

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Rupert Byrdsong

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

CATHERINE SWEAT,

Plaintiff,

vs.

PENSAR BIG, INC.; CARMEN HUERTA;  
and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **23STCV00616**

) **COMPLAINT FOR DAMAGES FOR:**

- ) **1) FAILURE TO COMPENSATE FOR**  
) **ALL HOURS WORKED;**  
) **2) FAILURE TO PAY MINIMUM**  
) **WAGES;**  
) **3) FAILURE TO PAY OVERTIME;**  
) **4) FAILURE TO PROVIDE ACCURATE**  
) **ITEMIZED WAGE STATEMENTS;**  
) **5) FAILURE TO PAY WAGES OWED**  
) **EVERY PAY PERIOD;**  
) **6) FAILURE TO PAY WAGES WHEN**  
) **EMPLOYMENT ENDS;**  
) **7) FAILURE TO GIVE REST BREAKS;**  
) **8) FAILURE TO GIVE MEAL BREAKS;**  
) **9) FAILURE TO REIMBURSE**  
) **BUSINESS EXPENSES;**  
) **10) PRIVATE ATTORNEYS GENERAL**  
) **ACT ("PAGA");**  
) **11) FAILURE TO PROVIDE**  
) **PERSONNEL RECORDS;**  
) **12) FAILURE TO PROVIDE PAY**  
) **RECORDS;**  
) **13) VIOLATION OF CALIFORNIA**  
) **BUSINESS AND PROFESSIONS**  
) **CODE SECTION 17200.**

) **DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, CATHERINE SWEAT (hereinafter “Plaintiff”), and alleges:

**PARTIES, JURISDICTION, VENUE**

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants PENSAR BIG, INC.; CARMEN HUERTA; and DOES 1 to 25, inclusive, (collectively “Defendant(s)” or “PENSAR BIG”) do business in the County of Los Angeles, and because Defendants’ obligations and liabilities arise therein. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant PENSAR BIG, INC. was and is a California corporation, operating in the County of Los Angeles, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that all times herein mentioned, Defendant CARMEN HUERTA is and was a resident of the County of Los Angeles, State of California and was an owner, director, and/or managing agent of PENSAR BIG, INC., who was personally involved in the day-to-day activities of the business and, as such, controlled the wages, hours, and working conditions of Plaintiff and other aggrieved employees. Defendant CARMEN HUERTA is being included in this lawsuit pursuant to Labor Code section 558.1.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

## GENERAL ALLEGATIONS

6. During her employment tenure with PENSAR BIG, Plaintiff was classified as an hourly, non-exempt employee and her latest position was that of “shift manager”. Plaintiff’s latest rate of pay was \$17.50 per hour.

7. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves and others. The statute also states that an “aggrieved employee” is “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas’ motion.

8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on behalf of all other employees, including hourly, non-exempt employees who worked for PENSAR BIG at

any of their California locations during the relevant PAGA period.

9. It is Plaintiff's position that PENSAR BIG has committed numerous labor code violations against Plaintiff and other hourly, non-exempt employees who worked for PENSAR BIG in the state of California during the PAGA period.

10. PENSAR BIG did not provide Plaintiff and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate her and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and consistently worked "off the clock". This is so because Plaintiff and others would consistently be required to perform work duties after clocking out for work, including cleaning up after business hours. Furthermore, management/ownership was unequivocally aware of the "off the clock" work. Moreover, there would be issues with rounding down the number of hours worked, which led to time shaving and Plaintiff and others not being paid for all hours worked. In addition, to the extent employees such as Plaintiff and others worked through their meal periods, they were not compensated for that time, which would be akin to a minimum wage violation.

11. Due to the above "off the clock" violations, PENSAR BIG violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and others' actual work hours, which included the "off the clock" work as described above, entitled them to overtime, however, it was not company policy to keep accurate track of all hours worked and to pay employees overtime. In addition, any bonus or incentive payments or shift differentials were not factored into Plaintiff's and others' hourly rates for the purposes of calculating the correct overtime rate of pay and also for the purposes of calculating accurate amount of sick pay and meal/rest period premiums.

