

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

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Attorneys for Plaintiff,
ANALETTE P. ESPINO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

ANALETTE P. ESPINO, an individual,
on her own behalf and on behalf of all
others similarly situated,

Plaintiffs,

vs.

ADVANCED PAYROLL SOLUTIONS,
INC., a California corporation;
ADVANCED MANAGEMENT
COMPANY, an entity of unknown form;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 25STCV04021

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM
OVERTIME WAGES DUE (Cal. *Labor Code* §§ 510, 511, 558, 1194, 1198; IWC
Wage Order No. 5);**
- 2. FAILURE TO PAY MINIMUM WAGES
(Cal. *Labor Code* §§1194, 1194.2, 1997,
1197.1, 1198; IWC Wage Order No. 5);**
- 3. FAILURE TO PROVIDE TIMELY OFF
DUTY MEAL PERIODS (Cal. *Labor Code*
§§ 226.7, 512; IWC Wage Order No. 5);**
- 4. FAILURE TO PROVIDE TIMELY OFF
DUTY REST PERIODS (Cal. *Labor Code*
§§ 226.7, 512; IWC Wage Order No. 5);**
- 5. FAILURE TO MAINTAIN RECORDS
AND PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS (Cal. *Labor Code*
§226; IWC Wage Order No. 5);**
- 6. FAILURE TO REIMBURSE BUSINESS
EXPENSES (Cal. *Labor Code* § 2802);**
- 7. FAILURE TO PROVIDE A UNIFORM
MAINTENANCE ALLOWANCE (Cal.
Labor Code § 2802);**
- 8. REPORTING TIME PAY (IWC Wage
Order No. 5);**
- 9. FAILURE TO ALLOW INSPECTION OF
EMPLOYMENT RECORDS (Cal. *Labor*
Code §1198.5); and**
- 10. 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.

Analette P. Espino ("Plaintiff") alleges the following:

1. This is a class action brought under California law by an individual who was employed by Advanced Payroll Solutions, Inc. ("APS") and Advanced Management Company ("AMC") (along with DOES 1 through 100, collectively "Defendants"). Plaintiff brings this action on behalf of herself and others similarly situated to recover wages from Defendants due to Defendants' systematic failure to pay overtime, minimum wages, failure to provide meal breaks (or pay the statutory compensation due), failure to provide rest breaks (or pay the statutory compensation due), failure to issue accurate wage statements, failure to reimburse business expenses, failure to provide a uniform maintenance allowance, failure to pay reporting time pay and failure to allow inspection of employment records.

2. Plaintiffs have worked as employees for Defendants at their business in Lakewood, California. While working, Plaintiffs have been forced to endure stressful and illegal workplace conditions created by Defendants' efforts to maximize profits and tightly control labor costs.

3. Plaintiff, like her co-workers whom Defendants also employed during the applicable limitations period, spend their workdays in Lakewood, California, under illegal and highly regimented circumstances. That regimen results from Defendants' insistence to strictly monitor and curtail labor costs, which Defendants accomplish by not paying for all labor costs, failing to pay overtime, minimum wages, refusing to provide proper meal periods, refusing to provide proper rest periods, not paying the required extra hour for missed meal/rest breaks,

1 failing to issue accurate wage statements, failing to reimburse business expenses, failing to
2 provide a uniform maintenance allowance, failing to pay reporting time pay, failing to allow
3 inspection of employment records, and by using other unlawful stratagems to ensure that labor
4 costs remain artificially low.

5 4. Plaintiff brings this class action to recover, among other things, wages and
6 penalties from unpaid wages earned and due, including but not limited to, overtime, minimum
7 wages, missed meal/rest break wages, penalties for failure to provide accurate itemized wage
8 statements, unreimbursed business expenses, uniform maintenance expenses, reporting time
9 pay, to allow inspection of employment records and interest, attorneys' fees, costs, and
10 expenses.

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

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

19 7. Pursuant to the California Labor Code, on or about February 12, 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 Analette P. Espino brings this Complaint on her
28 own behalf and on behalf of all persons in the Class as defined in paragraph 18 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 Los Angeles and because Defendants owned and operated their businesses in the County of Los Angeles.

THE PARTIES

PLAINTIFF

10. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Warner Springs, California;
- (b) Employed as an hourly employee for Defendants in Lakewood, California;
- (c) Did not receive overtime required by *Labor Code* §§ 1194, 1198, and IWC Wage Order No. 5;
- (d) Did not receive minimum wages required by *Labor Code* §§ 1194, 1194.2, 1997, 1197.1, 1198 and IWC Wage Order No. 5;
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and IWC Wage Order No. 5;
- (f) Did not receive the rest periods required by *Labor Code* §266.7 and IWC Wage Order No. 5;
- (g) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (h) Was not reimbursed for necessary business expenses as required by *Labor Code* § 2802;
- (i) Was not provided a uniform maintenance allowance as required by *Labor Code* § 2802;
- (j) Was not paid reporting time pay in violation of IWC Wage Order No. 5; and
- (k) Was not provided her personnel records. Each of these was a violation of the *Labor Code*.

