked by an employee or subject to the
2 employer's control is unlawful, even if averaging an employee's total pay over all hours
3 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
4 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

5 34. Plaintiff and Class members were not afforded compliant meal/rest breaks. As a
6 result, during this period, it was the practice and policy of Defendant to not pay employees at
7 appropriate overtime and minimum wage rates. Monies for unpaid overtime and minimum
8 wages remain due and owing.

9 **MEAL BREAKS NOT COMPLIANT**

10 35. Under California law, non-exempt employees as defined by Wage Order No. 2,
11 are entitled to premium wages for overtime worked, a 30-minute lunch period for each 5 hours
12 worked, a 10-minute paid rest break for every four hours worked, or major fraction thereof.
13 Non-exempt employees are entitled to one hour pay at their regular pay rate for each day the
14 requisite rest and/or meal periods are not provided.

15 36. At times, Plaintiff and Class members were not afforded their meal breaks, their
16 meal breaks were afforded late and/or interrupted. Further, Defendant failed to require Plaintiff
17 and Class members to clock in/out for their meal breaks. As a result of this policy, Defendant
18 failed to compensate these employees with at least minimum wage rate for all time worked when
19 their daily hours were reduced even though employees did not receive a meal period, their meal
20 periods were afforded late and/or their meal periods were interrupted.

21 37. Defendant's policies and procedures were applied to all non-exempt employees
22 in California and resulted in non-exempt employees working time which was not compensated
23 by any wages in violation of Labor Code sections 510, 1194 and IWC Wage Order No. 2. As a
24 result, Defendant owes wages at the legal overtime rate for unpaid overtime to each of their
25 California non-exempt employees whose daily hours were reduced even though they did not take
26 meals periods, the meal periods were afforded late and/or interrupted.

27 **REST BREAKS NOT COMPLIANT**

28 38. Plaintiff and Class members were never afforded rest breaks.

1 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

2 39. As a result of Defendant's failure to pay employees at required overtime rates,
3 minimum wages and premium pay for missed meal/rest breaks, the wage statements issued to
4 the employees did not comply with Labor Code §226 and California Industrial Welfare
5 Commission ("IWC") Wage Order No. 2 in that they did not accurately reflect all wages
6 earned and due and owing.

7 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 40. Defendant failed to reimburse Plaintiff and Class members for their necessary
9 business expenses. Plaintiff and Class members were required to purchase their own tools and
10 were not reimbursed therefor.

11 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

12 41. Defendant failed to allow Plaintiff and Class members to timely inspect their
13 records and payroll files.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME**

16 **(Labor Code §§510, 558, 1194.3 and Wage Order No. 2 By Plaintiffs Against Defendant**
17 **and Does 1-100)**

18 42. Plaintiff and the Class reallege and incorporate by reference all of the allegations
19 set forth in this Complaint.

20 43. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab.
21 Code §§510, 1194, and 1198, and IWC Wage Order No. 2, Defendant was required to
22 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
23 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
24 hours on the seventh (7th) consecutive day of any work week.

25 44. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
26 who had not been paid overtime compensation could recover the unpaid balance of the full
27 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
28 fees and costs of suit.

1 45. Pursuant to IWC Wage Order No. 2-2001, § 3, "Employment beyond eight (8)
2 hours in any workday is permissible provided the employee is compensated for such overtime
3 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
4 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
5 workday...

6 46. California Labor Code section 558 provides in pertinent part:

7 (a) Any employer or other person acting on behalf of an employer who
8 violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the
10 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

11 (1) For any initial violation, fifty dollars (\$50) for each underpaid
12 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

13 (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was
15 underpaid in addition to an amount sufficient to recover underpaid
wages.

16 (3) Wages recovered pursuant to this section shall be paid to the affected
17 employee...

18 (c) The civil penalties provided for in this section are in addition to any
19 other civil or criminal penalty provided by law.

20 47. Throughout Plaintiff's and Class members' employment, Defendant failed and
21 refused to pay and properly calculate overtime compensation to Plaintiff and Class members as
22 required by law due to its failure to afford compliant meal/rest breaks.

23 48. The foregoing overtime compensation is owed and unpaid. As a direct and
24 proximate result of Defendant's failure and refusal to pay overtime, Plaintiff and Class
25 members suffered damages in an amount to be proven at trial.

