

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Lori Dentinger, on behalf of herself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

LORI DENTINGER, on behalf of herself and
all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

PROFESSIONAL EVALUATIONS &
DEVELOPMENTAL SERVICES, LLC, a
California limited liability company, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: STK-CV-UOE-2022-0011016

*Assigned to the Hon. Erin Guy Castillo, Dept.
10B*

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

**1. FAILURE TO PAY ALL WAGES DUE
(LABOR CODE §§ 226.7, 246, 510, 512, 1194,
AND 1194.2; IWC WAGE ORDER 4-2001)**

**2. FAILURE TO PROVIDE COMPLIANT
MEAL PERIODS OR CORRECT
COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7, 510, 512, 1174,
1174.5, 1194, AND 1198; IWC WAGE
ORDER 4-2001)**

**3. FAILURE TO PROVIDE COMPLIANT
REST PERIODS OR CORRECT
COMPENSATION IN LIEU THEREOF
(LABOR CODE § 226.7; IWC WAGE
ORDER 4-2001)**

**4. FAILURE TO REIMBURSE ALL
BUSINESS-RELATED EXPENSES (LABOR
CODE § 2802)**

**5. FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))**

1 **6. FAILURE TO TIMELY PAY WAGES**
2 **DUE AT SEPARATION OF EMPLOYMENT**
3 **(LABOR CODE §§ 201-203)**

4 **7. VIOLATION OF BUSINESS AND**
5 **PROFESSIONS CODE § 17200 ET SEQ.**

6 **8. CIVIL PENALTIES PURSUANT TO**
7 **LABOR CODE § 2699(f) FOR VIOLATIONS**
8 **OF LABOR CODE §§ 201, 202, 204, 226(a),**
9 **226.7, 246, 510, 512, 1174, 1174.5, 1194, 1198,**
10 **AND 2802 AND PURSUANT TO LABOR**
11 **CODE § 2699(a) FOR VIOLATIONS OF**
12 **LABOR CODE §§ 210, 226.3, AND 558**

13 **DEMAND FOR JURY TRIAL**

14 *Complaint Filed: November 30, 2022*

1 Plaintiff LORI DENTINGER (“Plaintiff”), individually and on behalf of all similarly situated
2 individuals (the “Class”), on behalf of the general public, and as an “aggrieved employee” under the
3 Labor Code Private Attorneys General Act of 2004, codified as Labor Code §§ 2698 *et seq.*,
4 complains of PROFESSIONAL EVALUATIONS & DEVELOPMENTAL SERVICES, LLC, a
5 California limited liability company, and/or any subsidiaries or affiliated companies (hereinafter
6 referred to as “Defendants”), as follows:

7 **I.**

8 **INTRODUCTION AND FACTUAL BACKGROUND**

9 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382
10 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other employees who work or formerly
11 worked for Defendants within the State of California.

12 2. For at least four (4) years prior to the filing of this action and continuing to the present
13 (the “liability period”), Defendants have had consistent policies of failing to pay Plaintiff and Class I
14 Members (as defined below) all wages due, provide legally compliant meal and rest periods or correct
15 compensation in lieu thereof to Plaintiff and Class I Members; reimburse all business-related
16 expenses to Class I and II Members (as defined below); timely pay wages to Plaintiff and all Class
17 Members on designated pay dates; provide accurately itemized wage statements to Plaintiff and all
18 Class Members; and to timely pay wages upon separation of employment to Plaintiff and Class I
19 Members.

20 3. Plaintiff, on behalf of herself and members of each Class, brings this action pursuant
21 to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5,
22 1194, 1194.2, 1198, and 2802 seeking compensation for all unpaid wages, liquidated damages, unpaid
23 meal and rest period wages, statutory penalties, injunctive and other equitable relief, and reasonable
24 attorneys’ fees and costs.

25 4. Plaintiff, on behalf of herself and members of each Class, and pursuant to Business &
26 Professions Code §§ 17200-17208, seeks injunctive relief, restitution, and disgorgement of all
27 benefits Defendants enjoyed from their failure to pay all wages due to all Class I Members and failure
28 to reimburse all business-related expenses due to Class I and II Members.

5. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code § 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and all Class Members in San Joaquin County, California.

II.

PARTIES

A. Plaintiff

7. Plaintiff LORI DENTINGER was employed as a non-exempt employee by Defendants from January 2018 through April 2022 in San Joaquin County, California.

8. During her work with Defendants, Plaintiff was:

- a. Willfully denied the payment of all wages due;
- b. Willfully denied compliant meal periods or correct compensation in lieu thereof;
- c. Willfully denied compliant rest periods or correct compensation in lieu thereof;
- d. Willfully denied reimbursement of all business-related expenses;
- e. Willfully denied the timely payment of wages during employment;
- f. Willfully denied accurately itemized wage statements; and
- g. Willfully denied the timely payment of wages upon separation of her employment.

B. Defendants

9. Defendant PROFESSIONAL EVALUATIONS & DEVELOPMENTAL SERVICES, LLC is a California limited liability company that employed Plaintiff, Class Members, and aggrieved employees in San Joaquin County, California.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will

1 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
2 designated hereinafter as DOES when such identities become known.

3 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
4 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
5 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
6 attributable to the other Defendants.

7 12. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
8 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
9 provisions of the California Labor Code as alleged herein.

10 III.

11 CLASS ACTION ALLEGATIONS

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

15 CLASS I

16 All non-exempt California employees employed by Defendants at any
17 time since the date four years preceding the filing of this Action, plus
18 any additional time tolled by the California State Judicial Council
19 pursuant to Emergency Rule 9 in response to the COVID-19 pandemic
20 and continuing through the present.

21 CLASS II

22 All California employees employed by Defendants at any time since
23 the date four years preceding the filing of this Action, plus any
24 additional time tolled by the California State Judicial Council pursuant
25 to Emergency Rule 9 in response to the COVID-19 pandemic and
26 continuing through the present.

1 14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
2 modify these class descriptions with greater specificity or further division into subclasses or limitation
3 to particular issues.

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

7 **A. Numerosity**

8 16. The potential members of the Classes as defined are so numerous that joinder of all
9 Class Members is impracticable. While the precise number of members of each Class has not been
10 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 currently employ, and during the relevant time periods employed, over 50 persons in the State of
12 California who fall within the Class definitions.

13 17. Accounting for employee turnover during the relevant period necessarily increases this
14 number. Plaintiff alleges Defendants' employment records would provide information as to the
15 number and location of members of each Class. Joinder of members of the Classes is not practicable.

16 **B. Commonality**

17 18. There are questions of law and fact common to the Classes that predominate over any
18 questions affecting only individual Class Members. These common questions of law and fact include,
19 without limitation:

- 20 a. Whether Defendants failed to pay all wages due to Plaintiff and Class I
21 Members, in violation of Labor Code §§ 226.7, 246, 510, 512, 1194, and
22 1194.2 and IWC Wage Order 4-2001;
- 23 b. Whether Defendants failed to properly provide compliant meal periods or
24 correct compensation in lieu thereof to Plaintiff and Class I Members, in
25 violation of Labor Code §§ 226.7, 510, 512, 1174, 1174.5, 1194, and 1198 and
26 IWC Wage Order 4-2001;
- 27
28

- 1 c. Whether Defendants failed to properly provide compliant rest periods or
2 compensation in lieu thereof to Plaintiff and Class I Members, in violation of
3 Labor Code § 226.7 and IWC Wage Order 4-2001;
- 4 d. Whether Defendants failed to reimburse Plaintiff and all Class Members for
5 business-related expenses, in violation of Labor Code § 2802;
- 6 e. Whether Defendants failed to provide Plaintiff and all Class Members with
7 accurately itemized wage statements, in accordance with Labor Code § 226(a),
8 (e);
- 9 f. Whether Defendants failed to timely pay Plaintiff and Class I Members all
10 wages due and owing at the separation of their employment, in violation of
11 Labor Code §§ 201-203; and
- 12 g. Whether Plaintiff and all Class Members are entitled to equitable relief
13 pursuant to Business & Professions Code § 17200 *et seq.*

14 **C. Typicality**

15 19. The claims of the named Plaintiff are typical of the claims of members of the Classes.
16 Plaintiff and members of each Class sustained injuries and damages arising out of and caused by
17 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
18 of law, and statutes as alleged herein.