1 **DEFENDANTS**

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

- 4 (a) A California corporation, with a principal place of business at 15320
5 Barranca Pkwy., Suite 100, Irvine, California 90712. Defendant APS
6 has been authorized to do business and has been doing business in the
7 County of Los Angeles;
- 8 (b) The current employer of Plaintiff and the current and former employer of
9 the putative Class members;
- 10 (c) Paid Plaintiff and all Class Members on an hourly basis;
- 11 (d) Failed to pay Plaintiff and all putative Class members overtime wages;
- 12 (e) Failed to pay Plaintiff and all putative Class members minimum wages;
- 13 (f) Failed to provide Plaintiff and all putative Class members with meal/rest
14 periods and failed to provide Plaintiff and all putative Class members
15 with accurate itemized wage statements;
- 16 (g) Failed to reimburse Plaintiff and all putative Class members for
17 necessary business expenses;
- 18 (h) Failed to provide Plaintiff and all putative Class members with a uniform
19 maintenance allowance;
- 20 (i) Failed to pay Plaintiff and all putative Class members reporting time
21 pay; and
- 22 (j) Failed to provide their personnel records. Each of these was a violation
23 of the *Labor Code*.

24 12. Plaintiff is informed and believes, and based on that information and belief,
25 alleges, Defendant AC is, and at all times mentioned herein was:

- 26 (a) An entity of unknown form, with a principal place of business at 15320
27 Barranca Pkwy., Suite 100, Irvine, California 90712. Defendant AC has
28

1 been authorized to do business and has been doing business in the
2 County of Los Angeles;

3 (b) The current employer of Plaintiff and the current and former employer of
4 the putative Class members;

5 (k) Paid Plaintiff and all Class Members on an hourly basis;

6 (c) Failed to pay Plaintiff and all putative Class members overtime wages;

7 (d) Failed to pay Plaintiff and all putative Class members minimum wages;

8 (e) Failed to provide Plaintiff and all putative Class members with meal/rest
9 periods and failed to provide Plaintiff and all putative Class members
10 with accurate itemized wage statements;

11 (f) Failed to reimburse Plaintiff and all putative Class members for
12 necessary business expenses;

13 (g) Failed to provide Plaintiff and all putative Class members with a uniform
14 maintenance allowance;

15 (h) Failed to pay Plaintiff and all putative Class members reporting time
16 pay; and

17 (i) Failed to provide their personnel records. Each of these was a violation
18 of the *Labor Code*.

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

24 14. Plaintiff is informed and believes, and based on that information and belief
25 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
26 reside in or are authorized to do, or are otherwise doing, business in the State of California.
27 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
28 conduct business in the County of Los Angeles. Each of the Defendants DOES 1 through 100

1 was the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator,
2 alter ego and/or representative of one or more of the other Defendants named herein, and acting
3 with permission, authorization, and/or ratification and consent of the other Defendants.

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

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

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

26 **CLASS ALLEGATIONS**

27 **A. The Definition of the Class**

28 18. The Class ("the Class") is defined as follows:

1 (a) "All current and former employees who were hourly paid employees of
2 Defendants and worked for Defendants in California at any time during the
3 period commencing on the date that is four (4) years prior to the filing of this
4 Complaint and continuing through the present date (the "Class Period")."

5 (b) "All persons who were hourly paid employees of Defendants and worked for
6 Defendants in California and left the employ of Defendants at any time during
7 the period commencing on the date that is within one (1) year prior to the filing
8 of this Complaint and continuing through the present date (the "Class Period")."

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

12 **B. Maintenance of the Action**

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

16 **C. The Class Requisites**

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

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

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

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

26 (c) The claims of the representative Plaintiff are typical of the claims of each
27 Class member. Plaintiff, like all Class members, has sustained damages
28 arising from Defendant's violations of the laws of the State of California.

1 Plaintiff, and the Class members, were and are similarly or identically
2 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
3 pattern of misconduct engaged in by the Defendants;

- 4 (d) The representative Plaintiff has, and will continue to, fairly and adequately
5 represent and protect the interests of the Class and has retained counsel
6 who are competent and experienced in class action litigation. There are no
7 material conflicts between the claims of the representative Plaintiff and the
8 Class members that would make class certification inappropriate. Counsel
9 for the Class will vigorously assert the claims of all Class members.

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

17 24. The Court should permit the action to be maintained as a class action under
18 *Code of Civil Procedure* § 382 because:

- 19 (a) The questions of law and fact common to the Class predominate over any
20 question affecting only individual members:
21 (b) A class action is superior to any other available method for fairly and
22 efficiently adjudicating the claims of the Class;
23 (c) The Class members are so numerous that it is impractical to bring all of
24 them before the Court;
25 (d) Plaintiff and other Class members will not be able to obtain effective and
26 economic legal redress unless the action is maintained as a class action;
27 (e) There is a community of interest in obtaining appropriate legal and
28 equitable relief for the statutory violations, and in obtaining adequate

1 compensation for the damages and injuries for which Defendants are
2 responsible in an amount sufficient to adequately compensate the Class
3 members;

4 (f) Without Class certification, the prosecution of separate actions by
5 individual Class members would create a risk of:

- 6 i. Inconsistent or varying adjudications for individual Class members
7 that would establish incompatible standards of conduct for
8 Defendant; and/or,
9 ii. Adjudication for individual Class members that would, as a
10 practical matter, dispose of other non-party members' interests, or
11 that would substantially impair or impede the non-parties' ability
12 to protect their interests, by, for example, potentially exhausting
13 the funds available from Defendants, and

14 (g) Defendant has acted or refused to act on grounds generally applicable to
15 the Classes, making final injunctive relief appropriate for the Class, as a
16 whole.

