

Assigned for all purposes to: Pomona Courthouse South, Judicial Officer: Salvatore Sirna

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

YESSSENIA MONTES, an individual, on
behalf of herself and all other aggrieved
employees,

Plaintiff,

vs.

CBSA HOME CARE, INC., a California
Corporation; and DOES 1 through 10
inclusive,

Defendants.

CASE NO.: 22PSCV01361

COMPLAINT FOR:

- 1. Failure to Pay All Wages;**
- 2. Meal Period Violations;**
- 3. Rest Period Violations;**
- 4. Failure to Reimburse Business Expenses;**
- 5. Wage Statement Violations;**
- 6. Unfair Competition;**
- 7. PAGA Civil Penalties (Labor Code § 2698
et seq.)**

1 Plaintiff YESSANIA MONTES (“Plaintiff”), as an individual and as a representative under
2 the Private Attorneys General Act (“PAGA”), hereby brings this Complaint against Defendants
3 CBSA HOME CARE, INC., a California corporation (“CBSA”); and DOES 1 through 10 inclusive
4 (collectively, “Defendants”), and hereby alleges with knowledge with respect to her own acts and
5 on information and belief as to other matters as follows:

6 **NATURE OF ACTION**

7 1. Plaintiff brings individual claims to recover unpaid wages, liquidated and statutory
8 damages, treble damages, restitution, interest, reasonable attorneys’ fees, costs and other sums that
9 Defendants owe to her under the California Labor Code (“Labor Code”), the Industrial Welfare
10 Commission (“IWC”) Wage Orders, and the California Business and Professions Code (“Business
11 and Professions Code”).

12 2. Plaintiff further brings a claim under the Private Attorneys General Act of 2004,
13 codified as Labor Code Sections 2698 *et seq.*, to recover civil penalties, reasonable attorneys’ fees,
14 costs, wages and other recoverable sums in her representative capacity as an “aggrieved employee”
15 on behalf of all other current and former employees of Defendant CBSA, including those
16 employees misclassified as personal attendants.

17 **JURISDICTION AND VENUE**

18 3. This Court has jurisdiction over all causes of action asserted in this Complaint
19 pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court
20 original jurisdiction in all cases except those given to other trial courts.

21 4. This Court has general personal jurisdiction over CBSA because it is a California
22 corporation.

23 5. Pursuant to California Code of Civil Procedure Sections 395 and 395.5, venue is
24 proper in this judicial district because all Defendants reside and maintain their principal place of
25 business in Los Angeles County, and/or the acts and omissions alleged in this Complaint occurred
26 in this County.

PARTIES

6. Plaintiff YESSANIA MONTES is an individual residing in Los Angeles County, California. Defendants have employed Plaintiff since approximately October 2019 as a caregiver in California.

7. Plaintiff is an “aggrieved employee” within the meaning of the PAGA since she suffered one or more of the violations alleged in this Complaint. Plaintiff brings a claim for civil penalties and other recoverable sums under the PAGA as a representative aggrieved employee on behalf of all current and former employees of Defendants during the PAGA Period. The PAGA Period is defined as commencing from one year prior to Plaintiff’s notice of Labor Code violations to the Labor Workforce and Development Agency (“LWDA”) and certified mailing of said notice to Defendant CBSA until resolution of this action.

8. Defendants employed Plaintiff as a non-exempt hourly employee during the PAGA Period and Plaintiff’s employment with Defendants ended within one (1) year of the filing of this action. The “Aggrieved Employees” for purposes of the representative claim for PAGA penalties include all current and former non-exempt employees of Defendants, including those misclassified as personal attendants, during the PAGA Period.

9. Defendant CBSA is a California corporation doing business throughout the state of California with its principal place of business located in Los Angeles County, California. CBSA is, and at all relevant times was, an employer subject to California state wage and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and policies of CBSA that are complained of by way of this Complaint were implemented during the four years preceding the filing of this Complaint and during the PAGA period.

10. Defendants continue to employ non-exempt employees within California.

11. Plaintiff is informed, believes, and thereon alleges that at all relevant times, Defendants were and are employers and/or joint employers of Plaintiff and the other Aggrieved Employees as defined in and subject to the Labor Code and IWC Wage Orders.