26 49. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
27 counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover Plaintiff's
28 attorneys' fees, costs and interest.

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(IWC Wage Order No. 2; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**
4 **Against Defendant and Does 1 through 100)**

5 50. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this Complaint.

7 51. Labor Code §§ 1194(a) states: “Notwithstanding any agreement to work for a
8 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
9 compensation applicable to the employee is entitled to recover in a civil action the unpaid
10 balance of the full amount of this minimum wage or overtime compensation, including interest
11 thereon, reasonable attorney's fees, and costs of suit.”

12 52. *Labor Code* § 1197 states the California requirement that employees must be
13 paid at least the minimum wage fixed by the Commission, and any payment of less than the
14 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
15 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
16 the full amount of this minimum wage.” IWC Wage Order No. 2-2001 also obligates
17 employers to pay each employee minimum wages for all hours worked. These minimum wage
18 standards apply to each hour employees worked for which they were not paid. Therefore, an
19 employer’s failure to pay for any particular hour of time worked by an employee is unlawful,
20 even if averaging an employee’s total pay over all hours worked, paid or not, results in an
21 average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314,
22 324 (2005).

23 53. Pursuant to Wage Order No. 2, Defendant is required to pay the members of the
24 Class for all hours worked, meaning the time during which an employee is subject to the
25 control of an employer, including all the time the employee is suffered or permitted to work,
26 whether or not required to do so.

27 54. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work
28 and the standard conditions of labor fixed by the commission shall be the maximum hours of

1 work and the standard conditions of labor for employees. The employment of any employee for
2 longer hours than those fixed by the order or under conditions of labor prohibited by the order
3 is unlawful.”

4 55. Defendant failed to satisfy minimum wage requirements because Defendant did
5 not provide compliant meal/rest breaks to Plaintiff and the Class.

6 56. Defendant’s pattern, practice and uniform administration of corporate policy
7 regarding illegal employee compensation as described herein is unlawful and creates an
8 entitlement, pursuant to Labor Code § 218, to recovery by Plaintiff and the members of the
9 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
10 the appropriate rate.

11 57. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
12 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
13 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
14 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
15 the time associated with the overtime for which they received no compensation. *See Sillah v.*
16 *Command Int’l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
17 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
18 showed they were paid less than minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.*,
19 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

20 58. Plaintiff and the other Class members suffered and continue to suffer losses
21 related to the use and enjoyment of compensation due and owing to them as a direct result of
22 Defendant’s unlawful acts and Labor Code violations in an amount to be shown according to
23 proof at trial and within the jurisdictional limitations of this Court.

24 59. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
25 Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them,
26 plus interest, penalties, attorneys’ fees, expenses and costs of suit, in amounts according to
27 proof.
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THIRD CAUSE OF ACTION
FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS
(IWC Wage Order No. 2; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendant and Does 1 through 100)

60. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

61. California Labor Code §226.7(a) prohibits an employer from requiring an employee to work during any meal period mandated by an applicable Industrial Wage Order. Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an employee to work during a meal or rest break or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..."

62. California Labor Code §1198 makes unlawful the employment of an employee under conditions the IWC prohibits.

63. IWC Order No. 2-2001(11)(A) provides, in relevant part: "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30-minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee."

64. IWC Order No. 2-2001 (11)(c) further provides, in relevant part: "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

65. Section 512(a) of the California Labor Code provides, in relevant part, that:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30-minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30-minutes, except that if the total hours worked is no more than 12 hours, the second meal period may

1 be waived by mutual consent of the employer and the employee only if the first
2 meal period was not waived.

3 66. The Labor Code and Wage Order provisions cited above require California
4 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
5 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
6 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
7 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
8 the fifth hour of their shifts.

9 67. As alleged herein, Defendant failed to relieve employees of duties for compliant
10 meal breaks throughout the Class Period

11 68. At times, Plaintiff and Class members were not afforded their meal breaks, their
12 meal breaks were interrupted and/or their meal breaks were afforded late. As a result of this
13 policy, Defendant failed to compensate these employees with at least minimum wage rate for
14 all time worked when their daily hours were reduced even though employees did not receive a
15 meal period, their meal periods were afforded late and/or their meal periods were interrupted.

