

1 B. James Fitzpatrick (SBN: 129056)
2 Alison L. Baker (SBN: 193601)
3 FITZPATRICK & SWANSTON
4 555 S. Main Street
5 Salinas, CA 93901
6 Telephone: (831) 755-1311
7 Facsimile: (831) 755-1319

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 8/10/2023 5:29 PM
By: Stephanie Mendez, Deputy

8 Attorneys for Plaintiff,
9 Margarita Soto Alvarez on behalf of herself
10 and all similarly aggrieved employees

11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF MONTEREY**

13 MARGARITA SOTO ALVAREZ, on
14 behalf of herself and all similarly aggrieved
15 employees,

16 Plaintiff,

17 v.

18 JALISCIENSE-GRULLO CORP.; and
19 DOES 1 through 50, inclusive,

20 Defendants.

Case No. 23CV002609

**CLASS AND REPRESENTATIVE
ACTION**

**COMPLAINT FOR DAMAGES,
PENALTIES AND FOR INJUNCTIVE
RELIEF**

21 Plaintiff Margarita Soto Alvarez, who on behalf of herself and all other similarly
22 situated current and former employees, and members of the public, complain and allege as
23 follows:

24 1. As used herein, the term "Plaintiff" includes Margarita Soto Alvarez, who is the
25 named Plaintiff and Class Representative herein.

26 2. Plaintiff and the Class Members alleged herein (collectively, "Class Members")
27 seek remedies for all compensation and penalties due to the Class Members during the "Class
28 Period," which is defined as four years from the filing date, through the date on which final
judgment is entered, based upon information and belief that Defendants are continuing and
will continue the unlawful employment practices as described herein.

3. Each Class Member is an identifiable, similarly-situated person who is now, or
was during the Class Period, employed by Defendants as an administrative/office employee.

1 Plaintiff reserves the right to seek additional amendments of this Complaint to add as a named
2 Plaintiff some or all of the persons who are members of the Class.

3 4. Plaintiff is a competent adult who is, and at all times mentioned in this complaint
4 has been, a resident of Monterey County, California. Plaintiff has been an employee since
5 approximately 2008, pursuant to an unwritten contract, some of the terms of which were the
6 product of an oral agreement, with other terms implied from or incorporated from written
7 materials and policies maintained by Defendants and from the conduct of the parties. The
8 terms of this contract included working as a non-exempt employee, and at all times as an
9 employee not exempted from the California Labor Code. Plaintiff is, and at all relevant times
10 was, an individual as defined in Business and Professions Code §§ 17201 and 17204.

11 5. Defendant JALISCIENSE-GRULLO CORP. ("JALISCIENSE") is, and at all
12 times mentioned in this complaint has been, a corporation incorporated under the laws of the
13 State of California and registered to do business in the State of California. Plaintiff is
14 informed and believes and thereon alleges that JALISCIENSE is authorized to and does
15 conduct business throughout the State of California, and has purposefully availed itself of the
16 privileges and benefits of doing business in the State of California.

17 6. Plaintiff and the Class Members are ignorant of the true names, identities,
18 capacities and relationships of the Defendants sued herein as DOES 1 through 50, inclusive,
19 and therefore sues these Defendants by such fictitious names. Plaintiff and the Class Members
20 are informed and believe, and thereon allege, that each of these fictitiously named Defendants
21 are responsible in some manner for the occurrences herein alleged, and that Plaintiff's and the
22 Class Members' damages as herein alleged were proximately caused by DOES 1 through 50.
23 Plaintiff and the Class Members will amend this Complaint to allege the true names and
24 capacities of said DOE Defendants when such information is ascertained. Each reference to
25 "Defendants," and each reference to any particular Defendant herein, shall be construed to
26 refer to all Defendants, including, but not limited to, all of those fictitiously named herein as a
27 "DOE" Defendant, and each of them.

28 7. Plaintiff and the Class Members are informed and believe, and thereon allege,

1 that each of the Defendants herein was at all times relevant to this action the agent, employee,
2 representative, partner, and/or joint venturer of the remaining Defendants, and each of them,
3 and that each of the Defendants herein was at all times acting within the course and scope of
4 that relationship. Plaintiff and the Class Members are further informed and believe, and
5 thereon allege, that each of the Defendants herein consented to, ratified, and/or authorized the
6 acts of each of the remaining Defendants herein. The conduct of each of the Defendants was
7 at all times herein in accordance with and represents the official policy of Defendants.

8 Additionally, at all times herein mentioned, Defendants, and each of them, aided and abetted
9 the acts and omissions of each and all of the other Defendants, which proximately caused the
10 damages herein alleged. Plaintiff and the Class Members are further informed and believe,
11 and thereon allege, that all of the Defendants jointly employed the Plaintiff and Class
12 Members herein and/or carried out a joint scheme, business plan and/or uniform policy, and
13 the acts and omissions of each Defendant are legally attributable to the other Defendants such
14 that they are deemed a single integrated enterprise and agents of one another so that all
15 Defendants are each jointly and severally liable for the acts and omissions hereinafter alleged.

16 8. Defendant JALISCIENSE and DOES 1 through 50 (collectively referred to
17 herein as “Defendants”) are, and at all times herein were, “persons” as defined in California
18 Business and Professions Code § 17201.

19 9. At all times herein, Defendants directly or indirectly, or through an agent or
20 representative, exercised control over the wages, hours and/or working conditions of the
21 Plaintiff and the Class Members, and directly or indirectly or through an agent or other person
22 engaged, suffered, or permitted Plaintiff and the Class Members to work.