12. Defendant Does 1 through 10, are sued under fictitious names pursuant to Code of Civil Procedure Section 474. Plaintiff will seek leave of court to amend this Complaint in the event

1 such names and identities are ascertained. Plaintiff is informed, believes, and thereon alleges that
2 each of the fictitiously named defendants is and/or was responsible in some manner for, gave
3 consent to, ratified, and/or authorized the conduct alleged herein, thereby causing damage to
4 Plaintiff and the other Aggrieved Employees. At all relevant times mentioned in this Complaint,
5 all defendants acted as agents of all other defendants in committing the acts alleged in this
6 Complaint.

7 13. Plaintiff is informed, believes, and thereon alleges that each defendant directly or
8 indirectly, through agents or other persons or entities, employed and/or exercised control over the
9 wages, hours and working conditions of Plaintiff and the other Aggrieved Employees. Plaintiff is
10 further informed, believes, and thereon alleges that each defendant acted in all respects pertinent to
11 this action as the agent of the other defendants, carried out in a joint scheme, plan or policy, such
12 that that the acts of each defendant are legally attributable to all other defendants.

13 14. At all relevant times herein, Defendants were agents of each other and acting within
14 the course and scope of their agency.

15 **FACTUAL ALLEGATIONS**

16 15. Defendants have employed Plaintiff, misclassified as a personal attendant, since
17 approximately October 2019. Plaintiff's job duties included, *inter alia*, housekeeping, food/kitchen
18 preparation, and elderly care services, among other things.

19 16. Plaintiff is informed, believes, and thereon alleges that Defendants employed
20 Plaintiff and the other Aggrieved Employees, including those misclassified as personal attendants,
21 to facilitate its in-home care and assistance service throughout California.

22 17. Plaintiff is informed, believes, and thereon alleges that at all times mentioned herein,
23 Defendants were advised by skilled lawyers, employees and other professionals who were
24 knowledgeable about California wage and hour law, employment and personnel practices, and the
25 requirements under California law.

26 18. Plaintiff is informed, believes, and thereon alleges that at all times mentioned herein,
27 Defendants knew or should have known that they had a duty to compensate Plaintiff and the other
28

1 Aggrieved Employees, and that Defendant's had the financial ability to pay such compensation but
2 willfully, knowingly and intentionally failed to do so, all in order to increase Defendant's profits.

3 19. Through this action, Plaintiff alleges that Defendants have engaged in a systematic
4 pattern of wage and hour violations under the Labor Code and IWC Wage Orders.

5 20. Defendants committed the violations set forth in this Complaint against Plaintiff
6 and/or all Aggrieved Employees, including those misclassified as personal attendants, continuing
7 through the present date. Defendants maintained non-compliant employment policies and practices
8 which were applied to Plaintiff and all other Aggrieved Employees.

9 **Misclassification**

10 21. Plaintiff is informed, believes, and thereon alleges that Defendants misclassified
11 Plaintiff and other Aggrieved Employees as personal attendants. Specifically, Defendants should
12 have classified Plaintiff and other Aggrieved Employees as non-exempt because they spent more
13 than 20 percent of their time performing work other than directly supervising, feeding, and dressing
14 a child or person in need of supervision. Plaintiff and other Aggrieved Employees spent more than
15 20 percent of their time performing non-attendant duties including making beds, housecleaning,
16 cooking, laundry, and/or other duties related to the maintenance of the private household or
17 premises.

18 22. As a result of Defendants' misclassification of Plaintiff and other Aggrieved
19 Employees as personal attendants, Defendants failed to pay all wages, including but not limited to
20 minimum, regular, overtime, and double time wages.

21 **Unpaid Minimum, Overtime and Double Time Wages**

22 23. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should
23 have known that Plaintiff and other Aggrieved Employees were entitled to receive at least minimum
24 wages, wages at their regular rate of pay, overtime wages, and/or double time wages, and that they
25 were not receiving minimum, regular, overtime, and/or double time wages for all work that was
26 required to be performed.

27 24. Plaintiff is informed, believes, and thereon alleges that Plaintiff and other Aggrieved
28 Employees regularly worked in excess of eight (8), ten (10) and/or twelve (12) hours per workday

1 and/or 40 hours per workweek. In violation of the Labor Code, Defendants failed to pay the
2 minimum, regular, overtime, and/or double time rate of pay to Plaintiff and other Aggrieved
3 Employees for all hours worked. Defendants failed to pay the minimum, regular, overtime and/or
4 double time wages when Plaintiff and Aggrieved Employees were on call or worked off-the-clock
5 (e.g., time spent working before and after their scheduled shifts performing work-related tasks).
6 Specifically, Defendants did not compensate Plaintiff for all hours worked while she listened to
7 Defendants' prerecorded job instructions before clocking in for her shift. In addition, Defendant
8 did not compensate Plaintiff for all hours worked while she provided instructions of job duties to
9 another employee taking over Plaintiff's shift. Moreover, Defendants' supervisors regularly called
10 Plaintiff off the clock. Further, Defendants rounded Plaintiff and/or the other Aggrieved Employees
11 hours worked, including meal periods, thereby depriving them of compensation for time worked
12 during their shifts. Defendants' rounding practice systematically undercompensated Plaintiff and/or
13 the other Aggrieved Employees and favored the employer rather than the employees.