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

22 GENERAL ALLEGATIONS

23 26. At all times material hereto, Defendant APS has been and is, a payroll company.

24 27. At all times material hereto, Defendant AMC has been and is, a property
25 management company.

26 28. Plaintiff and members of the Class were employed as Community Managers and
27 other non-exempt employees by Defendants in California at various times during the Class
28 Period.

1 29. The employment by Defendants of the Class Members, and each them, is
2 governed by Industrial Welfare Commission Wage Order 5, which covers those persons
3 employed in the public housekeeping industry.

4 **JOINT EMPLOYER ALLEGATIONS**

5 30. Plaintiff is informed and believes and thereon alleges that given the amount of
6 influence, control and direction APS and ACM exerted over Plaintiff's employment, APS and
7 ACM were Plaintiff's co-employers.

8 31. Plaintiff is informed and believes and thereon alleges that APS and AMC
9 exercised control over Plaintiff's wages, hours and/or working conditions (start time, end time,
10 etc.) such that they were joint employers.

11 **THE CONDUCT**

12 32. Plaintiff seeks relief from Defendants' uniform policies and practices of denying
13 Plaintiff and members of the Class wages and compensation owed under California law.

14 33. Starting on or about May 1, 2014 and continuing to the present, Defendants
15 employ Plaintiff on an hourly basis as a Community Manager in Lakewood, California.
16 Plaintiff answers phone calls, leads tours, handles evictions and leasing, collects rent, posts
17 notices and takes care of residents.

18 34. While employed by Defendants as a Community Manager Plaintiff works 8 or
19 more hours per day, 5 days per week. Plaintiff earns \$32.00 per hour.

20 **OFF-THE-CLOCK WORK**

21 35. Employers must compensate non-exempt employees for "off-the-clock" work
22 (before punching in or after punching out on a time clock) if the employers knew or should
23 have known that the employees were working those hours. *Morillion v. Royal Packing Co.*
24 (2000) 22 Cal. 4th 575, 585.

25 36. Defendants required Plaintiff and the Class to regularly perform compensable
26 tasks pre- and post-shift off-the-clock for which they did not receive any compensation.
27 Specifically, at all times relevant, Plaintiff and Class members consistently worked hours for
28 which they were not paid because Plaintiff and the Class members were at times required to

1 start working prior to clocking in for their shifts. Further, at times Plaintiff and Class members
2 would clock out for the end of their shifts, but were required to continue working.

3 Additionally, Plaintiff and Class members worked every weekend for approximately one hour
4 off the clock. During the weekend, Plaintiff approved time sheets of employees. Defendants
5 were aware of Plaintiff and Class members' off the clock work.

6 37. As a result, and because they improperly treated such pre- and post-shift and
7 time as non-compensable, Defendants failed to compensate Plaintiff and the Class for such
8 time.

9 **FAILURE TO PAY OVERTIME WAGES**

10 38. Under California law, non-exempt employees as defined by Wage Order No. 5,
11 are entitled to premium wages for overtime worked. Under California law, an hourly paid
12 employee is entitled to overtime pay when they exceed eight hours of work in a single day,
13 exceed 40 hours of work in a week or work seven days in a row.

14 39. During the period, it was the practice and policy of Defendants to not properly
15 pay employees' overtime because extra benefits and bonuses were not incorporated into the
16 overtime rate. Monies for unpaid overtime remain due and owing. Further, throughout
17 Plaintiff's and Class members' employment, Plaintiff and Class members worked overtime
18 hours and were not paid overtime pay due to off the clock work. Lastly, Plaintiff and Class
19 members were not paid for all of the overtime hours they worked.

20 **FAILURE TO PAY MINIMUM WAGES**

21 40. Under California law, non-exempt employees as defined by IWC Wage Order
22 No. 5 are entitled to minimum wages. Labor Code Section 1197 states the California
23 requirement that employees must be paid at least the minimum wage fixed by the Commission
24 or by any applicable state or local law, and any payment of less than the minimum wage is
25 unlawful. Similarly, Labor Code Section 1194 entitles "any employee receiving less than the
26 legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full
27 amount of this minimum wage." IWC Wage Order No. 5, obligates employers to pay each
28 employee minimum wages for all hours worked.

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

7 42. Plaintiff and the Class were not paid minimum wages due to Defendants' failure
8 to afford proper meal/rest breaks.

9 43. At all times during the relevant time period, Plaintiff and the Class routinely
10 worked schedules such that they were due pay at minimum wage rates. During this period, it
11 was the practice and policy of Defendants to not pay employees' minimum wages. Monies for
12 unpaid minimum wages remain due and owing.