16 69. Under California law, employers must also record their employees' meal
17 periods: "Every employer shall keep accurate information with respect to each employee,
18 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
19 operations cease ... need not be recorded." IWC Order No. 2, § (7)(A)(3). Where the employer
20 has failed to keep records required by statute, the consequences of such failure should fall on
21 the employer, not the employee. In such a situation, imprecise evidence by the employee can
22 provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
23 (1988). Inasmuch as Defendant had an obligation under the record-keeping requirements of the
24 Wage Order to track meal periods unless "all work ceases", Defendant knew or should have
25 known its employees were regularly missing meal periods during the Class Period.

26 70. Defendant also failed to record Plaintiff and Class members' meal breaks since
27 Plaintiff and Class members were not required to clock in/out for their meal breaks.
28

1 71. Defendant has a policy or practice of failing to ensure that Plaintiff and
2 members of the class take the meal periods required by California Labor Code §226.7 and IWC
3 Wage Order No. 2-2001 §11.

4 72. By their actions in not affording Plaintiff and Class members meal periods
5 and/or not affording them compliant meal periods, Defendant violated Cal. Lab. Code
6 §226.7(b) and section 11 of Wage Order No. 2 in the amount of one additional hour of pay at
7 the employee's regular rate of compensation for each work period during each day in which
8 Defendant failed to provide employees with statutory timely off-duty meal periods.

9 73. Defendant also has a policy or practice of failing to pay each of their employees
10 who was not provided with a meal period as required an additional one hour of compensation at
11 each employee's regular rate of pay.

12 74. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to
13 bring a private right of action to recover wages due based on the deprivation of timely meal
14 periods under Cal. Labor Code § 226.7(b).

15 75. As a direct and proximate result of Defendant's unlawful conduct as alleged
16 herein, Plaintiff and members of the Class have sustained economic damages, including but not
17 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
18 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
19 relief due to Defendant's violations of the California Labor Code and IWC Wage Order No. 2.

20 **FOURTH CAUSE OF ACTION**

21 **FOR FAILURE TO PROVIDE REST PERIODS**

22 **(Labor Code § 226.7 and IWC Wage Order No. 2 By Plaintiffs Against Defendant and**
23 **Does 1 through 100)**

24 76. Plaintiff and the Class reallege and incorporate by reference all of the allegations
25 set forth in this Complaint.

26 77. Labor Code § 226.7 and IWC Wage Order No. 2 provide that employers shall
27 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
28 per four hours of work, or major fraction thereof.

1 78. Labor Code § 226.7 and IWC Wage Order No. 2 provide that if an employer
2 fails to provide an employee with rest periods in accordance with those provisions, the
3 employer shall pay the employee one hour of pay at the employee's regular rate of
4 compensation for each workday that the rest periods were not so provided.

5 79. Defendant has intentionally and improperly denied any rest periods to Plaintiff
6 and the Class in violation of Labor Code § 226.7 and IWC Wage Order No. 2.

7 80. At all times relevant hereto, Plaintiff and members of the Class have worked 8
8 or more hours daily.

9 81. At all times relevant hereto, Defendant failed to provide rest periods as required
10 by Labor Code § 226.7 and IWC Wage Order No. 2. Plaintiff and the Class were not afforded
11 rest breaks.

12 82. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff
13 and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in
14 amounts which are presently unknown to Plaintiff and the Class, but which exceed the
15 jurisdictional limits of the Court and which will be ascertained according to proof at trial.

16 **FIFTH CAUSE OF ACTION**

17 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**

18 **ITEMIZED STATEMENTS**

19 **(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)**

20 83. Plaintiff and the Class reallege and incorporate by reference all of the allegations
21 set forth in this Complaint.

22 84. Pursuant to IWC Wage Order No. 2, Defendant was the employer of Plaintiff
23 and the Class.

24 85. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 2-
25 2001 section 7, Defendant is required to maintain and provide accurate records relating to
26 employee compensation including all formulas and production records used to calculate wages
27 due.
28

1 86. Defendant is further required to provide, *inter alia*, semimonthly or at the time
2 of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2)
3 all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which
4 the employee is being paid; (5) the name of the employee; and (6) the name and address of the
5 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

6 87. Section 226(e) provides that an employee is entitled to recover \$50 for the initial
7 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
8 not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods
9 in which the employer knowingly and intentionally failed to provide accurate itemized
10 statements to the employee causing the employee to suffer injury.