23 **JURISDICTION AND VENUE**

24 10. Plaintiff brings this Complaint for violations of California law occurring in this
25 County, including without limitation violations of the California Labor Code, Business and
26 Professions Code, Civil Code and common law, and the amount in controversy exceeds the
27 minimum jurisdictional amount of the Superior Court. Based on information and belief,
28 Defendants have intentionally availed themselves of the benefits and privileges available

1 within this State, economic or otherwise, so as to render the exercise of jurisdiction over them
2 by the courts of the State of California consistent with traditional notations of fair play and
3 substantial justice. Accordingly, this Court has jurisdiction over the parties and claims in this
4 matter.

5 11. Pursuant to Code of Civil Procedure § 395(a), venue is proper in this judicial
6 district because Defendants now, and all times relevant herein, reside and/or transact business
7 in this County. The conduct alleged herein and the damages resulting therefrom occurred in
8 this County, and at all times herein Defendants maintained their principal place of business in
9 this County.

10 **ADMINISTRATIVE PROCEEDINGS**

11 12. Pursuant to California Labor Code § 2699.3, Plaintiff gave written notice on
12 October 14, 2022, by electronic filing with the Labor and Workforce Development Agency,
13 and by certified mail to Defendant JALISCIENSE of factual and legal basis for the labor law
14 violations alleged in this Complaint.

15 13. Pursuant to California Labor Code § 2699.3, Plaintiff seeks all applicable
16 penalties for violations which the Labor and Workforce Development Agency has failed or
17 elected not to investigate and/or failed or elected not to issue a citation. Plaintiff has
18 exhausted all administrative remedies required by the Labor and Workforce Development
19 Agency as a prerequisite to filing this action.

20 **GENERAL ALLEGATIONS**

21 14. Defendants now, and at all times relevant herein, did, own, operate and control a
22 business/establishment that employs persons within the meaning of all applicable wage orders,
23 including, but not limited to, IWC Wage Order No. 5-2001 (California Code of Regulations,
24 title 8, section 11050).

25 15. At all times relevant herein, Plaintiff and the Class Members were non-exempt
26 employees of Defendants under the California Labor Code and were protected by the
27 provisions of the Wage Order.

28 16. At all times relevant herein, Plaintiff and the Class Members worked for

1 Defendants without the provision of being compensated for all hours worked, without being
2 paid overtime premium wages for all overtime hours worked, without being paid all wages on
3 time, working without meal or rest breaks as required by law, without being compensated for
4 missed meal and rest breaks, without being paid the full payment of wages owed at the end of
5 their employment, and without having been provided with complete and accurate wage
6 statements as required by law.

7 17. At all times relevant herein, Defendants maintained and enforced a uniform
8 policy by which they regularly and consistently failed to pay Plaintiff and the Class Members
9 their final wages on the last date of their employment. Rather, Defendant waited until the next
10 normal payroll cycle to pay Plaintiff and the Class Members their final wages.

11 18. At all times relevant herein, Defendants maintained and enforced a uniform
12 policy of requiring Plaintiff and the Class Members to work shifts of five hours or more within
13 a single workday without providing a thirty (30) minute uninterrupted duty-free meal period
14 within five (5) hours of the beginning of their shift. Defendants also failed to pay Plaintiff and
15 the Class Members one hour of pay at their regular rate of compensation as required by
16 California Labor Code § 226.7 and the Wage Order for each meal period that was not
17 provided.

18 19. Likewise, at all times relevant herein, Defendants maintained and enforced a
19 uniform policy by which they repeatedly failed to authorize, permit and provide Plaintiff and
20 the Class Members with paid duty-free rest periods of at least ten (10) consecutive
21 uninterrupted minutes during which Plaintiff and the Class Members were relieved of all
22 duties for every four (4) hours worked or major fraction thereof and which were counted as
23 hours worked for which there would be no deduction from wages, and failed to compensate
24 Plaintiff and the Class Members one (1) hour of wages at their regular rate of compensation as
25 required by California Labor Code § 226.7 and the Wage Order for each rest period not
26 provided.

27 20. At all times relevant herein, Defendants maintained and enforced a uniform
28 policy by which they regularly and consistently failed to pay Plaintiff and the Class Members

1 overtime premium wages of one and one-half times their regular rate of pay for all overtime
2 hours worked in a single workday and/or a single workweek, as required by California Labor
3 Code §§ 510 and 1194 and the Wage Order.

4 21. At all times relevant herein, Defendants maintained and enforced a uniform
5 policy by which they regularly and consistently failed to provide Plaintiff and the Class
6 Members with complete and accurate itemized wage statements stating the total hours worked,
7 regular and overtime hours worked, gross wages earned, net wages earned, all applicable rates
8 of pay and the corresponding number of hours worked under each rate, all deductions, wages
9 owed for missed rest and meal periods, and accurate accounting for all wages paid to Plaintiff
10 and the Class Members.

11 22. At all times relevant herein, Defendants maintained and enforced a uniform
12 policy by which they regularly and consistently violated California Labor Code §§ 201, 202,
13 204, 216, 218, 221, 223, 1194, 1198 and the Wage Order by unlawfully refusing to pay wages
14 to Plaintiff and the Class Members.

15 23. At all times relevant herein, Defendants maintained and enforced a uniform
16 policy by which they regularly and consistently violated California Labor Code §§ 201, 202,
17 and 203 by failing to pay Plaintiff and the Class Members all owing and unpaid wages for
18 work performed by them during their employment and at the end of their employment.