13 **LATE/INTERRUPTED/NOT AFFORDED MEAL BREAKS**

14 44. Under California law, non-exempt employees as defined by IWC Wage Order
15 No. 5, are entitled to a 30-minute lunch period for each 5 hours worked, or major fraction
16 thereof. Non-exempt employees are entitled to one hour pay at their regular pay rate for each
17 day the requisite meal periods are not provided.

18 45. Plaintiff and Class members were routinely not afforded compliant meal breaks.
19 Plaintiff and Class members' meal breaks were at times interrupted, afforded late and/or not
20 afforded at all.

21 46. Defendants' 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 the IWC Wage Order No. 5.
24 As a result, Defendants owe wages at the legal minimum wage rate for unpaid minimum wages
25 to each of their California non-exempt employees whose daily hours were reduced and their
26 meals periods were not afforded.

27 **FAILURE TO AFFORD REST PERIODS**

1 47. At times Plaintiff and Class members were not afforded rest breaks because they
2 were too busy.

3 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

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

9 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

10 49. Defendants failed to reimburse Plaintiff and Class members for their necessary
11 business expenses such as personal vehicle and cell phone use.

12 **FAILURE TO PROVIDE A UNIFORM MAINTENANCE ALLOWANCE**

13 50. Defendants failed to provide Plaintiff and Class members with a uniform
14 maintenance allowance.

15 **FAILURE TO PAY REPORTING TIME PAY**

16 51. Defendants failed to pay Plaintiff and Class members reporting time pay.
17 Plaintiff and Class members were required to be on-call. Plaintiff was required to report for
18 emergencies.

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

20 52. Defendants failed to allow Plaintiff to timely inspect her records and payroll
21 files.

22 **EXCLUSION OF EXTRA BENEFITS/BONUSES FROM REGULAR RATE OF PAY**

23 53. California law uses the terms "compensation" and "pay" interchangeably and
24 requires that all applicable remuneration, including but not limited to, commissions, and/or
25 non-discretionary bonuses, and/or gift cards and/or cash payments based on sales numbers,
26 etc., be included when calculating an employee's regular rate of pay.

27 54. Defendants failed to properly pay and calculate wages due to excluding extra
28 benefits and bonuses from regular rate of pay calculations. Such benefit/bonus payments are

1 required under California law to be included in an employee's regular rate of pay for wage
2 calculation. Defendants failed to do so, thereby failing to pay employees their full wages as
3 required under the Labor Code.

4 55. Plaintiff and members of the Class received extra benefits and bonuses that must
5 be included when calculating their regular rates of pay for purposes of wages. However,
6 Defendants failed to correctly calculate Plaintiff and members of the Class's regular rate of pay
7 to include all applicable remuneration, including, but not limited to, extra benefits and bonuses.
8 Defendants provided extra benefits such as a discount on rent. The extra benefits were not
9 blended into Plaintiff and Class member's regular rate of pay.

10 56. Plaintiff lived on the property and only paid \$1,200.00 per month for rent.
11 However, the market rate was \$2,600.00. Plaintiff's paystubs dated February 16, 2024, March
12 1, 2024, April 12, 2024, April 26, 2024 and May 10, 2024, show that Plaintiff was paid
13 "Weighted OT" at exactly the base rate. Thus, the extra benefits were not incorporated into the
14 overtime pay rate. Additionally, Plaintiff's paystubs dated January 5, 2024, February 2, 2024
15 and April 12, 2024 show that Plaintiff was paid "CA Lunch Penalty" at exactly base rate.
16 Thus, extra benefits were not incorporated into the meal break premium pay rate. Lastly,
17 Plaintiff's paystubs dated March 1, 2024 and March 15, 2024, show that Plaintiff was paid
18 "Sick" at exactly the base rate. Thus, extra benefits were not incorporated into the sick pay
19 rate.

20 57. Plaintiff and Class members received bonuses of between \$100 to \$500 for
21 lease/rent renewals monthly and/or quarterly when Defendants were performing well. The
22 amount of the bonuses depended on the percentage that the rent was raised on renewal.

23 58. Additionally, Plaintiff and Class members received bonuses of between \$300 to
24 \$3,000 four times per year for Quarterly Bonuses. Moreover, employees were eligible to
25 receive bonuses when renting to new residents in the approximate amount of \$150.00 per new
26 lease.

27 59. Plaintiff's paystubs dated February 2, 2024 (meal break), April 12, 2024 (meal
28 break) and May 3, 2024 (bonus), show that Plaintiff was paid a "Lease Renewal Bonus" for

1 the same period as she was paid “CA Lunch Penalty” at exactly the base rate. Thus, the “Lease
2 Renewal Bonus” was not incorporated into the meal break premium pay rate.

3 60. Also, Plaintiff’s paystubs dated March 1, 2024 (sick), March 15, 2024 (sick) and
4 May 3, 2024 (bonus), show that Plaintiff was paid a “Lease Renewal Bonus” for the same
5 period as “Sick” paid at exactly the base rate. Thus, the “Lease Renewal Bonus” was not
6 incorporated into the sick pay rate.

7 61. Additionally, Plaintiff’s paystubs dated January 5, 2024 (meal penalty) February
8 9, 2024 (meal penalty), January 12, 2024 (leasing bonus), February 9, 2024 (leasing bonus)
9 show that Plaintiff was paid a “Leasing Bonus” for the same period as “CA Lunch Penalty”.
10 However, the Leasing Bonus was not incorporated into the meal break premiums.