14 25. As a result of Defendants' failure to properly compensate Plaintiff and the other
15 Aggrieved Employees, they were underpaid wages owed (including overtime and double time
16 wages) and, in certain pay periods, compensated at a rate less than the lawful minimum wage for
17 all hours worked.

18 **Meal Period Violations**

19 26. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should
20 have known that Plaintiff and the other Aggrieved Employees were entitled to receive a timely, off-
21 duty, uninterrupted 30-minute meal period for every five hours of work, or payment of one
22 additional hour of pay at their regular rate of pay when they did not receive a compliant meal period.

23 27. In violation of the Labor Code and IWC Wage Orders, Plaintiff and the other
24 Aggrieved Employees did not receive compliant meal periods due to Defendants' policies,
25 workload, and understaffing, among other things. Specifically, Defendants regularly failed to
26 provide Plaintiff and Aggrieved Employees with a meal period within the first five hours of work.
27 Plaintiff and the other Aggrieved Employees were also on-duty during their meal periods and had
28 their meal periods regularly interrupted. For example, due to understaffing and Defendant's lack of

adequate guidelines or policies, Plaintiff and the other Aggrieved Employees would often be required to work through their meal periods. Further, Defendants failed to provide second meal periods when Plaintiff and the other Aggrieved Employees worked over 10 hours.

28. Defendants also failed to pay Plaintiff and the other Aggrieved Employees one additional hour of pay at their regular rate of pay when Plaintiff and the other Aggrieved Employees did not receive a compliant meal period. Plaintiff is informed, believes, and thereon alleges that Defendants maintained no mechanism for the payment of meal period premiums in the event a lawful meal period was not provided.

Rest Period Violations

29. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive a 10-minute, off-duty, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, or payment of one additional hour of pay at their regular rate of pay when they were not permitted to take a compliant rest period. Specifically, Defendants failed to implement a rest break policy and/or practice, and failed to provide uninterrupted, off-duty 10-minute rest breaks. For example, rest breaks were simply not provided to Plaintiff and the other Aggrieved Employees due to understaffing and Employer's lack of adequate guidelines or policies. As such, Plaintiff and the other Aggrieved Employees regularly missed their rest breaks or had them interrupted or governed by Defendants' practices and policies.

30. Despite these violations, Defendants failed to pay Plaintiff and Aggrieved Employees one additional hour of pay at their regular rate of pay when they did not receive a compliant rest break. Plaintiff is informed, believes, and thereon alleges that Defendants maintained no mechanism for the payment of premiums in the event a lawful rest period was not provided.

Unreimbursed Business Expenses:

31. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should have known that Plaintiff and the other Aggrieved Employees were entitled to reimbursement for their necessary work-related business expenses.

32. In violation of the Labor Code and IWC Wage Orders, Plaintiff and the other

1 Aggrieved Employees were required to use their personal cell phones, without reimbursement, to
2 carry out their jobs, including to communicate with Defendants. Further, Plaintiff and the other
3 Aggrieved Employees were required to purchase masks, gloves, hand sanitizer, and scrubs without
4 reimbursement for such costs. Finally, Plaintiff and the Aggrieved Employees were required to
5 travel to provide services for more than one client in the same work day without reimbursement for
6 mileage costs incurred between clients.

7 **Waiting Time Penalties**

8 33. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should
9 have known that other Aggrieved Employees who separated from their employment with
10 Defendants during the statutory period were entitled to timely payment of all wages due. In
11 violation of the Labor Code, other Aggrieved Employees did not receive payment of all wages
12 owed upon separation within the permissible time period due to, *inter alia*, Defendants' failure to
13 pay all wages, meal and rest period premiums, and reimburse expenses.