19 **D. Adequacy of Representation**

20 20. Plaintiff will fairly and adequately represent and protect the interests of members of
21 the Classes. Counsel who represents Plaintiff are competent and experienced in litigating large
22 employment class actions.

23 **E. Superiority of Class Action**

24 21. A class action is superior to other available means for the fair and efficient adjudication
25 of this controversy. Individual joinder of all proposed members of each Class is not practicable, and
26 questions of law and fact common to the proposed Classes predominate over any questions affecting
27 only individual members of the proposed Classes. Each member of the proposed Classes has been
28 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

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

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS

FAILURE TO PAY ALL WAGES DUE

(LABOR CODE §§ 226.7, 246, 510, 512, 1194, AND 1194.2; IWC WAGE ORDER 4-2001)

23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set forth herein.

24. During the liability period, Defendants failed to pay Plaintiff and Class I Members all wages due, in violation of Labor Code §§ 510, 1194, and 1194.2. Defendants only paid Plaintiff and Class I Members for time spent with Defendants' clients and for specific report writing. It required Plaintiff and Class I Members to work off-the-clock: they were not paid for time spent preparing notes and charting, responding to work-related phone calls and text messages, and washing and maintaining equipment to be used with Defendants' clients.

25. In addition, Plaintiff and Class I Members were also not paid for all hours worked: Defendants only compensated them for 15 minutes of pay when its clients cancelled or were a “no show,” notwithstanding the fact that Plaintiff and Class I Members were subject to Defendants’ control and/or scheduled to work during this time. An employer is obligated to pay the wages of an hourly employee for all time that the employee is under the control of the employer, and this includes all the time the employee is suffered or permitted to work, whether or not required to do so. When Plaintiff and Class I Members were waiting to see the next client after a cancellation or no-show, they were under the control of Defendants and required to be compensated for all hours worked. Defendants, however, failed to do so.

26. Further, Defendants failed to pay Plaintiff and Class I Members all minimum wages and overtime wages earned, in violation of Labor Code §§ 510, 1194, and 1194.2 and IWC Wage Order No. 4-2001. Plaintiff and Class I Members were paid a flat rate of \$2.25 for drive time between clients and a flat rate of \$10 for supervision, no matter how many hours were actually spent, and both of which yielded pay below the applicable minimum wage.

27. Furthermore, Defendants failed to properly compute bonuses and shift differential wages earned by Plaintiff and Class I Members into their regular rate of pay for purposes of paying them meal and rest period premiums, overtime wages, and sick pay wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558 and 1194. Defendants paid Plaintiff and Class I Members bonuses and shift-differential wages; however, Defendants failed to properly blend these forms of pay, and instead paid Plaintiff and Class I Members meal and rest period premiums, overtime wages, and sick pay wages based only on the base hourly rate of pay, thus depriving Plaintiff and Class I Members of all meal and rest period premiums, overtime wages, and sick pay wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, and 1194.

28. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due, Plaintiff and members of Class I have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs, pursuant to Labor Code § 1194, and liquidated damages pursuant to Labor Code § 1194.2.

Wherefore, Plaintiff and the Classes she seeks to represent request relief as described below.

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

OR CORRECT COMPENSATION IN LIEU THEREOF

**(LABOR CODE §§ 226.7, 510, 512, 1174, 1174.5, 1194, AND 1198 AND IWC WAGE ORDER
4-2001)**

29. Plaintiff incorporates paragraphs 1 through 28 of this Complaint as though fully set forth herein.

30. Plaintiff and Class I Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more compliant meal periods as set forth in Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001.

31. Defendants failed to pay correct premium wages to Plaintiff and Class I Members who were denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001. Plaintiff and Class I Members were routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. When they were able to take a meal period, they were oftentimes late or on-duty. Defendants also failed to maintain records indicating the start and end time of each meal period, if one ever occurred. This violates Labor Code §§ 226.7, 510, 512, 1174, 1174.5, 1194, and 1198 and IWC Wage Order 4-2001.

32. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all unpaid meal period compensation which she and Class I Members are owed, according to proof.

