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FILED
 Superior Court of California
 County of Los Angeles
11/21/2022

Sherri R. Carter, Executive Officer / Clerk of Court
 By: K. Martinez Deputy

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

JEANENNE ARAUJO, on behalf of herself and
 all others similarly situated,

Plaintiff,

vs.

NFM, INC.; NFM CONSULTANTS INC.; and
 DOES 1 through 100, Inclusive,

Defendants.

Case No. 22STCV30023

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

- (1) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 204, 558, 1182.12,
1194, 1194.2, 1197, 1198);
- (2) **FAILURE TO PAY OVERTIME**
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);
- (3) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512, 1198);
- (4) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 516, 1198)
- (5) **WAGE STATEMENT VIOLATIONS**
(LABOR CODE § 226, *et seq.*);
- (6) **WAITING TIME PENALTIES**
(LABOR CODE §§ 201-203);
- (7) **FAILURE TO REIMBURSE**
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);
- (8) **UNFAIR COMPETITION (BUS. &**
PROF. CODE § 17200, *et seq.*);
- (9) **CIVIL PENALTIES UNDER THE**
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)

**DEMAND FOR JURY TRIAL
 UNLIMITED CIVIL CASE**

1 Plaintiff Jeanenne Araujo (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby brings this Class Action Complaint against NFM, Inc; NFM Consultants Inc.;
3 and Does 1 through 100, inclusive (collectively, “Defendants”), and on information and belief
4 alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 class action for recovery of unpaid wages and penalties under California Business and Professions
8 Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7, 510, 512, 516, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*; and Industrial Welfare Commission
10 Wage Order No. 4 (“Wage Order 4”), in addition to seeking declaratory relief and restitution.
11 This class action is brought pursuant to California Code of Civil Procedure section 382. This
12 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
13 amount in controversy exceeds this Court’s jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in Los Angeles County. Defendants own, maintain offices, transact business, have an
18 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
19 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
23 the filing of this action and within the statute of limitations periods applicable to each cause of
24 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
25 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
26 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
27 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*;
28 California Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order

4, which sets employment standards for employees in professional, technical, clerical, mechanical, and similar occupations.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do) business as a mortgage and lending company, and that they employed Plaintiff and other similarly situated non-exempt employees within Los Angeles County and the state of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 20) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

7. At all times herein mentioned, each of said Defendants participated in the acts herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each of the acts or omissions alleged herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class Members (as defined in Paragraph 20).

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9. Plaintiff worked for Defendants as a non-exempt employee from approximately July 2022 to March 2022, and received her last paycheck from Defendants in April 2022.

10. During Plaintiff's employment with Defendants, Defendants failed to pay Plaintiff for non-exempt employees overtime at one and one-half times their "regular rate" of pay. Specifically, Defendants failed to incorporate non-discretionary bonuses and other forms of pay includable from the regular rate (collectively, such forms of pay are referred to herein as "Inclusive Pay") when calculating Plaintiff's and other non-exempt employees' regular rate of pay, which caused Defendants to under-pay overtime (and/or double-time) wages. For example, during the pay period of March 3-20, 2022, Plaintiff's wage statement reflects that she earned a bonus of \$100 and also worked 2.25 overtime hours, but was paid overtime at one and one-half times her regular rate of pay which excluded the value of Plaintiff's non-discretionary bonus in the calculation of the overtime rate, resulting in Plaintiff being underpaid for overtime hours worked.

11. In addition to underpaying Plaintiff for overtime hours worked, Defendants implemented a timekeeping system which resulted in Plaintiff not being compensated for all hours worked. Specifically, Plaintiff and other non-exempt employees were required to clock in and out for shifts, and although Defendants recorded Plaintiff's clock-in and clock-out times to the nearest minute, Defendants only paid Plaintiff in quarter-hour increments. Defendants' rounding of time to the nearest quarter-hour was not even-handed and has resulted in Plaintiff and other non-exempt employees not being compensated for all hours worked. As a result of these policies/practices, Plaintiff and other non-exempt employees have been underpaid for wages due, including overtime wages and minimum wages.