14 **Wage Statement Violations**

15 34. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should
16 have known that Plaintiff and the other Aggrieved Employees were entitled to receive complete
17 and accurate wage statements. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
18 the other Aggrieved Employees were not furnished with complete and accurate wage statements
19 that show all of the information required by Labor Code Section 226, including, but not limited to,
20 the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during
21 the pay period, the corresponding number of hours worked at each hourly rate, and the entity
22 name(s).

23 **Failure to Keep Accurate Records**

24 35. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should
25 have known that Defendants were required to keep accurate records of the hours worked by Plaintiff
26 and the other Aggrieved Employees. In violation of the Labor Code, Defendants failed to maintain
27 accurate records of hours worked by Plaintiff and the other Aggrieved Employees due to the
28 unlawful practices described above.

1 36. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
2 described throughout this Complaint were willful.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY ALL WAGES**

5 **(Against All Defendants)**

6 37. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint
7 as though fully set forth herein.

8 38. At all relevant times, Defendants had a duty to comply with Labor Code Sections
9 204, 206, 510, 1182.12, 1194, 1194.2, 1197, and 1198 and the applicable IWC Wage Orders and
10 California Code of Regulations.

11 39. Labor Code Section 204 and the IWC Wage Orders require timely payment of all
12 wages owed on regularly scheduled paydays at least twice during each calendar month, on days
13 designated in advance by the Defendants as the regular paydays. All wages in earned in excess of
14 the normal work period must be paid no later than the payday for the next regular payroll period.

15 40. Labor Code Section 206 provides that in case of a dispute over wages, the
16 Defendants shall pay, without condition and promptly under the Labor Code all wages conceded
17 due, leaving to the employee all remedies he/she is otherwise entitled to as to any balance claimed.

18 41. At all times relevant, Labor Code Section 510, and applicable Sections of the
19 California Code of Regulations and the IWC Wage Orders applied to Plaintiff's work with
20 Defendants and continued to apply to her employment with Defendants. Labor Code Section 510
21 and applicable provisions of the California Code of Regulations and IWC Wage Orders state that
22 any work performed in excess of eight hours in a workday and/or 40 hours in a workweek must be
23 paid at one and one-half times the employee's regular rate of pay. Any work performed in excess
24 of 12 hours in a workday must be compensated at the rate of no less than twice the regular rate of
25 pay for an employee.

26 42. Labor Code Section 1182.12 sets forth the minimum hourly wage that must be paid
27 to all employees in California for all hours worked. Local minimum wage ordinances, may provide
28 for higher minimum wage rates that must be paid to employees for all hours worked in those locales

1 where each local ordinance is in effect. Labor Code Section 1197 affirms that it is unlawful to pay
2 less than the state or local minimum wage, whichever is higher, for any hour of work.

3 43. Labor Code Section 1194 provides that any employee receiving less than the legal
4 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
5 in a civil action the unpaid balance of the full amount of the minimum wage or overtime
6 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

7 44. Labor Code Section 1194.2 authorizes the recovery of liquidated damages in an
8 amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

9 45. Labor Code Section 1198 prohibits Defendants from employing for longer hours or
10 less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise
11 set by the Labor Commissioner.

12 46. Plaintiff is informed, believes, and thereon alleges that at all relevant times, Plaintiff
13 regularly worked more than eight (8) hours, ten (10), and/or twelve (12) hours per workday, more
14 than 40 hours per workweek, and/or more than eight (8) hours on the seventh consecutive day of
15 work.

16 47. Plaintiff is informed, believes, and thereon alleges that at all relevant times,
17 Defendants failed to pay Plaintiff all wages for hours worked (including minimum, regular,
18 overtime, and double time wages), failed to pay overtime and/or double time wages at the proper
19 rates of pay, auto-deducted and rounded meal periods, unlawfully deducted wages, and required
20 off-the-clock work without compensation, among other things.

21 48. As a direct and proximate result of Defendants' unlawful conduct, as set forth
22 herein, Plaintiff has sustained and continues to sustain damages, including loss of earnings
23 including minimum, regular, overtime and/or double time compensation due, in an amount to be
24 established at trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

25 49. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
26 conduct described herein, have committed an "intentional theft of wages in an amount greater than
27 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
28 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12- month

1 period” within the meaning of California Penal Code Section 487m. Specifically, Defendants have
2 intentionally deprived Plaintiff of wages, as defined in Section 200 of the Labor Code, gratuities,
3 as defined in Section 350 of the Labor Code, benefits, or other compensation, by unlawful means,
4 with the knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff
5 under the law. Plaintiff is thus entitled to recover from Defendants treble damages and costs,
6 including reasonable attorneys’ fees, pursuant to California Penal Code Section 496(c).