Wherefore, Plaintiff and the Classes she seeks to represent request relief as described below.

VI.

THIRD CAUSE OF ACTION

PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE COMPLIANT REST PERIODS

OR COMPENSATION IN LIEU THEREOF

(LABOR CODE § 226.7 AND IWC WAGE ORDER 4-2001)

33. Plaintiff incorporates paragraphs 1 through 32 of this Complaint as though fully set forth herein.

34. Plaintiff and Class I Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 IWC Wage Order 4-2001.

35. Defendants failed to pay correct premium wages to Plaintiff and Class I Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Plaintiff and Class I Members were routinely unable to take an off-duty, 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. Plaintiff and Class I Members were frequently too busy to take a rest period. When they were able to take a rest period, they were oftentimes late or cut short. This violates Labor Code § 226.7 and IWC Wage Order No. 4-2001.

36. Pursuant to Labor Code §§ 226.7, 510, and 1194 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all rest period compensation which she and Class I Members are owed, according to proof.

Wherefore, Plaintiff and the Classes she seeks to represent request relief as described below.

VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND CLASSES I AND II AGAINST ALL DEFENDANTS

FAILURE TO REIMBURSE ALL BUSINESS-RELATED EXPENSES

(LABOR CODE § 2802)

37. Plaintiff incorporates paragraphs 1 through 36 of this Complaint as though fully set forth herein.

38. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiff and all Class Members for all out-of-pocket expenses incurred by them in the performance of their job duties.

39. Plaintiff and all Class Members were required to incur work-related expenses, including, but not limited to, the use of their personal computers and home internet required to perform their job, but were not fully reimbursed by Defendants for these expenses.

40. As a proximate result of the aforementioned violations, Plaintiff and all Class Members have been damaged in an amount according to proof at the time of trial.

41. Pursuant to Labor Code § 2802, Plaintiff and all Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiff and the Classes she seeks to represent request relief as described below.

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VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND CLASSES I AND II AGAINST ALL DEFENDANTS

FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE

WAGE STATEMENT PROVISIONS

(LABOR CODE § 226(a), (e))

42. Plaintiff incorporates paragraphs 1 through 41 of this Complaint as though fully set forth herein.

43. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate 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 (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. Defendants have failed to comply with Labor Code § 226(a).

44. Defendants failed to issue Plaintiff and Class I Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class I

1 Members were not paid all wages due, as stated above. As such, the wage statements provided by
2 Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1),
3 total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor
4 Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9).

6 45. Moreover, and independent of the above allegations, the wage statements issued to
7 Plaintiff and all Class Members failed fail to set forth the address of the legal entity that is the
8 employer, in violation of Labor Code §§ 226(a)(8).

9 46. As a consequence of Defendants' willful conduct in failing to provide all Class
10 Members with accurate itemized wage statements, Plaintiff and all Class Members have been injured
11 because they have not been paid all wages due and were issued wage statements which do not reflect,
12 and fail to accurately state, all information required by Labor Code § 226(a). The missing information
13 cannot be discerned at all from the face of the wage statements themselves. As a result, Plaintiff and
14 all Class Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of
15 all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee
16 for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per
17 employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code
18 § 226(h).

19 Wherefore, Plaintiff and the Classes she seeks to represent request relief as described below.

20 **IX.**

21 **SIXTH CAUSE OF ACTION**

22 **PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS**

23 **FAILURE TO TIMELY PAY WAGES DUE AT**

24 **SEPARATION OF EMPLOYMENT**

25 **(LABOR CODE §§ 201-203)**

26 47. Plaintiff incorporates paragraphs 1 through 46 of this Complaint as though fully set
27 forth herein.

48. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

49. Defendants paid Plaintiff and Class I Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class I Members were not paid all wages due and owing throughout the course of their employment, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment. Furthermore, when Plaintiff was terminated, she was not issued her final wages at the time of her termination—rather, she was issued her final wages the following day. Plaintiff alleges that Defendants maintain a policy to untimely pay final wages to its former Class I Members. This violates Labor Code §§ 201-203 and is alleged on behalf of Plaintiff and certain Class I Members no longer employed by Defendants.