12. Defendants have also failed to provide Plaintiff and other non-exempt employees with statutorily mandated meal periods due to Defendant's meal period policies/practices, and to keep accurate records of meal periods. Specifically, Defendants did not require Plaintiff to clock out for meal periods and did not otherwise record Plaintiff's meal periods. Instead, Defendants' timekeeping system auto-deducted 30 minutes for a supposed meal period by auto-editing Plaintiff's time records with a 30-minute meal period at times chosen by Defendants.

(which, incidentally, regularly commenced after Plaintiff's fifth hour of work), regardless of whether or what time Plaintiff actually took a meal period or whether she actually took a full 30-minute meal period. Thus, Defendants failed to keep accurate records of meal periods taken by Plaintiff and other non-exempt employees.

13. In addition, the workload placed on Plaintiff and other non-exempt employees – including the pressure to meet tight deadlines on a regular basis – often made it impracticable for Plaintiff and other non-exempt employees to take a 30-minute off-duty meal period prior to the end of the fifth hour of work, and as a result Plaintiff's meal periods were often short (less than 30 minutes), late (commencing after five hours of work), or missed. In those instances that Defendants failed to provide Plaintiff and other non-exempt employees with a legally compliant meal period, Defendants failed to pay the meal period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying meal period premiums when Defendants failed to provide a legally compliant meal period.

14. Moreover, and as described above, Defendants' auto-deducting of 30 minutes per workday for meal periods, even on workdays when Plaintiff and other non-exempt employees did not take a full 30-minute off-duty meal period, resulted in unpaid wages, including unpaid minimum wages and overtime wages.

15. Defendants have also failed to authorize and permit rest periods to Plaintiff and other non-exempt employees. Specifically, Plaintiff and other non-exempt employees were frequently unable to take rest periods to which they were entitled as a result of the workload imposed by Defendants, including but not limited to the tight deadlines that needed to be met, as described above. In those instances that Defendants failed to authorize and permit Plaintiff and other non-exempt employees to take a legally compliant rest period, Defendants failed to pay the rest period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to authorize and permit a legally compliant rest period.

1 16. Defendants also failed to reimburse Plaintiff and other employees for expenses
2 they incurred in the course of their employment. Specifically, Plaintiff worked from home and
3 Defendants required Plaintiff to use her personal internet, and required her to provide her own
4 printer, pens, paper and other office supplies, for work purposes, and failed to reimburse or
5 indemnify her for those expenses. Defendants also required Plaintiff to use her personal cell phone
6 for communications with vendors, supervisors, co-workers, and others for work-related purposes.
7 Despite requiring Plaintiff to use her personal property for work-related purposes, Defendant
8 failed to reimburse Plaintiff for any portion of her personal expenses, including any portion of her
9 monthly cell phone bill. As a result of the foregoing, Plaintiff and other employees are entitled to
10 reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.*, 228
11 Cal.App.4th 1137 (2014).

12 17. As a result of Defendants' failure to pay all minimum wages and overtime wages,
13 as well as Defendants' failure to pay meal and rest period premium wages, Defendants failed to
14 pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation
15 of their employment.

16 18. As a further result of Defendants' failure to pay all minimum wages and overtime
17 wages, as well as Defendants' failure to pay meal and rest period premium wages, Defendants
18 have maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff
19 and other employees.

20 19. In addition, Defendants have consistently failed to pay Plaintiff and other non-
21 exempt employees in a timely manner, in violation of Labor Code § 204. Specifically, Section
22 204 requires that all wages earned between the 1st and 15th days of each month be paid between
23 the 16th and 26th of that month, and requires all wages earned between the 16th day of the month
24 and last day of the month to be paid between the 1st and 10th days of the following month. That
25 section further provides that "[t]he requirements of this section shall be deemed satisfied by the
26 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
27 than seven calendar days following the close of the payroll period." (Labor Code § 204(d)).
28 Defendants, however, have consistently paid wages approximately 11-13 days after the close of

the pay period. For example, in the pay period of February 16 to March 2, 2022, Defendants paid Plaintiff on March 15, 2022, 13 days after the close of the pay period. This resulted in wages that were earned in the latter half of February to be paid after the 10th day of March. Likewise, for the pay period of February 3-15, 2022, Defendants paid Plaintiff on February 28, 2022, 13 days after the close of the pay period and after the 26th day of the month. As a result, Defendants have failed to pay Plaintiff and other non-exempt employees timely in accordance with Labor Code § 204.