7 50. WHEREFORE, Plaintiff requests relief as described herein and below.

8 **SECOND CAUSE OF ACTION**

9 **MEAL PERIOD VIOLATIONS**

10 **(Against All Defendants)**

11 51. Plaintiff incorporates by reference the allegations in all paragraphs in this
12 Complaint as though fully set forth herein.

13 52. Labor Code Section 512(a) prohibits employers from employing any person for a
14 work period of more than five (5) hours without a meal period of not less than thirty (30)
15 uninterrupted minutes. Further, employers may not employ an employee for a work period of
16 more than ten (10) hours per day without providing the employee with a second meal period of
17 not less than thirty (30) minutes.

18 53. At all relevant times, Plaintiff regularly worked more than five (5) hours and 10
19 hours per workday without being provided an uninterrupted, off-duty 30-minute meal period
20 since Plaintiff’s meal periods were late, interrupted, short, and/or on-duty.

21 54. During the relevant time period, Defendants failed to pay Plaintiff meal period
22 premiums for noncompliant meal periods pursuant to Labor Code Section 226.7(b) and the
23 applicable IWC Wage Order.

24 55. Defendants have willfully, unfairly, fraudulently or unlawfully failed to allow
25 Plaintiff to take meal breaks pursuant to Labor Code Section 512(a). As a result, Defendants are
26 liable to Plaintiff for premium compensation of one hour of pay at the employee’s regular rate for
27 each workday that the meal period was not provided pursuant to Labor Code Section 226.7, in an
28 amount to be established at trial.

1 56. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
2 conduct described herein, have committed an “intentional theft of wages in an amount greater than
3 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
4 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12- month
5 period” within the meaning of California Penal Code Section 487m. Specifically, Defendants have
6 intentionally deprived Plaintiff of wages, as defined in Section 200 of the Labor Code, gratuities,
7 as defined in Section 350 of the Labor Code, benefits, or other compensation, by unlawful means,
8 with the knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff
9 under the law. Plaintiff is informed, believes, and thereon alleges that meal period premiums are
10 wages, gratuities, benefits, or other compensation within the meaning of California Penal Code
11 Section 487m. Plaintiff is thus entitled to recover from Defendants treble damages and costs,
12 including reasonable attorneys’ fees, pursuant to California Penal Code Section 496(c).

13 **THIRD CAUSE OF ACTION**

14 **REST PERIOD VIOLATIONS**

15 **(Against All Defendants)**

16 57. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint
17 as though fully set forth herein.

18 58. California law and applicable Wage Orders require employers to authorize and
19 permit all employees to take uninterrupted rest periods. The rest period time shall be based on the
20 total hours worked daily at the rate of 10 minutes net rest time per four hours or major fraction
21 thereof.

22 59. During the relevant time period, Defendants failed to provide compliant rest breaks.
23 Specifically, Plaintiff had her rest breaks on-duty, interrupted, missed, or shortened. Consequently,
24 Plaintiff did not receive a 10-minute rest period for every four (4) hours worked or major fraction
25 thereof.

26 60. During the relevant time period, Defendants failed to pay Plaintiff rest period
27 premiums for noncompliant rest periods pursuant to Labor Code Section 226.7(b) and the
28 applicable IWC Wage Order.

1 61. Defendants have willfully, unfairly, fraudulently or unlawfully failed to allow
2 Plaintiff to take rest periods pursuant to California law. As a result, Defendants are liable to
3 Plaintiff for premium compensation of one hour of pay at the employee's regular rate for each
4 workday that the rest period was not provided pursuant to Labor Code Section 226.7, in an amount
5 to be established at trial.

6 62. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
7 conduct described herein, have committed an "intentional theft of wages in an amount greater than
8 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
9 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12- month
10 period" within the meaning of California Penal Code Section 487m. Specifically, Defendants have
11 intentionally deprived Plaintiff of wages, as defined in Section 200 of the Labor Code, gratuities,
12 as defined in Section 350 of the Labor Code, benefits, or other compensation, by unlawful means,
13 with the knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff
14 under the law. Plaintiff is informed, believes, and thereon alleges that rest period premiums are
15 wages, gratuities, benefits, or other compensation within the meaning of California Penal Code
16 Section 487m. Plaintiff is thus entitled to recover from Defendants treble damages and costs,
17 including reasonable attorneys' fees, pursuant to California Penal Code Section 496(c).