50. More than 30 days have passed since Plaintiff and Class I Members have left Defendants' employ.

51. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff and Class I Members are entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiff and the Classes she seeks to represent request relief as described below.

X.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND CLASSES I AND II AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

52. Plaintiff incorporates paragraphs 1 through 51 of this Complaint as though fully set forth herein.

1 53. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and
2 on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant
3 to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this
4 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
5 and all Class Members. Plaintiff seeks to enforce important rights affecting the public interest within
6 the meaning of Code of Civil Procedure § 1021.5.

7 54. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
8 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
9 appropriate equitable relief.

10 55. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
11 practices.

12 56. Wage and hour laws express fundamental public policies. Properly providing
13 employees with all wages and expense reimbursement due is a fundamental public policy of this State
14 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
15 vigorously minimum labor standards, to ensure that employees are not required or permitted to work
16 under substandard and unlawful conditions, and to protect law-abiding employers and its employees
17 from competitors who lower their costs by failing to comply with minimum labor standards.

18 57. Defendants have violated statutes and public policies. Through the conduct alleged
19 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
20 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
21 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
22 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
23 guaranteed to all employees under law.

24 58. Defendants’ conduct, as alleged herein, constitutes unfair competition in violation of
25 §17200 *et seq.* of the Business & Professions Code.

26 59. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
27 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
28 17200 *et seq.* of the Business & Professions Code.

60. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others similarly situated have been damaged in a sum as may be proven.

61. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited to, disgorgement of profits which may be necessary to restore Plaintiff and all Class Members to the money Defendants have unlawfully failed to pay.

XI.

EIGHTH CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 204, 226(a), 226.7, 246, 510, 512, 1174, 1174.5, 1194, 1198, AND
2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 210, 226.3, AND 558

62. Plaintiff incorporates paragraphs 1 through 61 of this Complaint as though fully set forth herein.

63. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.* Furthermore, and independent of the above allegations, Defendants paid Plaintiff and other aggrieved employees on a monthly basis, failing to issue them all their wages “twice during each calendar month” for work “performed between the 1st and 15th days” no later than the 26th of the month and for work “performed between the 16th and the last day, inclusive, of any calendar month” no later than the 10th day of the following month as required by Labor Code § 204(a). This subjects Defendants to penalties as authorized by Labor Code § 210.

64. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 204, 226(a), 226.7, 246, 510, 512, 1174, 1174.5, 1194, 1198, and 2802; and
- b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 210, 226.3, and 558.

65. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

66. On September 22, 2022, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of September 22, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the aggrieved employees she seeks to represent request relief as described below.

XII.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages and liquidated damages pursuant to Labor Code §§ 1194 and 1194.2, respectively, in the amount of all unpaid wages due to Plaintiff and Class I Members;
2. For compensatory damages in the amount of one hour of wages for each day on which a rest period was not properly provided to Plaintiff and Class I Members pursuant to Labor Code § 226.7;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal period was not properly provided to Plaintiff and Class I Members pursuant to Labor Code §§ 226.7 and 512;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class I and II Members;

5. For penalties pursuant to Labor Code § 203 for Plaintiff and Class I Members;
6. For reimbursement of all expenses incurred by Plaintiff and Class I and II Members pursuant to Labor Code § 2802;
7. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class I and II Members;
8. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other aggrieved employees;
9. An award of prejudgment and post-judgment interest;
10. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h), 2699(g)(1), 2802, and other applicable law;
11. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 2699(g)(1), 2802, and other applicable law; and
12. Such other and further relief as this Court may deem just and proper.

Dated: January 18, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: *Daniel F. Gaines*
DANIEL F. GAINES
ALEX P. KATOFISKY
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

Dated: January 18, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: *Daniel F. Gaines*
DANIEL F. GAINES
ALEX P. KATOFISKY
Attorney for Plaintiff

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_____ (For messenger) my business address is:

Jamie Bossuat, Esq.
KROLOFF, BELCHER, SMART, PERRY & CHRISTOPHERSON, APLC
7540 Shoreline Drive
Stockton, CA 95219

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

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____ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission of File & ServeXpress on the counsel of record listed above.

I declare under penalty of perjury that the foregoing is true and correct.

Katherine Soriano
Katherine Soriano