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Assigned for All Purposes
Judge Peter Wilson
cx-102

Attorney for Plaintiff, LAURA CIAVARELLA,
individually and as a proxy for the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

[UNLIMITED CIVIL—COMPLEX]

LAURA CIAVARELLA, an individual, and as a
proxy for the State of California,

Case No.: 30-2022-01285790-CU-OE-CXC

COMPLAINT FOR:

Plaintiff,

vs.

S90 TECHNOLOGY, LLC, a limited liability
company; SEAN CROWLEY, an individual;
MATTHEW RIGGIO, an individual; and
DOES 1 through 5, inclusive,

Defendants.

1. Private Attorneys General Act
2. Failure to Pay Overtime Wages in Violation of Labor Code § 510
3. Failure to Provide Meal and Rest Periods or Compensation in Lieu Thereof in Violation of Labor Code § 226.7
4. Failure to Provide Accurate Itemized Wage Statements
5. Labor Code § 203 Waiting Time Penalty

DEMAND FOR JURY TRIAL

Plaintiff, LAURA CIAVARELLA, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California. Plaintiff's claims arise out of and are related to all Defendant's contacts with California.

2. Venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred. Venue is proper in this Court because all or some of the violations of law and unlawful practices alleged herein occurred and are occurring in the County of Orange.

PARTIES

1 3. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

2 4. Defendant S90 TECHNOLOGY, LLC (“S90”), is a limited liability company that
3 conducted, and is conducting, business in the State of California. S90 TECHNOLOGY, LLC registered
4 the address 11 Orchard Rd., Ste 107, Lake Forest, CA 92630 with the California Secretary of State as its
5 principal place of business in California.

6 5. Defendant SEAN CROWLEY (“CROWLEY”) is an individual who, at all relevant times,
7 has resided in the State of California.

8 6. Defendant MATTHEW RIGGIO (“RIGGIO”) is an individual who, at all relevant times,
9 has resided in the State of California.

10 7. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
11 DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities.
12 Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when
13 ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named
14 Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff’s
15 injuries were proximately caused by the conduct of such defendant.

16 8. All of the Defendants, including DOES 1-5, are alleged to be co-conspirators with each
17 other, in that each agreed to participate, and participated in, the furtherance of the objective of civil
18 wrongs as alleged in this Complaint.

19 9. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
20 each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the
21 agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the
22 others.

23 10. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
24 each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-
25 Defendants and was acting within the course and scope of such agency, employment, and/or joint
26 venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain
27 Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant
28 and/or Defendants confirmed and ratified said conduct and omissions.

11. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the corporate Defendants, and each of them, had the right to control, and controlled, Plaintiff's wages, hours and working conditions, and has the right to control the manner in which Plaintiff performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all relevant times alleged herein.

12. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

GENERAL ALLEGATIONS

13. Defendant employed Plaintiff, as a Junior Account Executive, and misclassified as exempt, from at least around June 4, 2019, to June 2, 2022. Plaintiff should have been classified as an hourly non-exempt worker. As a company-wide practice, Defendant regularly required Plaintiff and its other non-exempt employees to work over eight hours per day and/or forty per week, without being paid premium overtime compensation.

14. As a company-wide practice, Defendant regularly required Plaintiff and its other non-exempt employees to work over eight hours per day and/or forty per week, without being paid premium overtime compensation.

15. As a company-wide practice, Defendant regularly required Plaintiff and its other non-exempt employees to work without being provided meal/rest breaks.

16. As a company-wide practice, Defendant regularly provided wage statements to Plaintiff and its other non-exempt employees that did not accurately show all hours worked and gross wages earned.

17. As a company-wide practice, Defendant knew that Plaintiff and its other non-exempt employees worked from home and used their home internet, yet failed to pay them for any associated home internet expenses. As a company-wide practice, Defendant knew that Plaintiff and its other non-

exempt employees used their personal cell phones for work, yet failed to pay them for any associated cell phone expenses.

18. As a company-wide practice, Defendant did not provide Plaintiff and its other non-exempt employees with their final pay upon termination of employment.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT (AGAINST ALL DEFENDANTS AND DOES 1-5)

21. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

22. Pursuant to the California Labor Code Private Attorneys General Act (“PAGA”), “Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Lab. Code § 2699(a). “For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions.” Lab. Code § 2699(f).

23. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”). An employee who brings such an action is acting as an agent of state enforcement agencies. *Kim v. Reins Intl. Cal., Inc.*, 9 Cal.5th 73, 81 (2020).

24. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an “aggrieved employee”

means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

25. This PAGA action is intended to “remediate present violations and deter future ones.” *Williams*, 3 Cal. 5th at 546. The relevant period for the following PAGA allegations in this cause of action is from August 7, 2021, to present and ongoing.

Labor Code Violations §§ 2802, 226.7, 512, 226, 510, 204, 226, 1198, 1174(d), 558, 210, 226.3, 1174.5, 201, 202, 203
§ 2802

26. “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Lab. Code § 2802(a). In *Cochran v. Schwan*’s, the court held:

If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. In other words, it is no concern to the employer that the employee may pass on the expense to a family member or friend, or to a carrier that has to then write off a loss. It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. Also, the details of the employee’s cell phone plan do not factor into the liability analysis. Not only does our interpretation prevent employers from passing on operating expenses, it also prevents them from digging into the private lives of their employees to unearth how they handle their finances vis-à-vis family, friends and creditors. To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.

27. *Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144–45 (2014), review denied (Nov. 25, 2014).

28. Here, like in *Cochran*, if an employee is required to do work-related activities on a personal cell phone, then he is incurring an expense for purposes of section 2802. Here, as in *Cochran*,

to show liability under section 2802, an employee need only show that he was required or directed to use a personal cell phone to do work-related activities and was not reimbursed.

29. Defendants did not reimburse or pay Plaintiff or the other aggrieved employees for any portion of their cell phone expenses, in violation of Labor Code § 2802(a).

30. Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor Code § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

§ 226.7

31. “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.” Lab. Code § 226.7(b). “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Lab. Code § 226.7(c).

32. Relevant Wage Orders of the Industrial Welfare Commission, applicable to Defendants, such as Wage Order No. 4-2001 section 12 for example, provide that “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

33. As a company-wide practice, Defendant regularly required Plaintiff and its other non-exempt employees to work without being provided the opportunity to have a rest break. As a company-wide practice, Defendant did not allow them the opportunity to be relieved of all duties to take a rest break. As a company-wide practice, Defendant did not compensate them in lieu of providing rest breaks. As such, Defendant violated California Labor Code section 226.7(b) and 226(c).

1 34. California Labor Code section 226.7 does not provide for its own self-contained “civil
2 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
3 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
4 aggrieved employee per pay period for each subsequent violation.

5 **§ 512**

6 35. “An employer may not employ an employee for a work period of more than five hours per
7 day without providing the employee with a meal period of not less than 30 minutes, except that if the total
8 work period per day of the employee is no more than six hours, the meal period may be waived by mutual
9 consent of both the employer and employee. An employer may not employ an employee for a work period
10 of more than 10 hours per day without providing the employee with a second meal period of not less than
11 30 minutes.” Lab. Code § 512(a).

12 36. As set forth above, Defendants did not permit Plaintiff and other aggrieved employees
13 uninterrupted duty-free meal periods with the opportunity to be relieved of all duties for meal breaks on
14 the days they worked more than five hours. As set forth above, Defendants did not permit Plaintiff and
15 other aggrieved employees uninterrupted second duty-free meal periods with the opportunity to be
16 relieved of all duties for meal breaks on the days they worked more than 10 hours.

17 37. California Labor Code section 512 does not provide for its own self-contained “civil
18 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
19 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
20 aggrieved employee per pay period for each subsequent violation.

21 **§ 510**

22 38. “Any work in excess of eight hours in one workday and any work in excess of 40 hours in
23 any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall
24 be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”
25 Lab. Code § 510(a).

26 39. Plaintiff’s co-workers regularly worked more than eight hours per workday. They were not
27 compensated with premium overtime pay for those overtime hours worked more than eight per day. As
28 such, Defendants violated Labor Code § 510.

1 40. California Labor Code section 510 does not provide for its own self-contained “civil
2 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
3 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
4 aggrieved employee per pay period for each subsequent violation.