11 88. Notwithstanding these provisions, Defendant has engaged in a uniform practice
12 of refusing to maintain and provide the accurate records and wage statements required by
13 California law. Throughout the Class Period, Defendant failed to provide Plaintiff and Class
14 members with any wage statements.

15 89. As a result, Plaintiff and members of the Class have been injured by having been
16 deprived of the true facts pertaining to their compensation and employment.

17 90. Plaintiff and members of the Class were damaged by these failures because,
18 among other things, the failures led them to believe that they were not entitled to overtime
19 compensation, minimum wages, pay for meal and rest periods not provided and wages on
20 termination of employment, even though they were so entitled and these failures hindered them
21 from determining the amounts of wages owed to them.

22 91. Plaintiff and members of the Class are entitled to the amounts provided in Labor
23 Code §226(e), plus attorneys' fees and costs.

24 92. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
25 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
26 provided by law for Defendant's improper conduct.

27 //

28 //

1 **SIXTH CAUSE OF ACTION**

2 **FOR FAILURE TO PAY WAGES UPON TERMINATION**

3 **(Labor Code §§201-203 By Plaintiffs against Defendant and Does 1 through 100)**

4 93. Plaintiff and the Class reallege and incorporate by reference all of the allegations
5 set forth in this Complaint.

6 94. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
7 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
8 from employment, unpaid wages are due and payable within 72 hours of resignation.

9 95. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
10 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
11 paid, not to exceed thirty days.

12 96. Plaintiff and the Class were discharged and/or resigned from Defendant's
13 employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

14 97. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's
15 wages for each day he or she was not timely paid, not to exceed 30 days' wages.

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

18 **(Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)**

19 98. Plaintiff and the Class reallege and incorporate by reference all of the allegations
20 set forth in this Complaint.

21 99. Labor Code §2802 requires employers to indemnify employees for all necessary
22 expenditures incurred by employees in the discharge of their duties.

23 100. At all times relevant herein, Defendant was aware that Plaintiff and Class
24 members were purchasing tools for business, but failed to indemnify Plaintiff and Class
25 members for all their business-related expenses, in accordance with Labor Code §2802.
26 Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendant
27 maintained a practice of not reimbursing Plaintiff and Class Members for their work-related
28 expenses that they incurred in purchasing tools for work-related purposes.

101. As a result of Defendant's conduct, Plaintiff and Class members suffered damages in an amount, subject to proof, to the extent they were not reimbursed for all of their business-related expenses incurred in the discharge of their duties.

102. Pursuant to Labor Code §2802, Plaintiff and Class members are entitled to recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS

(Labor Code §1198.5 By Plaintiffs Against Defendant and Does 1 through 100)

103. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

104. California Labor Code Section 1198.5 provides:

- (a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.
- (b) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request to inspect the records. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records,..... later than 30 calendar days from the date the employer receives the request...
- (k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified I this section... the current or former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

(1) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action.

105. Additionally, pursuant to Wage Order No. 2, at section 7 re: Records, employers are required to keep accurate payroll records on each employee, and such records must be made readily available for inspection by the employee upon reasonable request. The employer must also maintain accurate production records.

106. On or about January 23, 2025, Plaintiff's counsel issued a written request to Defendant for copies of her personnel records.

107. Under California Labor Code Sections 226, 432 and 1198.5, such records were to include all records relating to Plaintiff's hours worked, wage statements and compensation. Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of her records.

108. As a direct result and consequence of Defendant's failure and refusal to permit Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an order or decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon Defendant's violation of §1198.

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant and Does 1 through 100)

109. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

110. Pursuant to IWC Wage Order No. 2, Defendant was the employer of Plaintiff and the Class. Defendant is also a "person" as that term is defined in Business & Professions Code §17021.