12. PENSAR BIG violated Labor Code § 226.7 along with Industrial Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved

1 employees 10-minute rest periods for every four hours of work, or majority portion thereof,  
2 throughout their employment. PENSAR BIG did not completely relieve Plaintiff of all duty  
3 during said rest periods. PENSAR BIG did not pay to Plaintiff one additional hour of pay at  
4 Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods  
5 was not provided. Rest breaks were not authorized or enforced at the restaurant. In fact, it was  
6 not part of PENSAR BIG's culture for employees such as Plaintiff and others to take at least one  
7 10-minute rest break every day wherein they are relieved of all work duties. The latter was due  
8 to understaffing of employees and employees being too busy to be able to take rest breaks. There  
9 was no set schedule for employees to take meal and rest breaks. As such, employees were at the  
10 mercy of orders slowing down or not being placed. The latter meant that statutory rest breaks  
11 took a back seat as did timely, uninterrupted meal breaks before the 5<sup>th</sup> hour worked.

12 13. PENSAR BIG also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare  
13 Commission Wage Order No. 5 because it failed to provide Plaintiff and other similarly situated  
14 aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours  
15 of work throughout their employment, and Plaintiff did not validly waive said meal periods.  
16 PENSAR BIG did not completely relieve Plaintiff of all duties during said meal periods.  
17 PENSAR BIG did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of  
18 compensation for each workday that one or more statutory meal periods was not provided. If  
19 PENSAR BIG had Plaintiff sign a meal period waiver, it would not be valid and enforceable  
20 since Plaintiff and others generally worked more than a 6-hour shift. If PENSAR BIG had  
21 Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through her  
22 meal period, it would also be invalid and unenforceable because the nature of Plaintiff's job does  
23 not prevent her from taking a meal period. As was the case with rest periods, meal breaks were  
24 definitively not part of the PENSAR BIG's culture. Timely, uninterrupted, and complete (at least  
25 30 minutes) meal periods were not consistently authorized and were not consistently enforced.  
26 Due to understaffing and no coverage, meal periods were not always taken BEFORE the 5<sup>th</sup> hour  
27 worked and were not for a period of 30 minutes wherein employees were relieved of all job  
28 duties.

1 14. Furthermore, and due to the above-mentioned labor code violations, during the relevant  
2 time period, PENSAR BIG failed to pay Plaintiff and other similarly situated aggrieved  
3 employees all wages due to them within any time period specified by California Labor Code  
4 section 204, including the minimum wages and overtime as described above as well as meal/rest  
5 break premiums. PENSAR BIG was also in violation of California Labor Code section 226(a)  
6 by failing to include pertinent information on the wage statements, including but not limited to,  
7 all hours worked, tips earned, gross wages earned, net wages earned, all deductions, premium  
8 payments for meal and rest breaks (at accurate rates), the correct legal name and address of the  
9 employing entity, the beginning and end of the pay period, all applicable hourly rates, and all  
10 identifying employee information, among other items. As such, PENSAR BIG did not provide  
11 Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized  
12 wage statements.

13 15. PENSAR BIG violated Labor Code § 203 because it willfully failed to pay other similarly  
14 situated aggrieved employees earned and due wages upon separation of employment, either  
15 immediately upon involuntary termination, or within 72 hours of resignation. These earned but  
16 unpaid wages include compensation for all hours worked including minimum wages and  
17 overtime compensation, and premiums for the missed meal and rest breaks.

18 16. During the relevant time period, PENSAR BIG also failed to keep accurate and complete  
19 payroll records showing the actual hours worked per day (including the time for meal periods)  
20 and the wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code  
21 sections 1174(d).

22 17. PENSAR BIG also violated Labor Code section 2802 in that Plaintiff was not reimbursed  
23 for business expenses in that Plaintiff would have to utilize her personal cell phone to talk to  
24 management/ownership about work-related matters, including scheduling. Plaintiff and others  
25 were also not reimbursed for their uniforms.

26 18. Moreover, PENSAR BIG failed to provide sick pay pursuant to Labor Code section 246  
27 and also failed to provide Worker's Compensation coverage for Plaintiff and other aggrieved  
28

employees in violation of Labor Code Section 3700.5.

**FIRST CAUSE OF ACTION**

**FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

**(California Industrial Welfare Commission Order 5-2001, California Code of Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

**(Plaintiff against all named defendants and all DOE defendants)**

19. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

20. At all times relevant herein, Defendants were required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 5-2001, California Code of Regulations, Title 8, Section 11050.

21. For the three (3) years preceding filing of this action, Defendants failed to compensate Plaintiff for all hours worked.

22. Under the aforementioned wage order and regulations, Plaintiff is to recover compensation for all hours worked but not paid by Defendants for the three (3) years preceding the filing of this Complaint.

23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs which will equal an amount known to Plaintiff once she has obtained all of her payroll records from Defendants.