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 **(Against All Defendants)**

21 63. Plaintiff hereby re-alleges and incorporates by reference the allegations in all
22 paragraphs in this Complaint as though fully set forth herein.

23 64. At all relevant times, Defendants had a duty to comply with Labor Code Sections
24 2800 and 2802. Defendants failed to comply with these indemnification and reimbursement
25 requirements with respect to Plaintiff.

26 65. Labor Code Section 2800 requires employers to indemnify employees for losses
27 caused by the employer's want of ordinary care. To the extent Defendants claim that Plaintiff failed
28 to request, demand, notify or otherwise seek reimbursement for their expenses and losses,

1 Defendants were obligated to nevertheless indemnify Plaintiff due to their own negligence.

2 66. Labor Code Section 2802(a) requires that employers indemnify and reimburse
3 employees for all business expenses, which are defined as all necessary expenditures or losses
4 incurred by the employee in direct consequence of the discharge of the employee's duties or
5 otherwise incurred based on the employee's obedience to the employer's directions. Labor Code
6 Section 2802(b) authorizes employees to recover in a court action interest which shall accrue from
7 the date on which the employee incurred the necessary expenditure or loss. Labor Code
8 Section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor
9 Code Section 2802, to also recover attorneys' fees and costs.

10 67. During the relevant time period, Defendants required Plaintiff to incur out-of-
11 pocket expenses without reimbursement, such as, using her personal cell phone to communicate
12 with Defendants. Defendants also required Plaintiff to purchase masks, gloves, hand sanitizer, and
13 scrubs without reimbursement for such costs. Defendant further required Plaintiff to travel to
14 provide services for more than one client in the same work day without reimbursement for mileage
15 costs incurred between clients.

16 68. As a result of Defendants' failure to indemnify and reimburse Plaintiff for all
17 business and work-related costs, expenditures, losses and expenses in accordance with Labor Code
18 Sections 2800 and 2802, Plaintiff is entitled to recover the full unreimbursed balance of
19 reimbursements, expenditures and losses, prejudgment interest, and statutory penalties, along with
20 attorneys' fees and costs in amounts that will be established at trial.

21 **FIFTH CAUSE OF ACTION**

22 **WAGE STATEMENT VIOLATIONS**

23 **(Against All Defendants)**

24 69. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint
25 as though fully set forth herein.

26 70. Labor Code Section 226(a) requires employers, at the time of each payment of
27 wages, to furnish each employee with an accurate statement itemizing, among other things: (1)
28 gross wages earned; (2) the total hours worked by the employee; (3) all deductions; (4) net wages

1 earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the
2 employee and his or her social security number (last four digits); (7) the name and address of the
3 legal entity that is the employer; and (8) all applicable hourly rates in effect during the pay period
4 and the corresponding number of hours worked at each hourly rate by the employee. Labor Code
5 § 1174 further requires that such payroll records be kept in a central location.

6 71. Labor Code Section 226(e) further provides that if an employer knowingly and
7 intentionally fails to provide a statement itemizing, among other things, the total hours worked by
8 the employee, then the employee is entitled to recover the greater of all actual damages or fifty
9 dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation,
10 up to four thousand dollars (\$4,000).

11 72. As alleged herein, Defendants failed to pay all wages, reimbursements, and
12 premiums. Thus, Defendants have knowingly and intentionally failed to comply with the Labor
13 Code on each and every wage statement that should have been provided to Plaintiff by failing to
14 provide itemized wage statements to Plaintiff that accurately reported, among other things, the
15 gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the
16 pay period, and the corresponding number of hours worked at each hourly rate.

17 73. By failing to keep accurate records and provide such records to Plaintiff as required
18 by Labor Code Sections 226(a) and 1174, Defendants have injured Plaintiff and made it difficult to
19 calculate the unpaid wages earned and due to Plaintiff. Moreover, Defendants' failure to comply
20 with Labor Code Section 1174 is unlawful pursuant to Labor Code Section 1175.

21 74. Because of Defendants' willful failure to provide Plaintiff with accurate records as
22 required by Labor Code Section 226(a), Plaintiff is entitled to damages pursuant to Labor Code
23 Section 226(e) in an amount to be established at trial.

24 **SIXTH CAUSE OF ACTION**

25 **UNFAIR BUSINESS PRACTICES**

26 **(Against All Defendants)**

27 75. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint
28 as though fully set forth herein.