CLASS ACTION ALLEGATIONS

20. Class Definitions: Plaintiff bring this action on behalf of herself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

a. The Minimum Wage Class consists of all of the Defendants' current and former non-exempt employees in California who were (i) subject to Defendants' timekeeping practices, and/or (ii) had a meal period auto-deducted from their time records, at any time from four years prior to the filing of this action through the present.

b. The Overtime Class consists of all of the Defendants' current and former non-exempt employees in California who (i) worked more than 8.0 hours in a workday and/or over 40.0 hours in a workweek, and were subject to Defendants' timekeeping practices; (ii) worked over 8.0 hours in a workday and/or over 40 hours in a workweek and had a meal period auto-deducted from their time records; and/or (iii) worked more than 8.0 hours in a workday and/or more than 40.0 hours in a workweek and received Incentive Pay during a corresponding time period; at any time from four years immediately preceding the filing of this action through the present.

c. The Meal Period Class consists of all of the Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, during the four years immediately preceding the filing of this action through the present.

d. The Rest Period Class consists of all of the Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, at any time from four years immediately preceding the filing of this action through the present.

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e. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage statement during the one year immediately preceding the filing of this lawsuit through the present.

f. The Waiting Time Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class, who are no longer employed by Defendants and who last worked for Defendants at any time from three years immediately preceding the filing of this lawsuit through the present.

g. The Expense Reimbursement Class consists of all of Defendants' employees (exempt and non-exempt) who were required to use their personal property, including but not limited to cellular phones, internet, pens, paper, or other office supplies for work-related purposes, at any time from four years prior to the filing of this action through the present.

21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via Defendants' employment records.

22. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation, to:

- i. Whether Defendants' timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;
- ii. Whether Defendants paid at least the minimum wage for all hours worked to members of the Minimum Wage Class;

- iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;
- iv. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- vi. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment; and
- vii. Whether Defendants properly reimbursed expenses incurred by members of the Expense Reimbursement Class.

23. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' timekeeping, overtime, wage statement, meal period, rest period, expense reimbursement, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

24. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned minimum wages and overtime wages, was subject to Defendants' uniform meal and rest period policies/practices, was furnished with inaccurate wage statements, was deprived of all final wages upon her separation of employment from Defendants, and was not reimbursed for all expenses she incurred in carrying out her job duties for Defendants.

25. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover,

Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

26. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by individual class members would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 20 are maintainable under Section 382 of the Code of Civil Procedure.

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1 **FIRST CAUSE OF ACTION**

2 **MINIMUM WAGE VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 28. Wage Order 4, § 4 and Labor Code §§ 1197 and 1182.12 establish employees'
6 right to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§
7 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage
8 as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees,
9 costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

10 29. At all relevant times, Defendants failed to conform their pay practices to the
11 requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours
12 actually worked including, but not limited to, all hours they were subject to Defendants' control
13 and/or suffered or permitted to work under the Labor Code and Wage Order 4.

14 30. California Labor Code § 1198 makes unlawful the employment of an employee
15 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
16 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
17 those employees the balance of the unpaid wages as well as liquidated damages in an amount
18 equal to the wages due and interest thereon.

19 31. As a direct and proximate result of Defendants' unlawful conduct as alleged
20 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
21 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
22 entitled to recover economic and statutory damages and penalties and other appropriate relief as
23 a result of Defendants' violations of the California Labor Code and Wage Order 4.