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1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
2 trial.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PAY OVERTIME**

5 **(California Industrial Welfare Commission Order 5-2001, California Code of**  
6 **Regulations Title 8 Section 11050)**

7 **(Plaintiff against all named Defendants and all DOE defendants)**

8 33. Plaintiff re-alleges and incorporates by reference each and every allegation in  
9 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.

10 34. Pursuant to Industrial Welfare Commission Order No. 5-2001, California Code of  
11 Regulations, Title 8, Section 11050, for the period of Plaintiff's employment, Defendants were  
12 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)  
13 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours  
14 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)  
15 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a  
16 week.

17 35. Plaintiff was a non-exempt employee entitled to the protections of the California  
18 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,  
19 Section 11050.

20 36. Plaintiff worked more than eight (8) hours in a single workday, more than twelve (12)  
21 hours in a single day, or forty (40) hours in a single workweek on numerous occasions.

22 37. Plaintiff was entitled to the above overtime premiums.

23 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times  
24 Plaintiff's regular rate of pay for hours worked past eight (8) in a day or two times Plaintiff's  
25 regular rate of pay for hours worked past twelve (12) in a day.

26 39. Defendants did not pay Plaintiff premium wages of at least one and one-half times  
27 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

28 40. Plaintiff worked at least one pay period in which she was not properly paid overtime  
within the three (3) years prior to the initiation of this lawsuit.

1 41. Defendants know or should know the actual dates of overtime worked, the amount of  
2 overtime worked, and the amount of unpaid overtime due.

3 42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an amount  
4 according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

5 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of  
6 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the nonpayment  
7 of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable  
8 attorney's fees and costs of suit.

9 44. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
10 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
11 trial.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

14 **(California Labor Code Section 226)**

15 **(Plaintiff against all named Defendants and all DOE defendants)**

16 45. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs  
1 through 44, inclusive, of this Complaint as though fully set forth herein.

17 46. Pursuant to California Labor Code Section 226, every employer must furnish each  
18 employee an itemized statement of wages and deductions at the time of payment of wages.

19 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that  
20 accurately reflected all information required by Labor Code Section 226, including but not  
21 limited to, gross wages earned, including overtime, net wages earned, total hours worked by the  
22 employee, all deductions, and premium pay for missed meal breaks and rest breaks. Therefore,  
23 Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in  
24 accordance with California Labor Code Section 226(a).

25 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the  
26 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
27 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay  
28 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and

1 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to  
2 the 1-year period immediately preceding the date this lawsuit was filed.

3 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained  
4 damages, including loss of earnings, in an amount to be established at trial. As a further direct  
5 and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to  
6 recover penalties, in an amount to be established at trial, as well as costs and attorney's fees  
7 pursuant to statute.

8 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
9 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

### 10 **FIFTH CAUSE OF ACTION**

#### 11 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

12 **(California Labor Code Section 204)**

13 **(Plaintiff against all named Defendants and all DOE defendants)**

14 51. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs  
1 through 50, inclusive, of this Complaint as though fully set forth herein.

15 52. California Labor Code Section 204 establishes the fundamental right of all employees  
16 in the State of California to be paid wages in a timely fashion for their work.

17 53. At all times relevant during the liability period, Defendants failed to pay Plaintiff the  
18 full amount of all owed wages when due as required by California Labor Code Section 204.

19 54. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is  
20 informed, believes, and thereon alleges, that all times relevant during the liability period,  
21 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,  
22 including overtime hours and the minimum wage along with premiums for missed meal breaks  
23 and rest breaks.

24 55. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an  
25 amount, subject to proof, to the extent she was not paid all wages each pay period. The precise  
26 amount of unpaid wages is not presently known to Plaintiff but can be determined directly from  
27 Defendants' records or indirectly based on information from Defendants' records.

28 56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

4 **(California Labor Code Sections 201, 203)**

5 **(Plaintiff against all named Defendants and all DOE defendants)**

6 57. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs  
7 1 through 56, inclusive, of this Complaint as though fully set forth herein.

8 58. Pursuant to California Labor Code Section 201(a), an employer who discharges an  
9 employee must immediately pay for all compensation due and owing.

10 59. Pursuant to California Labor Code Section 202, when an employee resigns, the employer  
11 must pay all compensation due and owing within 72 hours of resignation, or on the employee's  
12 last day of work, if the employee gives more than 72 hours notice of resignation.

13 60. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,  
14 without abatement or reduction, any wages of an employee whose employment ends, the wages  
15 of the employee shall continue as a penalty from the due date at the same rate until paid or until  
16 an action is commenced; however, the wages shall not continue for more than 30 days for failure  
17 to pay an employee owed wages.