5 **§ 204**

6 41. Labor Code Section 204(a) provides that “All wages, other than those mentioned in Section
7 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice
8 during each calendar month, on days designated in advance by the employer as the regular paydays.”

9 42. Plaintiff’s co-workers regularly worked more than eight hours per workday. They were not
10 compensated with the earned premium overtime pay for those overtime hours worked more than eight per
11 day. As such, Defendants violated Labor Code Section 204(a) by failing to pay for all the overtime
12 premium wages on regular paydays. Labor Code Section 204 does not provide for its own self-contained
13 civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of
14 \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved
15 employee per pay period for each subsequent violation.

16 **§ 226**

17 43. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his
18 or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages,
19 or separately if wages are paid by personal check or cash, an accurate itemized statement in writing
20 showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision
21 (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
22 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
24 which the employee is paid, (7) the name of the employee and only the last four digits of his or her social
25 security number or an employee identification number other than a social security number, (8) the name
26 and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during
27 the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Lab.
28 Code § 226(a).

44. Due to Defendant's failure to account for the time worked and rest break premiums, Plaintiff and other aggrieved employees' itemized wage records did not show: (1) the accurate total hours worked; (2) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; (3) the accurate gross wages earned; and (4) the accurate net wages earned. As such, Defendants violated Labor Code Section 226(a)(1)(2)(5)(9). Defendant also failed to keep itemized wage statement records of the foregoing.

45. Defendant also violated section 226 by not providing copies of Plaintiff's itemized wage statements within 21 days (to date, Defendant has ignored this request).

46. Labor Code Section 226 does not provide for its own self-contained "civil" penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

§ 1198

47. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. California Labor Code section 1173 defines commission as the IWC. Further, the "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Lab. Code § 1198.

48. Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, Section 3(C) of IWC Order No. 15-2001, and Section 4 of IWC Order No. 17-2001, provide that "employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek." Section 7(A) requires every employer to keep accurate time records showing when the employee begins and ends each work period and the total hours worked in the payroll period. As set forth above, Plaintiff and his co-workers regularly worked more than eight hours per workday. They were not compensated with the earned premium overtime pay for those overtime hours worked more than eight per day. Relevant Wage Orders of the IWC, applicable to Defendants, such as Wage Order No. 4- 2001 section

12, provide that “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

49. As set forth above, on numerous occasions, Defendants did not permit Plaintiff and other aggrieved employees to have uninterrupted rest breaks with the opportunity to be relieved of all duties for rest breaks.

50. Relevant Wage Orders of the IWC, applicable to Defendants, such as Wage Order No. 4-2001 section 11, provide that “(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an —on duty meal period and counted as time worked. An —on duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

51. As set forth above, on numerous occasions, Defendants did not permit Plaintiff and other aggrieved employees to have uninterrupted duty-free meal breaks with the opportunity to be relieved of all duties for meal breaks.

52. Based on the foregoing, Defendants violated California Labor Code section 1198 by violating the above-referenced sections of relevant Wage Orders of the IWC.

53. California Labor Code section 1198 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

54. Based on the foregoing, Defendants violated California Labor Code section 1198 by violating the above-referenced sections of relevant Wage Orders of the IWC.

55. California Labor Code section 1198 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

§ 1174(d)

56. Labor Code Section 1174(d) provides that every person employing labor in this state shall keep payroll records showing the hours worked daily by and the wages paid to employees employed for not less than three years. "Person" means any person, association, organization, partnership, business trust, limited liability company, or corporation. Lab. Code § 18.

57. Defendants failed to maintain records showing the actual and accurate hours worked by Plaintiff's co-workers, aggrieved employees, in violation of Labor Code Section 1174(d). Labor Code Section 1174 does not provide for its own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

§ 558

58. Pursuant to Labor Code section 558(a) any employer or other person acting on behalf of an employer who violates, or causes to be violated, [Labor Code sections 510 and 512] or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty in a PAGA action as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . .

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .

59. As discussed above, Defendants violated Labor Code sections 510, 512, and the above-referenced provisions of IWC Wage Orders as applicable. As such, Defendants are subject to pay the pre-determined amount of civil penalties for the initial and subsequent violations.