24 32. Defendants' practice and uniform administration of corporate policy regarding
25 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
26 the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated
27 damages, interest thereon, statutory penalties, and attorneys' fees and costs of suit, per Labor
28 Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(AGAINST ALL DEFENDANTS)

33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

34. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked, and which provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

35. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 4, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. As alleged herein, Defendants caused Plaintiff and Overtime Class members to work overtime hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

36. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, and attorneys’ fees and costs of suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

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THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

37. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

38. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all their hourly non-exempt employees, including Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with the mandates of the California Labor Code and Wage Order 4, for the reasons set forth in this Complaint.

39. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 4, Labor Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

41. Labor Code §§ 226.7 and 516, and Wage Order 4, § 12 establish the right of employees to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

42. As alleged herein, Defendants have failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods. Defendants have also failed to compensate Plaintiff and Rest Period Class members with a rest period premium for each rest period to which they were entitled while working.

43. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(AGAINST ALL DEFENDANTS)

44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

45. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all hours worked, all wages earned, as well as all meal and rest period premium wages earned, in violation of Labor Code § 226.

46. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their minimum and overtime wages and meal and rest period premium wages, and deprived them of the information necessary to identify and reconcile the discrepancies in Defendants' reported data.

47. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(AGAINST ALL DEFENDANTS)

48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

49. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee, or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

1 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
3 at their separation from employment, including (but not limited to) unpaid minimum wages,
4 unpaid overtime wages, and unpaid meal and rest period premium wages.

5 51. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
6 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
7 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
8 to the requirements of Labor Code §§ 201-203.

9 52. Defendants' failure to pay all final wages was willful within the meaning of Labor
10 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
11 Time Class their earned wages upon separation from employment results in a continued payment
12 of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the
13 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
14 attorneys' fees and costs of suit.

15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

17 **(AGAINST ALL DEFENDANTS)**

18 53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 54. At all relevant times, Defendants were subject to Labor Code § 2802, which states
20 that "an employer shall indemnify his or her employees for all necessary expenditures or losses
21 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
22 her obedience to the directions of the employer."

23 55. At all relevant times, Defendants were subject to Labor Code § 2804, which states,
24 "any contract or agreement, express or implied, made by any employee to waive the benefits of
25 this article or any part thereof, is null and void, and this article shall not deprive any employee or
26 his personal representative of any right or remedy to which he is entitled under the laws of this
27 State."

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1 56. Due to Defendants' unlawful policy and practice of requiring employees to use
2 their personal property, including but not limited to personal cell phones, internet, and printers,
3 pens, paper, and other office supplies for work purposes, and their failure to reimburse Plaintiff
4 and Expense Reimbursement Class members, Defendants have violated Labor Code § 2802.

5 57. As a proximate result of Defendants' policies and/or practices in violation of Labor
6 Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class suffered
7 damages in sums, which will be shown according to proof.

8 58. Plaintiff and members of the Expense Reimbursement Class are entitled to
9 attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

10 59. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
11 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
12 Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall
13 accrue from the date on which they incurred the initial necessary expenditure.

14 **EIGHTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 **(AGAINST ALL DEFENDANTS)**

17 60. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 61. Defendants have engaged, and continue to engage, in unfair and/or unlawful
19 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay
20 Plaintiff and the Classes all minimum and overtime wages due, failing to provide meal periods or
21 pay meal period premium wages, failure to authorize and permit rest periods or pay rest period
22 premium wages, failing to furnish accurate and complete itemized wage statements, failing to
23 reimburse business expenses, and failing to pay all earned wages at separation of employment.

24 62. Defendants' utilization of these unfair and/or unlawful business practices has
25 deprived Plaintiff and members of the Classes of compensation to which they are legally entitled,
26 constitutes unfair and/or unlawful competition, and provides an unfair advantage over
27 Defendants' competitors who have been and/or are currently employing workers and attempting
28 to do so in honest compliance with applicable wage and hour laws.

63. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself, and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

64. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

65. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

66. Plaintiff re-alleges and incorporates by reference all previous paragraphs. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.* Plaintiff, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period;

and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees at least the statutory minimum wage for all hours worked, in violation of Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- c. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses, in violation of Labor Code §§ 2802, 2804, and 1198;
- d. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- e. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- f. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;
- g. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203;
- h. Failing to timely pay Plaintiff and other aggrieved employees all earned wages, in violation of Labor Code § 204; and
- i. Failing to maintain accurate records (including but not limited to actual hours worked and meal periods taken) on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code §§ 1174 and 1198.

67. On or about September 14, 2022, Plaintiff notified Defendants NFM, Inc. and NFM Consultants, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 66 (a)-(i) above. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

68. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees and the State of California, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;

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1 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
2 226, *et seq.*;

3 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
4 Labor Code §§ 201-203;

5 10. Upon the Seventh Cause of Action, for compensatory, consequential, general, and
6 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

7 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
8 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
9 practices declared by this Court to be in violation of Bus. & Prof. Code § 17200, *et seq.*;

10 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
11 employees, and the State of California according to proof pursuant to Labor Code § 2699,
12 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
13 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
14 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
15 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
16 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
17 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
18 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
19 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
20 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
21 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
22 Labor Code § 2699(f);

23 13. Prejudgment interest on all due and unpaid wages and other damages pursuant to
24 Cal. Labor Code §§ 218.6, 1194(a), 1194.2(a), and 2802(b); Civil Code § 3287; and Art. XV, § 1
25 of the California Constitution;

26 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
27 226(e), 1194 *et seq.*, 2802(c), 2699(g) and Code of Civil Procedure § 1021.5; and

28 ///

1 15. For such other and further relief the Court may deem just and proper.

2
3 Date: November 21, 2022

Respectfully submitted,
ABRAMSON LABOR GROUP

4
5 By: _____


Tuvia Korobkin
Attorney for Plaintiff

6
7
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

10
11 Dated: November 21, 2022

Respectfully submitted,
ABRAMSON LABOR GROUP

12
13 By: _____


Tuvia Korobkin
Attorney for Plaintiff

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18
3 and not a party to the within action. My business address is 11846 Ventura Blvd., Suite
4 100, Studio City, CA 91604

5 On the below date, I served a true copy of the foregoing documents described as:

6 **FIRST AMENDED COMPLAINT**

7 on all interested parties in this action directed as follows:

8

9 Bill Sinclair, Esq. 10 Silverman Thompson Slutkin White 400 E Pratt St., Ste. 900 Baltimore, MD 21202	Attorney for Defendant(s)
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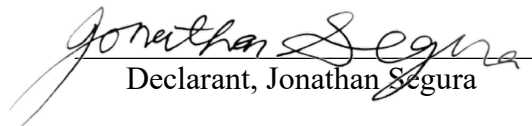
11 / X / (BY MAIL): I am "readily familiar" with the firm's practice of collection and processing
12 correspondence for mailing. Under that practice it would be deposited with U.S. postal service
13 on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary
14 course of business. I am aware that on motion of the party served, service is presumed invalid if
15 postal cancellation date or postage meter date is more than one day after date of deposit for
mailing in affidavit.

16 / / (BY OVERNIGHT MAIL): I am readily familiar with the firm's practice of collection
17 and processing for overnight delivery. Under such practice, I caused the aforementioned
18 document(s) to be delivered to an overnight courier service, carrier fees paid and deposited in an
overnight delivery drop-box and/or delivered to an overnight carrier.

19 / / (BY ELECTRONIC SERVICE): BY ELECTRONIC TRANSMISSION) I served the
20 foregoing by electronic transmission to the email addresses listed above, pursuant to Cal. Code
Civ. Proc. § 1010.6 and Cal. Rules of Court Rule 2.251 via caseanywhere.com.

21 I declare under penalty of perjury under the laws of the State of California and the United
22 States of America that the foregoing is true and correct.

23 Executed on November 21, 2022, at Studio City, California.

24 
25 Declarant, Jonathan Segura
26
27
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