19 24. At all times relevant herein, Defendants maintained and enforced a uniform
20 policy by which they regularly and consistently violated California Labor Code §§ 201, 202,
21 204, 218, 1194, 1198, 1199 and the Wage Order by failing to pay Plaintiff and the Class
22 Members for all hours worked, overtime premium wages for all overtime hours worked, and
23 compensation for missed meal and rest periods.

24 25. At all times relevant herein, Defendants maintained and enforced a uniform
25 policy by which they regularly and consistently violated Labor Code § 2802 by failing to
26 reimburse employees for all business expenses, including phone-related expenses incurred for
27 mandatory work purposes.

28 26. Plaintiff and the Class Members are informed and believe, and thereon allege,

1 that at all times herein mentioned, Defendants were advised by skilled lawyers and other
 2 professionals, employees, and advisors knowledgeable about California labor and wage law,
 3 employment and personnel practices, and about the requirements of California law. Plaintiff
 4 and the Class Members are informed and believe, and thereon allege, that at all times relevant
 5 herein, Defendants knew or should have known that they had a duty to compensate Plaintiff
 6 and the Class Members and that Defendants had the financial ability to pay such
 7 compensation, but willfully, knowingly and intentionally failed to do so, and falsely
 8 represented to Plaintiff and the Class Members that they were properly denied wages, all in
 9 order to increase Defendants' profits.

10 27. California Labor Code § 218 states that nothing in Article I of the Labor Code
 11 shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to
 12 him under this Article.”

CLASS ACTION ALLEGATIONS

13 28. Plaintiff brings this action on behalf of herself, the general public, and all other
 14 similarly situated persons as a class action pursuant to Code of Civil Procedure § 382. All
 15 claims alleged herein arise under California law for which Plaintiff seeks relief authorized by
 16 California law. Plaintiff seeks to represent a class composed of and defined as follows:

17 A. Class:

18 All current and former non-exempt employees of
 19 Defendants who worked for Defendants in
 20 California at any time within four (4) years before
 the commencement of this action through the date
 on which final judgment is entered.

21 B. Meal Period Subclass:

22 All current and former non-exempt employees of
 23 Defendants who worked for Defendants in
 California who worked any work shift 5 hours or
 more at any time during the Class Period.

24 C. Rest Period Subclass:

25 All current and former non-exempt employees of
 26 Defendants who worked for Defendants in
 California who worked any work shift 3.5 hours or
 more at any time during the Class Period.

27 D. Unreimbursed Work-Related Expense Subclass:

1 All current and former non-exempt employees of
2 Defendants who worked for Defendants in
3 California and who were not reimbursed work-
4 related expenses at any time within four (4) years
before the commencement of this action through the
date on which final judgment is entered.

5 E. Non-Compliant Wage Statement Subclass:

6 All current and former non-exempt employees who
7 are or were employed by Defendants in California
8 and who were paid any wages from Defendants at
any time within one (1) year before the
commencement of this action through the date on
which final judgment is entered.

9 29. Plaintiff reserves the right under Code of Civil Procedure § 382 to amend or
10 modify the class description with greater specificity, further division into subclasses or with
11 limitations to particular issues.

12 30. This action has been brought and may be properly maintained as a class action
13 under the provisions of Code of Civil Procedure § 382 because the questions of law and fact at
14 issue herein are common and of general interest to Plaintiff and the Class Members, the parties
15 are numerous, and it would be impracticable to bring the claims alleged herein before the court
16 as individual claims or through some other than a class action.

17 A. Numerosity

18 31. The Class Members are so numerous that joinder of all the members of the class
19 is not feasible and not practical. While the precise number the Class Members has not been
20 determined at this time, Plaintiff is informed and believes that Defendants currently employ,
21 and during the Class Period regularly employed, more than 50 employees in California in
22 hourly wage or otherwise non-exempt positions. The identities of the Class Members are
23 readily ascertainable by inspection of Defendants' employment records. Moreover, the joinder
24 of all members of the proposed class is not practicable, and individual damages for each
25 member are not anticipated to be sufficiently high to allow for practical resolution through
26 individualized litigation.

27 B. Commonality and Predominance

28 32. There are questions of law and fact common to each Class Member that

1 predominates over any questions affecting only individual Class Members. These common
2 questions of law and fact include, without limitation:

3 a. Whether Defendants violated California Labor Code §§ 226.7 and 512
4 and the Wage Order by failing to provide a 30 minute duty-free meal period within the first
5 five hours of each workday to Plaintiff and the Class Members on days they worked in excess
6 of five hours, and failing to compensate Plaintiff and the Class Members one hour of wages at
7 their regular rate of pay for each such missed meal period that was not provided;

8 b. Whether Defendants violated Labor Code § 226.7 and the Wage Order
9 by failing to provide a paid 10 minute duty-free rest period to Plaintiff and the Class Members
10 for every four-hour work period or major fraction thereof, by either not paying wages to
11 Plaintiff and the Class Members or reducing their wages for time spent during any rest period
12 that was provided, and by failing to compensate Plaintiff and the Class Members one hour of
13 wages for such missed and/or unpaid/underpaid rest periods;

14 c. Whether Defendants violated Labor Code §§ 1194 and 1198 and the
15 Wage Order by failing to pay Plaintiff and the Class Members the appropriate premium
16 overtime wages for all overtime hours worked;