18 61. After Plaintiff's employment with Defendants ended, Defendants willfully refused and  
19 continue to refuse to pay their unpaid wages as required by Labor Code Section 203.

20 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
21 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.  
22 Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding  
23 the filing of this lawsuit.

24 63. Under this cause of action, Plaintiff also prays for attorney's fees and costs under  
25 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set  
26 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

27 64. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
28 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

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68. Under this cause of action, Plaintiff prays for wages due to her under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

69. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

70. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

### **EIGHTH CAUSE OF ACTION**

#### **FAILURE TO GIVE MEAL BREAKS**

**(Plaintiff against all named Defendants and all DOE defendants)**

71. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 70, inclusive, of this Complaint as though fully set forth herein.

72. Plaintiff brings this cause of action under the following laws, for the following reasons:

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11050, which states that if an employer fails to provide an employee a meal period in accordance with the

1 applicable provisions of the Wage Order, the employer shall pay the employee one  
2 (1) hour of pay at the employee's regular rate of compensation for each workday that  
3 the meal period is not provided;

- 4 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as  
5 codified under Title 8 of the California Code of Regulations Section 11050, which  
6 requires an employer to maintain records documenting its employees' meal periods;
- 7 e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as  
8 codified under California Code of Regulations Section 11050, which penalizes the  
9 employer \$50.00 for each initial violation, per employee, of any provision of the  
10 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 11 f. California Labor Code section 1171 and 1173, which have given the California  
12 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5)  
13 as enforceable law.

14 73. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks  
15 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted  
16 to take a second relieved meal break after ten (10) hours of work, as required by California law.  
17 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.  
18 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that  
19 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that  
20 the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty.  
21 California Labor Code section 226.7 provides that employers may not require their employees  
22 to work through their meal periods. California Labor Code section 226.7 and California Code of  
23 Regulations section 11050 requires that if the employer fails to provide the employee with an  
24 uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each  
25 work day that the meal period is not given.

26 74. Under this cause of action, Plaintiff prays for wages due to her under the statutes,  
27 regulations, and wage orders alleged in this cause of action along with any allowable interest,  
28 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the  
foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

1 75. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's  
2 fees as well as interest under Labor Code section 218.6.

3 76. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
4 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

5 **NINTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

7 **(Plaintiff against all named Defendants and DOE Defendants)**

8 77. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs  
9 1 through 76, inclusive, of this Complaint as though fully set forth herein.

10 78. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her  
11 employee for all necessary expenditures or losses incurred by the employee in direct  
12 consequence of the discharge of his or her duties."

13 79. Beginning at least 3 years prior to the filing of this complaint, in order to discharge  
14 his duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of  
15 completing her job duties, which were not reimbursed by Defendants. These costs include, but  
16 are not limited to, use of personal cell phone for work purposes and her uniform. Plaintiff is  
17 entitled to reimbursement for these necessary expenditures, plus interest and attorney's fees and  
18 costs, under Labor Code section 2802.

19 **TENTH CAUSE OF ACTION**

20 **PRIVATE ATTORNEYS GENERAL ACT**

21 **Representative Claim for PAGA penalties under California Labor Code sections 201,**  
22 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1174,**  
23 **1174.5, 1194, 1197, 1198, 2802, 3700.5)**

24 **(Plaintiff against all named Defendants and all DOE defendants)**

25 80. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs  
26 1 through 79, inclusive, of this Complaint as though fully set forth herein.

27 81. Pursuant to law, Plaintiff provided the required written notice to the LWDA and  
28 Defendants of the specific violations of the California Labor Code that Defendants and DOE  
defendants have violated and continue to violate.

1 82. Pursuant to California Labor code section 2699.3, no response was received from the  
2 LWDA within 65 days of the postmark date of the above-alleged letter.

3 83. Plaintiff therefore has exhausted all administrative remedies required of her under  
4 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this  
5 cause of action and pursue penalties in a representative action for Defendants' violations of the  
6 Labor Code.

7 84. Pursuant to California Labor Code section 2699, any provisions of the Labor Code  
8 that provides for a civil penalty to be assessed and collected by the LWDA or any of its  
9 departments, divisions, commissions, boards, agencies, or employees for violation of the code  
10 may, as an alternative, be recovered through a civil action brought by an aggrieved employee  
11 on behalf of himself or herself and other current or former employees pursuant to the procedures  
12 specified in California Labor Code section 2699.3.