1 111. The Business & Professions Code defines unfair competition as any unlawful,
2 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
3 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
4 Plaintiff and the Class overtime compensation; (2) pay minimum wages; (3) pay Plaintiff and
5 the Class for meal periods not provided, (4) pay Plaintiff and the Class for rest periods not
6 provided, (5) furnish Plaintiff and the Class with accurate itemized wage statements, as
7 mandated by the applicable Labor Code and Industrial Welfare Commission requirements, (6)
8 pay all wages owed on termination of employment, (7) reimburse business expenses (8)
9 provide personnel records, all in violation of Business & Professions Code §§ 17200 *et seq.*

10 112. By and through the unfair and unlawful business practices described herein,
11 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
12 and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of
13 Plaintiff and the Class.

14 113. All the acts described herein are violations of, among other things, the Labor
15 Code and Industrial Commission Wage Order No. 2, are unlawful and in violation of public
16 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
17 constitute unfair and unlawful business practices in violation of Business & Professions Code
18 §§ 17200 *et seq.*

19 114. Plaintiff and the Class are entitled to, and do, seek such relief as may be
20 necessary to restore to them the money and property which Defendant has acquired, or of
21 which Plaintiff and the Class have been deprived by means of the above-described unfair and
22 unlawful business practices.

23 115. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
24 above-described business practices are unfair and unlawful and that injunctive relief should be
25 issued restraining Defendant from engaging in any of the above described unfair and unlawful
26 business practices in the future.

27 116. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
28 redress the injuries which they have suffered as a consequence of the unfair and unlawful

1 business practices of Defendant. As a result of the unfair and unlawful business practices
2 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable
3 harm unless Defendant is restrained from continuing to engage in these unfair and unlawful
4 business practices. In addition, Defendant should be required to disgorge the unpaid moneys to
5 Plaintiff and the Class.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor
9 and against Defendant as follows:

- 10 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff
11 and Class Members, according to proof;
- 12 2. For compensatory damages in the amount minimum wages due to Plaintiff and
13 Class Members, according to proof;
- 14 3. For payment of unpaid wages in accordance with California labor and
15 employment law;
- 16 4. For one (1) hour of pay at the regular rate of compensation for Plaintiff and
17 Class Members for each workday that a meal and/or rest period was not provided;
- 18 5. For payment to Plaintiff and Class Members of waiting time penalties pursuant
19 to *Cal. Lab. Code* §203, in an amount equal to her respective daily rates of pay at the time of
20 termination or layoff, multiplied by the total amount of days elapsed between the date of the
21 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
22 maximum of 30 days' pay, according to proof;
- 23 6. For specific relief enforcing waiting time penalties of 30 days of per diem wages
24 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;
- 25 7. For compensatory damages in the amount of Plaintiff and Class members' out of
26 pocket expenses for tools and/or reimbursement of monies incurred while performing
27 Defendant's business-related duties plus interests, costs and attorneys' fees pursuant to *Cal.*
28 *Code Civ. Proc.* §2802(c);

1 8. For an award of consequential damages in Plaintiff and Class Members' favor
2 and against Defendant, in an amount to be proven at trial;

3 9. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

4 10. For prejudgment interest accrued on all due and unpaid overtime and minimum
5 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
6 1194(a), according to proof;

7 11. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5,
8 according to proof;

9 12. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order 2-
10 2001(14);

11 13. For reasonable costs, including attorneys' fees, in an amount according to proof
12 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802 and/or *Cal. Code of*
13 *Civ. Proc.* §1021.5;

14 14. For an award of restitution of wages to Plaintiff and Class members in an
15 amount equal to the amount of wages owed and unpaid, according to proof;

16 15. For injunctive relief requiring Defendant to comply with Labor Code
17 1198.5(b)(1);

18 16. For injunctive relief ordering the continuing unfair business acts and practices to
19 cease, as the Court deems just and proper;

20 17. For other injunctive relief ordering Defendant to notify Plaintiff and Class
21 members that they have not been paid the proper amounts in accordance with California law;

22 18. For punitive and exemplary damages in a sum to be determined at trial; and

23 19. For such other and further relief as the Court deems just and proper.

24
25 **DEMAND FOR JURY TRIAL**

26 Plaintiff Michelle D. Gonzalez hereby respectfully requests a trial by jury for all claims
27 and issues raised in her Complaint that may be entitled to a jury trial.

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LIPELES LAW GROUP, APC

Date: January 23, 2025

By: 

Thomas H. Schelly
Attorneys for Plaintiff
Michelle D. Gonzalez