17 d. Whether Defendants violated California Labor Code § 226 by failing to
18 provide accurate itemized wage statements to Plaintiff and the Class Members containing all
19 of the information required by Labor Code § 226;

20 e. Whether Defendants violated California Labor Code §§ 201, 202, 204,
21 216, 218, 221, 1194, and 1198 by failing and refusing to pay Plaintiff and the Class Members
22 agreed wages for all work performed by them, including minimum wage and/or overtime as
23 compensation for any and all hours worked;

24 f. Whether Defendants violated Labor Code §§ 201, 202, 203, and 204 by
25 failing to timely pay Plaintiff and the Class Members all wages for work performed by them
26 during their employment and failing to timely pay Plaintiff and the Class Members at the end
27 of their employment all wages for work performed by them during their employment;

28 g. Whether Defendants violated Labor Code §§ 201, 202, and 204 by

1 failing to timely pay Plaintiff and the Class Members for all wages and hours worked during
2 their employment;

3 h. Whether Defendants violated Labor Code § 2802 by failing to reimburse
4 employees for all business expenses, including phone-related expenses incurred for mandatory
5 work purposes;

6 i. Whether Defendants' failure to pay wages, and premiums in accordance
7 with the California Labor Code and the Wage Order was willful;

8 j. Whether Defendants violated Labor Code § 1198 and the Wage Order for
9 failing to keep accurate records with respect to each employee;

10 k. Whether Defendants' conduct as alleged throughout this complaint was
11 willful or reckless;

12 l. The appropriate amount of damages, restitution and/or monetary
13 penalties resulting from Defendants' violations of California law;

14 m. Whether Plaintiff and the Class members are entitled to equitable relief,
15 including but not limited to, injunctive and declaratory relief, pursuant to Business and
16 Professions Code §§ 17200 et seq.; and

17 n. Whether Defendants violated Business and Professions Code §§ 17200 et
18 seq., by failing to provide meal and rest periods; by failing to compensate for meal and rest
19 periods not provided; by failing to pay regular and overtime wages for all hours worked; by
20 failing to provide complete and accurate wage statements; by failing to pay agreed wages; by
21 failing to pay all wages due upon termination; and by failing to timely provide all wages due.

22 **C. Typicality**

23 33. The claims of Plaintiff are typical of the claims of the Class Members. Plaintiff
24 and the Class Members sustained injuries and damages arising out of and caused by the
25 Defendants' common course of conduct in violation of statutes, common law, wage orders
26 and/or regulations that have the force and effect of law, as alleged herein. Plaintiff has a well-
27 defined community of interest with the Class Members and are qualified to, and will, fairly
28 and adequately protect the interests of each Class Member.

D. Adequacy of Representation

34. Plaintiff will fairly and adequately represent and protect the interests of the Class Members. Plaintiff acknowledges Plaintiff's obligation to make known to the Court any relationship, conflict, or difference with any Class Member. Plaintiff has incurred and throughout this action will continue to incur, costs and attorney's fees necessarily expended for the prosecution of this action for the substantial benefit of each Class Members. Counsel who represents Plaintiff is competent and experienced in litigating class actions, versed in the rules governing class action discovery certification, settlement and trial, and will vigorously and competently pursue the claims of Plaintiff and the Class Members.

E. Superiority

35. The nature of this action makes the use of class action adjudication superior to other methods. The class action will achieve economies of time, effort, and expense as compared with separate individual lawsuits on behalf of each Class Member, and will avoid inconsistent outcomes because the same issues will be adjudicated in the same manner and at the same time for the entire class.

F. Public Policy Consideration

36. Employers in the State of California violate employment and labor laws daily. Employees are often intimidated and afraid to assert their rights out of fear that they will be subjected to direct or indirect retaliation by their employers. Former employees (those who are no longer employed by a particular employer who had subjected them to employment and labor law violations) are fearful of bringing actions against their former employers because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide Class Members who are not named in the complaint with vindication of their rights while also protecting their privacy and shielding them from retaliation.

FIRST CAUSE OF ACTION

**Failure to Provide Meal Periods or Compensation in Lieu Thereof
(Labor Code §§ 226.7 and 1198; and the Wage Order)
(Plaintiff and the Class Members against Defendants)**

37. Plaintiff and the Class Members allege and incorporate by reference all of the

1 allegations contained in the preceding paragraphs as though fully set forth herein.

2 38. California Labor Code § 226.7 provides that no employer shall require an
3 employee to work during any meal period mandated by an applicable order of the Industrial
4 Welfare Commission. Labor Code § 226.7 further provides that if an employer fails to
5 provide an employee a meal period or rest period in accordance with an applicable order of the
6 Industrial Welfare Commission, the employer shall pay the employee one additional hour of
7 pay at the employee's regular rate of compensation for each workday that the meal or rest
8 period is not provided.

9 39. At all times relevant to this action, the Wage Order and California Labor Code §
10 1198 provided that an employer may not require, cause or permit an employee to work for a
11 period of more than five (5) hours per day without providing the employee with an
12 uninterrupted meal period of not less than thirty (30) minutes, except that if the total work
13 period per day of the employee is not more than six (6) hours, the meal period may be waived
14 by mutual consent of both the employer and the employee.