§ 210

60. Pursuant to Labor Code § 210(a), in addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Section 204 shall be subject to a civil penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

61. As discussed above, Defendants violated Labor Code § 204. As such, Defendants are subject to pay a pre-determined amount of civil penalties for the initial and subsequent violations “plus 25 percent of the amount unlawfully withheld,” as indivisible civil penalties pursuant to Section 210(a).

§ 226.3

62. “Any employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.” Lab. Code § 226.3. This section “sets out a civil penalty for all violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675 (2018). Because Defendant violated California Labor Code section 226(a), Defendant is subject to civil penalties under section 226.3 applicable to Plaintiff and other current and former aggrieved employees.

§ 1174.5

63. Pursuant to Labor Code Section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174 shall be subject to a civil penalty of five hundred dollars (\$500). As discussed above, Defendant violated Labor Code Labor Code Section 1174(d). Defendant willfully failed to maintain records showing the accurate hours worked daily by the aggrieved employees. Thus, Defendants are subject to civil penalties.

§ 201-203

64. Due to the overtime and rest break violations, Plaintiff did not timely receive all of her final pay within the required timeframe from her discharge date. Thus, Defendant violated Labor Code sections 201-203. Defendant also did this to other aggrieved employees. Labor Code Sections 201-203 do

not provide for their own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

Exhaustion of Administrative Remedies

65. On July 29, 2022, Plaintiff provided notice to the California Labor and Workforce Development Agency (“LWDA”), pursuant to Labor Code § 2699.3, detailing the specific provisions of the foregoing Labor Code sections that have been violated, including the facts and theories to support the violations. The LWDA file number is LWDA-CM-898505-22. The notice was sent by certified mail on or about July 29, 2022, to Sean Crowley, Member, and Matthew Riggio, Member, [7021 1970 0000 0044 0713]. Plaintiff submitted a \$75.00 fee to the LWDA.

66. The LWDA has not, within 65 days of Plaintiff’s Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff’s administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff’s administrative remedies, pursuant to Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE § 510

(AGAINST ALL DEFENDANTS AND DOES 1-5)

67. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

68. Any employee receiving less than the California legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including interest and reasonable attorney’s fees. Lab. Code § 1194(a).

69. “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek

shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” Lab. Code § 510(a).

70. Due to Defendant calling Plaintiff on her off time, Plaintiff worked more than eight hours per workday and more than 40 hours per workweek and was not compensated for those overtime hours worked more than eight per day and 40 per week. As such, Defendant violated Labor Code Sections 510 and 1198 because it violated the above-referenced as Industrial Welfare Commission Orders, as applicable.

71. Any “person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections . . . 1194 . . . may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

72. If the defendant does not keep accurate records of the hours worked by the plaintiff, then the plaintiff may prove the number of overtime hours worked by making a reasonable estimate of those hours. CACI 2703. As a direct and proximate result of the violations of law by Defendant, Plaintiff has worked a substantial number of hours without receiving overtime compensation, at the applicable rate, from Defendants, in accordance with California law.

73. Plaintiff has been damaged in an amount equal to the compensation to which she was entitled but was unlawfully deprived by Defendants, subject to proof at trial.

74. Pursuant to California Labor Code section 1194(a) Plaintiff is entitled to interest at the legal rate on the overtime wages owed to Plaintiff by Defendants.

75. Pursuant to California Labor Code section 1194(a), Plaintiff is entitled to an award of attorneys’ fees, and costs.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL AND REST PERIODS

OR COMPENSATION IN LIEU THEREOF IN VIOLATION OF LABOR CODE § 226.7

(AGAINST ALL DEFENDANTS AND DOES 1-5)

76. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

1 77. California Labor Code section 226.7 provides that “An employer shall not require an
2 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
3 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety
4 and Health Standards Board, or the Division of Occupational Safety and Health.” Lab. Code § 226.7(b).

5 78. “If an employer fails to provide an employee a meal or rest or recovery period in
6 accordance with a state law, including, but not limited to, an applicable statute or applicable regulation,
7 standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards
8 Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one
9 additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or
10 rest or recovery period is not provided.” Lab. Code § 226.7(c).