11 62. Plaintiff’s paystubs dated January 19, 2024, February 2, 2024, February 16,
12 2024, March 1, 2024 and April 12, 2024 (collectively overtime), May 3, 2024 (bonus and
13 Overtime True Up) reflect that Plaintiff was paid “Lease Renewal Bonus” and an adjustment of
14 “Overtime True Up” for the same period as “Weighted OT”, which was paid at exactly 1.5
15 times the base rate. Thus, it is unclear whether the “Lease Renewal Bonus” was incorporated
16 into the overtime pay rate.

17 63. Plaintiff’s paystubs dated January 5, 2024, January 19, 2024, February 2, 2024
18 (collectively Overtime), January 12, 2024, February 9, 2024 (collectively leasing bonus),
19 January 12, 2024 and February 9, 2024 (collectively Overtime True Up) show that Plaintiff
20 was paid a “Leasing Bonus” and adjustment of “Overtime True Up” for the same period as
21 “Weighted OT” paid at exactly 1.5 times the base rate. Thus, it is unclear whether the
22 “Leasing Bonus” was incorporated into the overtime pay rate.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME**

25 **(Labor Code §§510, 511, 558, 1194, 1198 and IWC Wage Order No. 5 by Plaintiffs**
26 **Against Defendants and Does 1-100)**

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

1 65. During Plaintiff's entire employment with Defendants, pursuant to Cal. Lab.
2 Code §§510, 1194, and 1198, and IWC Wage Order No. 5, Defendants were required to
3 compensate Plaintiff and Class members with premium pay for all overtime work performed,
4 for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for
5 the first eight (8) hours on the seventh (7th) consecutive day of any work week.

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

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

14 68. California Labor Code section 558 provides in pertinent part:

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

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

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

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

26 (c) The civil penalties provided for in this section are in addition to any
27 other civil or criminal penalty provided by law.
28

69. Throughout Plaintiff's and Class members' employment, Plaintiff and Class members worked overtime hours and were not paid overtime pay. Further, Plaintiff and Class members engaged in off the clock work without compensation.

70. The regular rate of pay under California law includes all remuneration for employment paid, on behalf of the employer, to the employee. Employers must properly factor all economic items into the regular rate of pay for purposes of calculating the overtime wages due to their employees. *See Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th 542, 554, 568 (the regular rate of pay must include the “value of any nonhourly compensation,” including bonuses).

71. Specifically, Defendants had a company-wide policy of failing to properly pay and calculate wages due.

72. Defendants violated the rights of Plaintiff and the members of the Class by not correctly calculating their regular rate of pay. Plaintiff and Class members' extra benefits and bonuses were not incorporated into their regular rate of pay.

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES DUE

(IWC Wage Order No. 5; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs

Against Defendants and Does 1 through 100)

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

76. Labor Code §§ 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime

1 compensation applicable to the employee is entitled to recover in a civil action the unpaid
2 balance of the full amount of this minimum wage or overtime compensation, including interest
3 thereon, reasonable attorney's fees, and costs of suit.”

4 77. *Labor Code* § 1197 states the California requirement that employees must be
5 paid at least the minimum wage fixed by the Commission, and any payment of less than the
6 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
7 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
8 the full amount of this minimum wage.” IWC Wage Order No. 5-2001 also obligates
9 employers to pay each employee minimum wages for all hours worked. These minimum wage
10 standards apply to each hour employees worked for which they were not paid. Therefore, an
11 employer’s failure to pay for any particular hour of time worked by an employee is unlawful,
12 even if averaging an employee’s total pay over all hours worked, paid or not, results in an
13 average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314,
14 324 (2005).

15 78. Pursuant to IWC Wage Order No. 5, Defendants are required to pay the
16 members of the Class for all hours worked, meaning the time during which an employee is
17 subject to the control of an employer, including all the time the employee is suffered or
18 permitted to work, whether or not required to do so.

19 79. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work
20 and the standard conditions of labor fixed by the commission shall be the maximum hours of
21 work and the standard conditions of labor for employees. The employment of any employee for
22 longer hours than those fixed by the order or under conditions of labor prohibited by the order
23 is unlawful.”

24 80. Defendants failed to satisfy minimum wage requirements because they failed to
25 afford Plaintiff and Class members compliant meal/rest breaks in violation of *Labor Code* §§
26 226.7, 1197, 1198 and IWC Wage Order No. 5.

27 81. Defendants’ pattern, practice and uniform administration of corporate policy
28 regarding illegal employee compensation as described herein is unlawful and creates an

1 entitlement, pursuant to Labor Code § 218, to recovery by Plaintiff and the members of the
2 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
3 the appropriate rate.

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

13 83. Plaintiff and the other Class members suffered and continue to suffer losses
14 related to the use and enjoyment of compensation due and owing to them as a direct result of
15 Defendants' unlawful acts and Labor Code violations in an amount to be shown according to
16 proof at trial and within the jurisdictional limitations of this Court.

17 84. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
18 Class are entitled to recover the unpaid balances of the minimum wages Defendants owe them,
19 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
20 proof.