1 76. The Unfair Competition Law as codified in California Business and Professions
2 Code Sections 17200 *et seq.* (“UCL”) defines unfair business competition to include any “unlawful,
3 unfair or fraudulent” act or practice.

4 77. A business act or practice is “illegal” under the UCL if it violates any statute,
5 regulation, or ordinance

6 78. A business practice is “unfair” under the UCL if the reasons, justifications, and
7 motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

8 79. A business act or practice is “fraudulent” under the UCL if it is “likely to deceive”
9 members of the general public.

10 80. Plaintiff is informed, believes, and thereon alleges that Defendants’ unlawful failure
11 to timely pay wages, meal and rest periods or compensation, provide accurate itemized wage
12 statements, reimburse expenses, among other things, constitute violations of the UCL.

13 81. Defendants’ failure to pay Plaintiff in a lawful manner as set forth above and below
14 is fraudulent and deceptive and constitutes an ongoing and continuous unfair business practice
15 within the meaning of the UCL. Members of the public have been deceived in the past, and will be
16 in the future continue to be deceived, by these continuous unfair business practices.

17 82. The illegal conduct alleged in this Complaint is continuing, and there is no indication
18 that Defendants will not continue such activity in the future. Plaintiff alleges that if Defendants are
19 not enjoined from their illegal conduct, they will continue to fail to provide rest periods and meal
20 breaks or provide appropriate compensation in-lieu thereof.

21 83. A request for injunctive relief, restitution and for the disgorgement of unlawfully
22 earned profits is specifically authorized by the UCL. Thus, on behalf of herself and the general
23 public, Plaintiff seeks injunctive relief, restitution, and the disgorgement of all unlawfully earned
24 profits as a result of Defendants’ alleged acts or omissions described in this Complaint.
25 Furthermore, Plaintiff requests attorneys’ fees and costs pursuant to Code of Civil Procedure
26 Section 1021.5.

27 84. Plaintiff is informed, believes, and thereon alleges that unless restrained and ordered
28 to pay restitution and disgorge profits derived from said unfair and unlawful business practices,

1 Defendants will continue to engage in the alleged acts and/or omissions described in this
2 Complaint.

3 **SEVENTH CAUSE OF ACTION**

4 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

5 **(Against All Defendants)**

6 85. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
7 though fully set forth herein.

8 86. Pursuant to Labor Code Section 2699(a), any provision of the Labor Code that
9 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
10 divisions, commissions, boards, agencies or employees for violation of the code may, as an
11 alternative, can be recovered through a civil action brought by an aggrieved employee on behalf of
12 himself or herself and other current or former employees pursuant to the procedures specified in
13 Labor Code Section 2699.3.

14 87. Under Labor Code Section 2699.3(a), a plaintiff may bring a cause of action under
15 PAGA only after giving the LWDA and the employer notice of the Labor Code Sections alleged to
16 have been violated, and after receiving notice from the LWDA of its intention not to investigate or
17 after 65 days have passed without notice from the LWDA.

18 88. On June 10, 2022, Plaintiff gave written notice of the specified provisions alleged
19 to have been violated, including the facts and theories to support the alleged violations, as required
20 by Labor Code Section 2699.3. This written notice was provided via certified mail to Defendant
21 CBSA and to the LWDA by electronically filing the notice via the Department of Industrial
22 Relations' website. More than 65 days have passed since Plaintiff submitted her PAGA notice to
23 the LWDA without notice from the LWDA. Accordingly, Plaintiff has exhausted the procedural
24 requirements under Labor Code Section 2699.3 as to Defendant CBSA and is therefore able to
25 pursue a claim for penalties on behalf of herself and all other Aggrieved Employees under PAGA.

26 89. For all provisions of the Labor Code except those for which a civil penalty is
27 specifically provided, Labor Code Section 2699(f) imposes upon Defendant CBSA a penalty of one
28 hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation and

1 two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent
2 pay period in which Defendant CBSA violated these provisions of the Labor Code.

3 90. Pursuant to Labor Code Sections 2699.3 and 2699.5, Plaintiff may seek civil
4 penalties for any alleged violation of the following provisions: subdivision (k) of Section 96,
5 Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,
6 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223,
7 and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections
8 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section
9 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of
10 Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603,
11 604, 750, 7 51.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025,
12 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197,
13 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292,
14 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5,
15 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55,
16 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 17 00.26, 1700.31,
17 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and
18 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810,
19 subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, 6399.7, 6400, 6401, 6401.7,
20 6402, and 6403.