15 40. Throughout the Class Period, Defendants and/or their authorized supervisors
16 repeatedly failed to comply with the meal period requirements of the Labor Code and the
17 Wage Order by failing to provide Plaintiff and the Class Members with a thirty (30) minute
18 uninterrupted duty-free meal period within five (5) hours of the beginning of their shift, in
19 violation of Labor Code §§ 512, 226.7, and the Wage Order. Defendants also failed to
20 compensate Plaintiff and the Class Members one (1) hour of wages for any of the missed meal
21 periods not provided by Defendants, as alleged above, which failure also violated Labor Code
22 §§ 512 and 226.7 and the Wage Order.

23 41. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiff and
24 the Class Members are entitled to recover from Defendants one (1) additional hour of pay at
25 their regular hourly rate of compensation for each meal period violation as alleged herein.

26 42. Defendants were at all times aware of the Labor Code and Wage Order
27 requirements that they provide Plaintiff and the Class Members with such meal periods and
28 was aware that Plaintiff and the Class Members regularly worked more than five (5) hours in a

1 shift without receiving mandated meal periods. Thus, Defendants willfully violated the
2 provisions of Labor Code §§ 226.7 and 512 and the Wage Order.

3 43. As a result of the unlawful conduct of Defendants, Plaintiff and the Class
4 Members have been deprived of wages and other compensation in amounts to be determined at
5 trial, and are entitled to recovery of such amounts.

6 44. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed
7 for.

8 **SECOND CAUSE OF ACTION**
9 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
10 **(Labor Code §§ 226.7 and 1198; and The Wage Order)**
11 **(Plaintiff and the Class Members against Defendants)**

12 45. Plaintiff and the Class Members allege and incorporate by reference all of the
13 allegations contained in the preceding paragraphs as though fully set forth herein.

14 46. California Labor Code § 226.7 provides that no employer shall require an
15 employee to work during any rest period mandated by an applicable order of the California
16 Industrial Welfare Commission. Labor Code Section 226.7 further provides that if an
17 employer fails to provide an employee a meal period or rest period in accordance with an
18 applicable order of the Industrial Welfare Commission, the employer shall pay the employee
19 one additional hour of pay at the employee's regular rate of compensation for each workday
20 that the meal or rest period is not provided.

21 47. The Wage Order and California Labor Code § 226.7 provides that every
22 employer shall provide and shall authorize and permit all employees to take rest periods,
23 which insofar as practicable shall be in the middle of each work period, and that the rest period
24 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time
25 per four (4) hours or major fraction thereof, unless the total daily work time is less than three
26 and one-half hours.

27 48. Throughout the Class period, on days in which Plaintiff and the Class Members
28 worked at least three and one half hours, Defendants regularly and repeatedly required
Plaintiff and the Class Members to work four (4) hours and/or a major fraction thereof without
providing, authorizing or permitting at least one ten (10) minute rest period during which

1 Plaintiff's and the Class Members were relieved of all duties (hereafter "rest period") per each
2 four (4) hour period, or a major fraction thereof, worked.

3 49. Throughout the Class Period, Defendants failed to pay Plaintiff and the Class
4 Members a premium of one hour pay at their regular rate of pay for each rest period not
5 provided, authorized, and permitted as alleged herein, pursuant to Labor Code § 226.7.

6 50. Defendants were at all times aware of the Labor Code and Wage Order
7 requirements that they provide Plaintiff and the Class Members with the rest periods described
8 above and were aware that Plaintiff and the Class Members regularly worked more than four
9 (4) hours or major fraction thereof without receiving mandated rest periods. Defendants
10 therefore at all times willfully violated the provisions of Labor Code § 226.7 and the Wage
11 Order.

12 51. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiff and
13 the Class Members are entitled to recover from Defendants one (1) additional hour of pay at
14 their regular hourly rate of compensation for each workday that a rest period was not provided.
15 As a result of the unlawful conduct of Defendant, Plaintiff have been deprived of wages and
16 compensation in amounts to be determined at trial, and are entitled to recovery of such
17 amounts.

18 52. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed
19 for.

20 **THIRD CAUSE OF ACTION**
21 **Failure to Pay Hourly and Overtime Wages**
(California Labor Code §§ 1194 and 1198; and The Wage Order)
22 **(Plaintiff and the Class Members against Defendants)**

23 53. Plaintiff and the Class Members incorporate by reference all of the allegations
24 contained in the preceding paragraphs as though fully set forth herein.

25 54. Plaintiff and the Class Members base this cause of action upon Defendants'
26 willful and intentional violations of the California Labor Code and Industrial Welfare
27 Commission requirements that Defendants pay Plaintiff and the Class Members for all hours
28 worked, including the requirement to pay premium overtime wages to Plaintiff and the Class
Members for overtime hours worked in a workday and/or in a workweek, and/or on the

seventh consecutive day in a workweek.

55. Pursuant to Labor Code § 204, as well as other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

56. Labor Code § 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. 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.”

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

58. Throughout the Class Period, Defendants knew or had reason to know that Plaintiff and the Class Members were regularly and consistently worked overtime without being paid the appropriate premium overtime wage required by Labor Code §§ 1194 and 1198, and the Wage Order.

59. Throughout the Class Period, Defendants' conduct as alleged herein amounted to a uniform pattern of unlawful wage and hour practices which resulted from the implementation of uniform policies and practices by which Defendants failed to accurately record all hours worked by Plaintiff and the Class Members thereby denying payment of overtime premium wages to Plaintiff and the Class Members for overtime hours worked.