21 **THIRD CAUSE OF ACTION**

22 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

23 **(IWC Wage Order No. 5; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendants and**
24 **Does 1 through 100)**

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

27 86. California Labor Code §226.7(a) prohibits an employer from requiring an
28 employee to work during any meal period mandated by an applicable Industrial Wage Order.

1 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
2 employee to work during a meal or rest break or recovery period mandated pursuant to an
3 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
4 Commission..."

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

7 88. IWC Wage Order No. 5 provides, in relevant part: "No employer shall employ
8 any person for a work period of more than five (5) hours without a meal period of not less than
9 30-minutes, except that when a work period of not more than six (6) hours will complete the
10 day's work the meal period may be waived by mutual consent of the employer and the
11 employee."

12 89. IWC Wage Order No. 5, section (11)(c) further provides, in relevant part:
13 "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period
14 shall be considered an 'on duty' meal period and counted as time worked."

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

16 An employer may not employ an employee for a work period of more than five
17 hours per day without providing the employee with a meal period of not less
18 than 30-minutes, except that if the total work period per day of the employee is
19 no more than six hours, the meal period may be waived by mutual consent of
20 both the employer and employee. An employer may not employ an employee
21 for a work period of more than 10 hours per day without providing the
22 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
be waived by mutual consent of the employer and the employee only if the first
meal period was not waived.

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

1 92. As alleged herein, Defendants failed to relieve employees of duties for
2 compliant meal breaks throughout the Class Period. Further, Plaintiff and the members of the
3 Class's meal periods were routinely interrupted, afforded late and/or not afforded at all. At
4 times, Plaintiff was required to take her meal breaks late or not at all since potential tenants
5 would walk in without appointments and want tours. Plaintiff's meal breaks were also
6 interrupted at times.

7 93. Under California law, employers must also record their employees' meal
8 periods: "Every employer shall keep accurate information with respect to each employee,
9 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
10 operations cease ... need not be recorded." IWC Wage Order No. 5, § (7)(A)(3). Where the
11 employer has failed to keep records required by statute, the consequences of such failure should
12 fall on the employer, not the employee. In such a situation, imprecise evidence by the employee
13 can provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
14 (1988). Inasmuch as Defendants had an obligation under the record-keeping requirements of
15 the Wage Order to track meal periods unless "all work ceases", Defendants knew or should
16 have known its employees were regularly missing meal periods and/or their meal periods were
17 interrupted during the Class Period.

18 94. Defendants have a policy or practice of failing to ensure that Plaintiff and
19 members of the Class take proper meal periods required by California Labor Code §226.7 and
20 IWC Wage Order No. 5, §11.

21 95. By their actions in not affording Plaintiff and Class members compliant meal
22 periods, Defendants violated Cal. Lab. Code §226.7(b) and section 11 of Wage Order No. 5 in
23 the amount of one additional hour of pay at the employee's regular rate of compensation for
24 each work period during each day in which Defendants failed to provide employees with proper
25 statutory off-duty meal periods.

26 96. Defendants also have a policy or practice of failing to pay each of their
27 employees who was not provided with a proper meal period an additional one hour of
28 compensation at each employee's regular rate of pay.

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

98. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and members of the Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendants' violations of the California Labor Code and IWC Wage Order No. 5.

FOURTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE REST PERIODS
(Labor Code § 226.7 and IWC Wage Order No. 5 By Plaintiffs Against Defendants and Does 1 through 100)

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

100. Labor Code § 226.7 and IWC Wage Order No. 5 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

101. Labor Code § 226.7 and IWC Wage Order No. 5 provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

102. Defendants have intentionally and improperly denied rest periods to Plaintiff and the Class in violation of Labor Code § 226.7 and IWC Wage Order No. 5. At times, Plaintiff and Class members were not afforded rest breaks since they were too busy to take rest breaks.

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

1 104. At all times relevant hereto, Defendants failed to provide proper rest periods as
2 required by Labor Code § 226.7 and IWC Wage Order No. 5.

3 105. By virtue of Defendants' unlawful failure to provide proper rest periods to the
4 Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer,
5 damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed
6 the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

7 **FIFTH CAUSE OF ACTION**

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

9 **ITEMIZED STATEMENTS**

10 **(Labor Code §226 and IWC Wage Order No. 5 By Plaintiffs Against Defendants and Does**
11 **1 through 100)**

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

14 107. Pursuant to IWC Wage Order No. 5, Defendants were the employers of Plaintiff
15 and the Class.

16 108. Pursuant to California Labor Code sections 226 and 1174, and IWC Wage Order
17 No. 5, section 7, Defendants are required to maintain and provide accurate records relating to
18 employee compensation including all formulas and production records used to calculate wages
19 due.

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

25 110. Section 226(e) provides that an employee is entitled to recover \$50 for the initial
26 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
27 not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods
28

1 in which the employer knowingly and intentionally failed to provide accurate itemized
2 statements to the employee causing the employee to suffer injury.

3 111. Notwithstanding these provisions. Defendants have engaged in a uniform
4 practice of refusing to maintain and provide the accurate records and wage statements required
5 by California law.