21 91. Labor Code Section 558(a) provides “[a]ny employer or other person acting on
22 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
23 provision regulating hours and days of work in any order of the Industrial Welfare Commission, or
24 violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802 [of the Labor
25 Code], shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50)
26 for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For
27 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
28 period for which the employee was underpaid.”

1 92. Labor Code section 1197.1 provides “[a]ny employer or other person acting either
2 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
3 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
4 order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial violation
5 that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each
6 pay period for which the employee is underpaid . . . (2) For each subsequent violation for the same
7 specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period
8 for which the employee is underpaid regardless of whether the initial violation is intentionally
9 committed.”

10 93. Labor Code Section 226.3 provides: “[a]ny employer who violates subdivision (a)
11 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
12 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
13 each violation in a subsequent citation, for which the employer fails to provide the employee a
14 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
15 The civil penalties provided for in this section are in addition to any other penalty provided by law.”

16 94. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to
17 maintain accurate and complete payroll records showing the hours worked daily by and the wages
18 paid to employees.

19 95. Plaintiff is informed, believes, and thereon alleges that Defendant CBSA’s conduct
20 with respect to Plaintiff and the other Aggrieved Employees violates numerous Labor Code
21 Sections including, but not limited to, the following:

- 22 a. Violation of Labor Code Sections 204, 206, 210, 510, 558, 1194, 1197, 1197.1,
23 1198, 1771, and 1774 for failure to timely pay all earned wages (including
24 minimum, regular, overtime, and double time wages) owed to Plaintiff and the
25 other Aggrieved Employees during employment and upon separation of
26 employment as herein alleged;
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- b. Violation of Labor Code Sections 226.7 and 512 for failure to provide meal periods to Plaintiff and the other Aggrieved Employees and failure to pay premium wages for missed meal periods as herein alleged;
- c. Violation of Labor Code Sections 226.7 for failure to permit rest breaks to Plaintiff and the other Aggrieved Employees and failure to pay premium wages for missed and/or non-compliant rest periods as herein alleged;
- d. Violation of Labor Code Sections 226 and 226.3 for failure to provide accurate itemized wage statements to Plaintiff and the other Aggrieved Employees as herein alleged;
- e. Violation of Labor Code Sections 1174 and 1174.5 for failure to maintain accurate records regarding the employment of Plaintiff and the other Aggrieved Employees as herein alleged; and
- f. Violation of Labor Code Sections 2800 and 2802 for failure to reimburse business expenses to Plaintiff and the other Aggrieved Employees as herein alleged.

96. As set forth above, Defendants have violated numerous provisions of the Labor Code regulating hours and days of work as well as the IWC Wage Orders.

97. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of all other Aggrieved Employees.

98. Pursuant to Labor Code Sections 2699(a), 2699.3, and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code Sections cited above.

99. Plaintiff is also entitled to attorneys’ fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as follows:

1. For compensatory damages and general damages according to proof with interest thereon;

2. For economic and/or special damages, and/or liquidated damages according to proof with interest thereon;

3. For other compensatory damages for emotional distress and other economic losses;

4. For damages, monetary relief, wages, premiums, reimbursements, benefits and penalties, including interest thereon;

5. For prejudgment interest on all sums recovered pursuant to other compensatory damages at the legal rate from the date of injury or pursuant to California Code of Civil Procedure Sections 3287 and 3289, and Labor Code Section 218.6;

6. For all damages and penalties available for violations of the Labor Code;

7. For waiting time penalties pursuant to Labor Code Section 203;

8. For liquidated damages pursuant to Labor Code Section 1194.2;

9. For treble damages pursuant to Penal Code Section 496(c);

10. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

11. For injunctive relief, disgorgement, and restitution of all money and property unlawfully acquired by Defendants through unfair or unlawful business practices pursuant to Business and Professions Code sections 17200 *et seq.*;

12. For attorneys' fees pursuant to Labor Code Sections 226, 1194, 2802, Code of Civil Procedure Section 1102.5 and any other applicable provisions of law;

13. For costs of suit incurred; and

14. For any other and further relief as the Court deems just and proper.

WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays for judgment against Defendants, jointly and severally, as follows:

15. For civil penalties against Defendants on behalf of all Aggrieved Employees pursuant to, *inter alia*, Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2698 *et seq.*;

16. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including pursuant to Labor Code Sections 2699(g), 2802(c) and California Code of Civil Procedure Section 1021.5; and

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ALAMI LAW GROUP



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