60. In committing the violations of the California Labor Code as alleged herein, Defendants engaged in an illegal attempt to avoid the payment of all earned wages and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

61. As a direct result of Defendants' unlawful wage practices as alleged herein, Plaintiff and the Class Members have been denied full compensation for all hours worked by them, including but not limited to premium overtime wages for overtime hours.

1 62. The Labor Code and the Wage order set forth various exemptions by which
2 certain categories of employees are exempt from the protections of the overtime laws
3 contained in the Labor Code. At no time during Plaintiff's employment did any of these
4 exemptions apply to Plaintiff and the Class Members. Moreover, at no time were Plaintiff and
5 the Class Members subject to a valid collective bargaining agreement that would preclude the
6 causes of action set forth in this complaint. Rather, Plaintiff and the Class Members bring this
7 action because of Defendants' violations of non-waivable rights guaranteed to them by the
8 State of California.

9 63. As a direct consequence of Defendants' unlawful failure to pay Plaintiff and the
10 Class Members the full and accurate amount of all earned wages at the appropriate rate for the
11 true number of hours they worked, Plaintiff and the Class Members have suffered and will
12 continue to suffer economic injuries in an amount which is presently unknown to them and
13 which will be ascertained according to proof at trial.

14 64. In performing the acts and practices in violation of California labor laws as
15 herein alleged, Defendants have acted and continue to act intentionally, oppressively and
16 maliciously towards Plaintiff and the Class Members, with a conscious disregard for their legal
17 rights and the consequences to them, and with the intent of depriving them of their property
18 and legal rights and otherwise causing them injury, in order to increase Defendants' profits at
19 the expense of Plaintiff and the Class Members.

20 65. Plaintiff and the Class Members request recovery of all unpaid wages, including
21 overtime premium wages, in an amount according to proof, interest on such amounts, statutory
22 costs, and the assessment of any and all statutory penalties against Defendants, all in the sums
23 as provided by the California Labor Code and/or other applicable statutes. In addition, to the
24 extent that overtime compensation is owed Plaintiff and the Class Members whose
25 employment has been terminated, Defendants' conduct violates Labor Code §§ 201 and/or
26 202, entitling Plaintiff and the Class Members to waiting time penalties under Labor Code §
27 203, which penalties are sought herein on behalf of Plaintiff and the Class Members.

28 66. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed

1 for.

2 **FOURTH CAUSE OF ACTION**
3 **Failure to Comply with Itemized Employee Wage Statement Requirements**
4 **(California Labor Code §§ 226, 1174 and 1175; and The Wage Order)**
5 **(Plaintiff and the Class Members against Defendants)**

6 67. Plaintiff and the Class Members allege and incorporate by reference all of the
7 allegations contained in the preceding paragraphs, as though fully set forth herein.

8 68. Labor Code § 226(a) and the Wage Order require Defendants to itemize in wage
9 statements all deductions from payment of wages, to accurately report total hours worked, to
10 report the rate of pay for hours worked, and keep the records on file at the place of
11 employment or at a central location within the State of California. Defendants have
12 knowingly and intentionally failed to comply with Labor Code § 226(a) and the Wage Order
13 with respect to wage statements they have provided to Plaintiff and the Class Members.

14 69. Labor Code § 1174 and the Wage Order requires Defendants to maintain and
15 preserve, at the place of employment or at a central location within the State of California,
16 among other items, accurate records showing the names and addresses of all employees
17 employed, payroll records accurately showing the hours worked daily and the wages paid to its
18 employees. Defendants have knowingly and intentionally failed to comply with these
19 requirements in violation of Labor Code §§ 1174 and 1175 and the Wage Order.

20 70. Labor Code § 226(a) and the Wage Order provide that every employer shall,
21 semimonthly or at the time of each payment of wages, furnish each of its employees an
22 accurate itemized statement in writing showing gross wages earned, total hours worked by the
23 employee, the number of piece rate units and the applicable rate, all deductions, net wages
24 earned, the inclusive dates of the period for which the employee is paid, the name of the
25 employee and the last four digits of the employee's social security number (or an employee
26 identification number), the name and address of the legal entity that is the employer and all
27 applicable hourly rates in effect during the pay period and the corresponding numbers of hours
28 worked at each hourly rate by the employee. Labor Code § 226(a) mandates that deductions
made from payments of wages shall be recorded in ink, properly dated and a copy of the
statement or a record of deductions be kept on file by the employer for at least three years.

Moreover, the Wage Order requires Defendants to maintain time records for each employee showing, including but not limited to, an accurate report of the total hours worked by each employee, when the employee begins and ends each work period, meal periods, and total daily hours worked in itemized wage statements, and all deductions from payment of wages.

71. Throughout the Class Period, Defendants have regularly and consistently, intentionally and willfully, failed to provide Plaintiff and the Class Members with complete and accurate wage statements.

72. The Wage Order provides that an employer must keep accurate information with regard to each employee, which shall include time records showing when the employee begins and ends each work period, total daily hours worked and total hours worked in the pay period and the applicable rates of pay.

73. Throughout the Class Period, Defendants continually failed to keep accurate records and information regarding Plaintiff and the Class Members as required by the Wage Order. Defendants repeatedly provided Plaintiff and the Class Members with wage statements that, among other inaccuracies, failed to include complete and accurate information on the following: (1) gross wages earned; (2) total hours worked; (3) all deductions from wages; (4) net wages earned; (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and (6) reimbursement for work-related expenses.