11 79. Relevant Wage Orders of the Industrial Welfare Commission (“IWC”), applicable to
12 Defendant, such as Wage Order No. 4-2001 section 12, provide that “Every employer shall authorize
13 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
14 work period. The authorized rest period time shall be based on the total hours worked daily at the rate of
15 ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

16 80. Relevant Wage Orders of the IWC, applicable to Defendant, such as Wage Order No. 4-
17 2001 section 11, provide that “No employer shall employ any person for a work period of more than five
18 (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more
19 than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the
20 employer and the employee.”

21 81. California Labor Code section 512(a) provides that an employer may not employ an
22 employee for a work period of more than five hours per day without providing the employee with a meal
23 period of not less than 30 minutes, except that if the total work period per day of the employee is no
24 more than six hours, the meal period may be waived by mutual consent of both the employer and
25 employee.

26 82. Defendants regularly required Plaintiff to work without being provided the opportunity to
27 have an uninterrupted rest break. Defendants regularly did not allow her the opportunity to be relieved
28

of Plaintiff's duties to take a rest break. Defendant did not compensate Plaintiff in lieu of providing her with rest breaks.

83. Defendants regularly required Plaintiff to work more than 5 hours without being provided with a duty-free meal period with relief of all duties. Defendant did not compensate Plaintiff in lieu of providing her with meal breaks.

84. Pursuant to Labor Code section 512, Plaintiff is entitled to compensation of one additional hour of pay at her regular rate of compensation for each workday that the meal period was not provided. Pursuant to Labor Code section 226.7, Plaintiff is entitled to compensation of one additional hour of pay at Plaintiff's regular rate of compensation for each workday that the meal period was not provided, and one additional hour of pay for each workday that the rest period was not provided pursuant to *United Parcel Serv., Inc. v. Superior Court*, 196 Cal. App. 4th 57, 70 (2011).

85. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Lab. Code § 558.1(a).

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (AGAINST ALL DEFENDANTS AND DOES 1-5)

86. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

87. California Labor Code section 226(a) provides that every employer shall, at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing accurate: (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name

of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. . .” A copy of the itemized statement shall be kept on file by the employer for at least three years. Lab. Code § 226(a). A “copy” includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by Labor Code Section 226(a). Lab. Code § 226(a).

88. Defendant knowingly and intentionally failed to provide an itemized statement in writing showing accurate information required by Labor Code section 226(a).

89. “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

90. An employee is deemed to suffer injury for purposes of section 226(e) if the employer fails to provide an itemized wage statement showing the accurate gross wages earned and total hours worked, and the employee cannot promptly and easily determine from the wage statement alone the amount of the gross wages or total hours worked. Lab. Code § 226(e)(2)(B)(i).

91. As a result of the knowing and intentional failure to provide wage statements, Plaintiff has suffered an injury pursuant to section 226(e). As a result, Defendants are liable to Plaintiff for the amounts provided by California Labor Code § 226(e).

92. Pursuant to California Labor Code § 226(e), Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs.

93. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the

Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

FIFTH CAUSE OF ACTION

LABOR CODE § 203 PENALTY

(AGAINST ALL DEFENDANTS AND DOES 1-5)

94. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

95. Defendant failed to timely pay Plaintiff all of her owed wages on her last date of work, in violation of Cal. Labor Code § 201, and failed to pay her the additional continuing wages as a penalty from the original due date, in violation of California Labor Code § 203.

96. Plaintiff has been harmed by Defendant’s conduct and is entitled to a statutory waiting time penalty, in an amount according to proof at trial, interest thereon, and costs.

PRAYER

WHEREFORE, Plaintiff prays:

1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
2. For compensatory special damages, in an amount according to proof at the time of trial.
3. For statutory penalties pursuant to the California Labor Code.
4. For reasonable attorneys’ fees pursuant to the California Labor Code and Code of Civil Procedure.
5. For costs of suit including expert witness fees.
6. For prejudgment interest.
7. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff, LAURA CIAVARELLA hereby demands a trial by jury.

Dated: October 11, 2022

GUTIERREZ DERHAM LAW FIRM LLP

By: Amber B. Derham
Amber B. Derham
Attorney for Plaintiff, LAURA CIAVARELLA,
individually and as a proxy for the State of
California