6 112. On Plaintiff's paystubs the company name for APS is listed differently from that
7 listed on the California Secretary of State website. Plaintiff's paystubs state the company name
8 as Advanced Payroll Solutions, Incorpor. The Secretary of State website lists APS's name as
9 Advanced Payroll Solutions, Inc.

10 113. Throughout the Class Period, Defendants intentionally and knowingly provided
11 Plaintiff and other members of the Class with weekly itemized wage statements containing
12 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
13 that the payments owed to Plaintiff and the members of the Class for overtime compensation,
14 minimum wage compensation, missed, interrupted and/or late meal/rest periods, reporting time
15 pay, were not included in gross wages earned by Plaintiff and members of the Class.

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

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

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

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

28

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(Labor Code § 2802 – By Plaintiffs Against Defendants and Does 1 through 100)**

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

6 119. Labor Code §2802 requires employers to indemnify employees for all necessary
7 expenditures incurred by employees in the discharge of their duties.

8 120. At all times relevant herein, Defendants were aware that Plaintiff and Class
9 members were using their personal vehicles and cell phones for business, but failed to
10 indemnify Plaintiff and Class members for all their business-related expenses, including wear
11 and tear expenses, in accordance with Labor Code §2802. Plaintiff is informed and believes and
12 thereon alleges that at all relevant times, Defendants maintained a practice of not reimbursing
13 Plaintiff and Class Members for their work-related expenses that they incurred in using their
14 vehicles for work-related purposes.

15 121. Defendants required use of Plaintiff's and Class members' cell phones for work-
16 related activities such as giving virtual tours for 4-5 hours per day. Also, Plaintiff and Class
17 members used their cell phones to communicate with other employees via texts and calls.
18 Additionally, Plaintiff and Class members were also required to use their cell phones for work-
19 related activities while off the clock. Further, Plaintiff and Class members used their vehicles to
20 attend events and perform errands.

21 122. Although Defendants reimbursed Plaintiff and Class members \$10.00 which
22 Defendants called "Cell Phone non taxable", the reimbursement was improperly taxed. *See e.g.*
23 Plaintiff's paystubs dated March 1, 2024, March 15, 2024, April 12, 2024, April 26, 2024 and
24 May 10, 2024.

25 123. As a result of Defendants' conduct, Plaintiff and Class Members suffered
26 damages in an amount, subject to proof, to the extent they were not reimbursed for all of their
27 business-related expenses incurred in the discharge of their duties.

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

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE A UNIFORM MAINTENANCE ALLOWANCE**

6 **(Violation of Cal. Labor Code §2802 By Plaintiffs Against Defendants and Does 1 through**
7 **100)**

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

10 126. Under California law, if an employer requires employees to wear a uniform, the
11 employer must pay for and maintain the uniform for the employee. Labor Code
12 §2802.

13 127. An employer may never impose a financial burden on employees, with respect
14 to paying for and maintaining clothing, which would reduce the employees' wage rate below
15 the minimum wage.

16 128. Here, Defendants required Plaintiff and Class members to wear uniforms
17 consisting of company shirts with the company name thereon. However, Plaintiff and Class
18 members were required to maintain their uniforms themselves.

19 129. Defendants failed to reimburse Plaintiff and members of the Class for their
20 uniform maintenance.

21 130. As a proximate result of the aforementioned violations of Labor Code § 2802,
22 Plaintiff and members of the Class have been damaged in an amount according to proof at the
23 time of trial.

24 131. As a proximate result of the aforementioned violations of § 2802, Plaintiff and
25 members of the Class are entitled to recovery from Defendant for reimbursement of necessary
26 expenditures including interest and attorneys' fees.

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EIGHTH CAUSE OF ACTION

FAILURE TO PAY REPORTING TIME PAY

(Wage Order No. 5 By Plaintiffs against Defendant and Does 1 through 100)

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

133. Wage Order No. 5-2001 provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

134. Defendant had a policy and practice that required Plaintiff and Class members to be on-call or standby 24/7 and report for emergencies. Plaintiff and Class members were not paid on-call pay. On one occasion, there was a fire in the building and Plaintiff had to report and respond to the fire emergency.

135. This has resulted in Defendants failing to pay required reporting time pay to Plaintiff and the Class.

136. As a direct and proximate results of Defendants' actions as set forth herein, Plaintiff and the Class have been damaged in that Plaintiff and the Class have not been paid all required reporting time pay.

NINTH CAUSE OF ACTION

FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS

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

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

138. 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.

1
2 (b) The employer shall make the contents of those personnel records available
3 for inspection to the current or former employee, or his or her
4 representative, at reasonable intervals and at reasonable times, but not later
5 than 30 calendar days from the date the employer receives a written request,
6 unless the current or former employee, or his or her representative, and the
7 employer agree in writing to a date beyond 30 calendar days to inspect the
8 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...

9
10 (k) If an employer fails to permit a current or former employee, or his or her
11 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.

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

15 139. Additionally, pursuant to IWC Wage Order No. 5, at section 7 re: Records,
16 employers are required to keep accurate payroll records on each employee, and such records
17 must be made readily available for inspection by the employee upon reasonable request. The
18 employer must also maintain accurate production records.

19 140. On or about February 12, 2025, Plaintiff's counsel issued a written request to
Defendants for copies of her personnel records.