74. As a result of Defendants' violation of Labor Code §§ 226(a), 1174 and 1175, as well as the Wage Order, Plaintiff and the Class Members have suffered injury and damage to their statutorily-protected rights. These injuries and damages include, but are not limited to, the denial of their legal right to receive and their protected interest in receiving accurate, itemized wage statements under Labor Code § 226(a). Moreover, the inaccurate and incomplete wage statements provided by Defendants deceived Plaintiff and the Class Members about the wages and other compensation to which they were entitled and deprived them of such wages and compensation. As a further result of Defendants' failure to provide Plaintiff and the Class Members with accurate wage statements in accordance with Labor

1 Code § 226 and to keep accurate time records as required by the Wage Order, Plaintiff and the
2 Class Members have suffered injuries and are entitled to penalties under Labor Code § 226
3 and Labor Code § 226.3 which states that any employer who violates § 226 shall be subject to
4 a civil penalty in the amount of \$250.00 per employee per violation in an initial citation. The
5 civil penalty provided for in this section is in addition to any other penalty provided by law, in
6 an amount to be proven at trial. The injuries suffered by Plaintiff and the Class Members
7 include, but are not limited to, having been, and continuing to be, forced to conduct
8 investigations and perform mathematical computations in an attempt to reconstruct their time
9 records; the inability to reconstruct their time records; the inability to discern the amount of
10 wages they were paid and/or the applicable wage rate; the inability to determine the number of
11 hours, including but not limited to, overtime hours they worked; the inability to determine the
12 number of rest periods and meal periods they were forced to forego; the inability to determine
13 whether they were compensated for all meal and rest periods of which they had been deprived;
14 the inability to determine whether they were paid all wages due for work they performed; the
15 inability to determine the amount of wages owing and unpaid; having been, and continuing to
16 be, forced to hire attorneys and initiate a lawsuit in order to ascertain the aforementioned
17 information.

18 75. Plaintiff and the Class Members are further entitled to recover from Defendants
19 the greater of their actual damages caused by Defendants' failure to comply with Labor Code
20 § 226(a), or an aggregate penalty not exceeding \$4,000.00.

21 76. Plaintiff and the Class Members are also entitled to injunctive relief to ensure
22 compliance with this section, pursuant to Labor Code § 226(g).

23 77. Pursuant to Labor Code § 226(e), each employee suffering injury as a result of a
24 knowing and intentional failure by an employer to comply with Labor Code § 226(a) is
25 entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in
26 which a violation occurs and \$100.00 per employee for each violation in a subsequent pay
27 period, not exceeding an aggregate penalty of \$4,000.00, and is entitled to an award of costs
28 and reasonable attorneys' fees.

1 78. Moreover, an employee is entitled under the Labor Code § 226(g) to injunctive
2 relief to ensure compliance with Labor Code § 226 and is entitled to an award of costs and
3 reasonable attorneys' fees.

4 79. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed
5 for.

6 **FIFTH CAUSE OF ACTION**
7 **Failure to Pay All Wages Upon Termination**
8 **(California Labor Code §§ 201, 202 and 203; and The Wage Order)**
9 **(Plaintiff and the Class Members against Defendants)**

10 80. Plaintiff and the Class Members incorporate by reference all of the allegations
11 contained in the preceding paragraphs as though fully set forth herein.

12 81. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
13 in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue
14 as a penalty from the due date, and at the same rate until paid, but the wages shall not continue
15 for more than thirty (30) days.

16 82. Labor Code § 201 provides if an employer discharges an employee, the wages
17 earned and unpaid at the time of discharge are due and payable immediately.

18 83. Labor Code § 202 provides that an employee is entitled to receive all unpaid
19 wages no later than 72 hours after an employee quits his or her employment, unless the
20 employee has given 72 hours previous notice of his or her intention to quit, in which case the
21 employee is entitled to his or her wages at the time of quitting.

22 84. Defendants willfully failed to pay Plaintiff and the Class Members all their
23 wages due, as alleged hereinabove and hereinafter, upon the termination of their employment
24 within the times prescribed by Labor Code §§201 and 202 and are therefore subject to a
25 waiting time penalty. Plaintiff and the Class Members are entitled to recover from Defendants
26 the statutory penalty for each day they were not paid at their regular hourly rate of pay, up to a
27 thirty (30) day maximum pursuant to California Labor Code § 203.

28 85. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed
for.

SIXTH CAUSE OF ACTION
Violation of Labor Code § 2802
(Plaintiff and the Class Members against Defendants)

86. Plaintiff and the Class Members incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

87. Pursuant to Labor Code § 2802 an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the employee's discharge of his or her duties.

88. At all times herein alleged, Defendants regularly and consistently violated Labor Code § 2802 by failing to reimburse for expenses incurred in performing their duties, including expenses associated with the use of Plaintiff's and the Class Members' personal phones for mandatory work-related purposes.

89. Plaintiff and the Class Members were required to retain attorneys to bring this action and are entitled to an award of reasonable attorneys' fees pursuant to Labor Code § 2802(c).

SEVENTH CAUSE OF ACTION
California Labor Code Private Attorneys General Act of 2004
(California Labor Code § 2698)
(Plaintiff and the Aggrieved Employees against Defendant JALISCIENSE)

90. Plaintiff incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

91. California Labor Code §§ 2698, et seq. ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5.

92. Plaintiff is an "aggrieved employee" pursuant to Labor Code § 2699, as Plaintiff has suffered violations including, but not limited to, violations of Labor Code §§ 201-204, 208, 216, 223, 226, 226.7, 233, 510, 512, 558, 1174, 1194, 1197-1199, 2698 et seq 2699(f) and (g), 2802, and the Wage Order.

93. Pursuant to PAGA, and in particular California Labor Code §§ 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks

1 assessment and collection of civil penalties for Plaintiff and the employees, and the State of
2 California against Defendants on behalf of himself and the employees.

3 94. WHEREFORE, Plaintiff requests relief as hereinafter prayed for.

4 **EIGHTH CAUSE OF ACTION**

5 **Unfair Business Practices**

6 **(California Business and Professions Code §§ 17200 et seq. and Common Law)**
7 **(Plaintiff and the Class Members against Defendants)**

8 95. Plaintiff and the Class Members hereby incorporate each of the preceding
9 paragraphs of this Complaint as if fully alleged herein.

10 96. Plaintiff and the Class Members suffered direct injury as a result of the
11 Defendants' conduct, as alleged in the preceding paragraphs, and bring this action under Code
12 of Civil Procedure § 382. The deprivation by Defendants of Plaintiff and the Class Members
13 of wages due and lawful meal and rest periods, and Defendants' provision of inaccurate wage
14 statements, are unlawful business practices within the meaning of Business and Professions
15 Code § 17200, et seq. including, but not limited to, a violation of the Wage Order, regulations,
16 and statutes, and further, whether or not in violation of the aforementioned Wage Order,
17 regulation and statutes, amount to practices which are otherwise unfair.

18 97. Under Business and Professions Code § 17200, et seq., including, but not limited
19 to §§ 17201, 17203, and 17208, Plaintiff asserts standing on behalf of herself and on the behalf
20 of each of the members of the class alleged herein. Plaintiff and the Class Members seek,
21 among others, restitution of compensation due during the Class Period.

22 98. Throughout the Class Period, Defendants have committed violations of law, as
23 described herein, including, but not limited to, violation of Labor Code §§ 204, 216, 221,
24 226.7, 510, 512(a), 1194, 1198, 2802 and the Wage Order.

25 99. These unlawful and unfair business practices defeat the public interest purposes
26 of the State's labor laws, as set forth in the sections of the California Labor Code, the
27 California Code of Regulation and the Wage Order referenced elsewhere in this complaint, all
28 of which promote compliance with labor laws and employment regulations by participants in
Defendants' industry.

100. Defendants' unfair and unlawful business practices thus have violated the

sections of the Labor Code, California Code of Regulation, and the Wage Order referenced in this complaint and have imposed harm on their employees and their competitors and will continue to do so until abated. As a result of these unfair and unlawful business practices, Defendants have retained monies belonging to Plaintiff and the Class Members and they have been unjustly enriched at Plaintiff's and the Class Members' expense. Plaintiff and the Class Members are entitled to restitution of the wages and monies withheld and retained by Defendants during the Class Period and a preliminary and permanent injunction requiring Defendants to pay all wages and sums due to Plaintiff and the Class Members, to provide mandatory rest and meal periods, and to provide accurate and complete wage statements.

101. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class Members have suffered injury and loss of money.

102. This action will result in the enforcement of an important right affecting the public interest. The conduct of Defendants as alleged herein has been and continues to be unfair, unlawful and harmful to Plaintiff and the Class Members, and the general public. Accordingly, under Code of Civil Procedure § 1021.5, Plaintiff and the Class Members are entitled to an award of reasonable attorneys' fees according to proof.

103. WHEREFORE, Plaintiff and the Class Members request relief as hereinafter prayed for.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and on behalf of the Class Members prays as follows:

1. For an order certifying this action as a class action and proposed Class;
2. For an order appointing Plaintiff as the representative of all the Class Members;
3. For an order appointing counsel for Plaintiff as Class Counsel.
4. As to the First and Second Cause of Action, for unpaid premium wages and penalties pursuant to Labor Code §§ 210, 226.7, 512, 1198 and the Wage Order;
5. As to the Third Cause of Action, for unpaid wages, including minimum and overtime wages, damages and/or penalties pursuant to Labor Code §§ 510, 558, 1194, 1197,

1 1197.1, and 1198, and the Wage Order;

2 6. As to the Fourth Cause of Action, for damages and/or penalties, attorneys' fees
3 and costs pursuant to Labor Code §§ 226 and 226.3, and the Wage Order;

4 7. As to the Fifth Cause of Action, for failing to pay all wages upon termination
5 pursuant to Labor Code §§ 201, 202, and 203;

6 8. As to the Sixth Cause of Action, for damages and/or penalties pursuant to Labor
7 Code § 2802, and the Wage Order;

8 9. As to the Seventh Cause of Action, for civil penalties and attorneys' fees
9 pursuant to Labor Code § 2698 et seq., and Labor Code § 226.3;

10 10. As to the Eighth Cause of Action, for restitution of unpaid wages and penalties
11 pursuant to Business and Professions Code § 17200 et seq.;

12 11. As to All Causes of Action, for prejudgment interest from the day such amounts
13 were due and payable.

14 12. As to All Causes of Action, for attorneys' fees and costs provided by Labor
15 Code §§ 218.5, 226, 1194 and Code of Civil Procedure § 1021.5; and

16 13. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 Dated: August 10, 2023

FITZPATRICK & SWANSTON

19
20 By: /s/ B. James Fitzpatrick
21 B. James Fitzpatrick
22 Attorneys for Plaintiff,
23 MARGARITA SOTO ALVAREZ
24 on behalf of herself and all similarly
25 aggrieved employees
26
27
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