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

25 142. As a direct result and consequence of Defendants' failure and refusal to permit
26 Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an order or
27 decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a
28

1 result of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
2 penalty of \$750 based upon Defendants' violation of §1198.

3 **TENTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

5 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendants and Does**
6 **1 through 100)**

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

9 144. Pursuant to IWC Wage Order No. 5, Defendants were the employers of Plaintiff
10 and the Class. Defendants are also "person(s)" as that term is defined in Business & Professions
11 Code §17021.

12 145. The Business & Professions Code defines unfair competition as any unlawful,
13 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
14 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
15 Plaintiff and the Class overtime; (2) pay Plaintiff and Class members minimum wages; (3) pay
16 Plaintiff and the Class for meal periods not afforded, (4) pay Plaintiff and the Class for rest
17 periods not afforded, (5) furnish Plaintiff and the Class with accurate itemized wage statements,
18 as mandated by IWC Wage Order No. 5 and the applicable Labor Code, (6) reimburse business
19 expenses, (7) provide a uniform maintenance allowance, (8) pay reporting time pay, and (9)
20 provide personnel records, all in violation of Business & Professions Code §§ 17200 *et seq.*

21 146. By and through the unfair and unlawful business practices described herein,
22 Defendants have obtained valuable property, money and services from the Plaintiff and the
23 Class and has deprived them of valuable rights and benefits guaranteed by law all to the
24 detriment of Plaintiff and the Class.

25 147. All the acts described herein are violations of, among other things, the Labor
26 Code and Industrial Commission Wage Order No. 5, are unlawful and in violation of public
27 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
28

1 constitute unfair and unlawful business practices in violation of Business & Professions Code
2 §§ 17200 *et seq.*

3 148. Plaintiff and the Class are entitled to, and do, seek such relief as may be
4 necessary to restore to them the money and property which Defendants have acquired, or of
5 which Plaintiff and the Class have been deprived by means of the above-described unfair and
6 unlawful business practices.

7 149. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
8 above-described business practices are unfair and unlawful and that injunctive relief should be
9 issued restraining Defendants from engaging in any of the above described unfair and unlawful
10 business practices in the future.

11 150. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
12 redress the injuries which they have suffered as a consequence of the unfair and unlawful
13 business practices of Defendants. As a result of the unfair and unlawful business practices
14 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable
15 harm unless Defendants are restrained from continuing to engage in these unfair and unlawful
16 business practices. In addition, Defendants should be required to disgorge the unpaid moneys
17 to Plaintiff and the Class.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor
20 and against Defendants, and each of them, as follows:

21 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff
22 and Class members, according to proof;

23 2. For compensatory damages in the amount of unpaid minimum wages due to
24 Plaintiff and Class member, according to proof;

25 3. For payment of unpaid wages in accordance with California labor and
26 employment law;

27 4. For one (1) hour of pay at the regular rate of compensation for Plaintiff and
28 Class Members for each workday that a meal period was not afforded;

- 1 5. For one (1) hour of pay at the regular rate of compensation for Plaintiff and
2 Class Members for each workday that a rest period was not afforded;
- 3 6. For specific relief enforcing waiting time penalties of 30 days of per diem wages
4 pursuant to *Cal. Bus. & Prof. Code* §17200, according to proof;
- 5 7. For compensatory damages in the amount of Plaintiff and Class members' out of
6 pocket expenses for vehicle and cell phone use and/or reimbursement of monies incurred while
7 performing Defendants' business-related duties plus interests, costs and attorneys' fees
8 pursuant to *Cal. Code Civ. Proc.* §2802(c);
- 9 8. For compensatory damages in the amount of Plaintiff and Class members'
10 uniform maintenance expenses, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.*
11 §2802(c);
- 12 9. For reporting time pay;
- 13 10. For an award of consequential damages in Plaintiff and Class members' favor
14 and against Defendants, in an amount to be proven at trial;
- 15 11. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
- 16 12. For specific relief enforcing waiting time penalties of 30 days of per diem wages
17 pursuant to *Cal. Bus. & Prof. Code* §17200, according to proof;
- 18 13. For prejudgment interest accrued on all due and unpaid overtime and minimum
19 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
20 1194(a), according to proof;
- 21 14. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.3, 226.7, 1198.5,
22 according to proof;
- 23 15. For civil penalties pursuant to *Cal. Labor Code* §1198 and IWC Wage Order
24 No. 5;
- 25 16. For reasonable costs, including attorneys' fees, in an amount according to proof
26 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802 and/or *Cal. Code of*
27 *Civ. Proc.* §1021.5;
- 28

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

3 18. For injunctive relief requiring Defendants to comply with Labor Code
4 1198.5(b)(1);

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

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

9 21. For punitive and exemplary damages in a sum to be determined at trial; and

10 22. For such other and further relief as the Court deems just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff Analette P. Espino hereby respectfully requests a trial by jury for all claims and
13 issues raised in her Complaint that may be entitled to a jury trial.

14
15 LIPELES LAW GROUP, APC

16 Date: February 12, 2025

17
18 By:  _____

19 Kevin A. Lipeles
20 Attorneys for Plaintiff
21 Analette P. Espino
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