13 85. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged  
14 violator and had one or more of the alleged violations committed against her, and therefore is  
15 properly suited to represent the interests of other current and former hourly, non-exempt  
16 employees who worked for PENSAR BIG at any of their California locations during the relevant  
17 PAGA Period.

18 86. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks penalties  
19 under California Labor Code sections 2698 and 2699 because of Defendants' violations of  
20 numerous provisions of the California Labor Code as alleged in this Complaint.

21 87. Plaintiff therefore has exhausted all administrative remedies required of her under  
22 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this  
23 cause of action and pursue penalties in a representative action for Defendants' violations of the  
24 Labor Code.

25 88. California Labor Code section 2699 et seq. imposes penalties upon culpable  
26 Defendants for violating the Labor Code.

27 89. California Labor Code section 558 establishes a civil penalty as follows: Any employer  
28 or other person action on behalf of an employer who violates, or causes to be violated, a section  
of this chapter or any provision regulating hours and days of work in any order of the Industrial

1 Welfare Commission (including the “Hours and Days of Work” section of the Wage Order) shall  
2 be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each underpaid  
3 employee for each pay period for which the employee was underpaid... (2) for each subsequent  
4 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which  
5 the employee was underpaid...

6 90. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by  
7 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not  
8 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved  
9 employees in this specific cause of action under the Private Attorneys General Act.

10 91. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for  
11 the following:

12 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,  
13 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, and  
14 3700.5 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission  
15 Wage Order Provisions (no. 5) violated based on the facts alleged in this Complaint.

16 92. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney’s fees,  
17 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees  
18 as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional  
19 limits of this Court.

## 20 **ELEVENTH CAUSE OF ACTION**

### 21 **FAILURE TO PROVIDE PERSONNEL RECORDS**

22 **(Plaintiff against all named Defendants and all DOE Defendants)**

23 93. Plaintiff re-alleges and incorporates by reference each and every allegation in  
24 paragraphs 1 through 92, inclusive, of this Complaint as though fully set forth herein.

25 94. Labor Code section 1198.5 dictates “every current and former employee, or his  
26 or her representative, has the right to inspect and receive a copy of the personnel records that  
27 the employer maintains relating to the employee’s performance or to any grievance concerning  
28 the employee.”

95. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the

1 employer shall make the contents of those personnel records available for inspection to the  
2 current or former employee, or his or her representative, at reasonable intervals and at reasonable  
3 times...” On information and belief, Defendants intentionally failed to provide Plaintiff with  
4 personnel records when requested by Plaintiff via letters on October 12, 2022, as required by  
5 law. Plaintiff requested her personnel records in accordance with California Labor Code section  
6 1198.5(k) on October 12, 2022, via U.S. certified mail, return receipt requested.

7 96. Defendants failed to provide Plaintiff with an opportunity to inspect or copy her  
8 records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has  
9 suffered and continues to suffer substantial losses related to Defendants' failure to provide  
10 personnel records.

11 97. Plaintiff seeks all available remedies for Defendants’ violations including, but  
12 not limited penalties, and costs to the extent permitted by law and according to proof at trial.  
13 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the  
14 amount of \$750.00, along with costs and attorney’s fees.

## 15 **TWELFTH CAUSE OF ACTION**

### 16 **FAILURE TO PROVIDE PAY RECORDS**

17 **(Plaintiff against all named Defendants and all DOE Defendants)**

18 98. Plaintiff re-alleges and incorporates by reference each and every allegation in  
19 paragraphs 1 through 97, inclusive, of this Complaint as though fully set forth herein.

20 99. Labor Code section 226 sub-section (b) dictates “an employer...shall afford  
21 current and former employees the right to inspect or copy records pertaining to their  
22 employment, upon reasonable request to the employer...”

23 100. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an  
24 employer who receives a written or oral request to inspect or copy records pursuant to  
25 subdivision (b) pertaining to a current or former employee shall comply with the request as soon  
26 as practicable, but no later than 21 calendar days from the date of the request.” On information  
27 and belief, Defendants intentionally failed to provide Plaintiff with pay records when requested  
28 by Plaintiff via certified letter, return receipt requested, on October 12, 2022, and as required  
by law. Plaintiff requested her pay records in accordance with California Labor Code section

226 on October 12, 2022, via certified mail. Defendants failed to provide Plaintiff with an opportunity to inspect or copy her pay records within 21 days.

101. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants' failure to provide pay records.

102. Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the amount of \$750.00, along with costs and attorney's fees. Plaintiff seeks all available remedies for Defendants' violations including, but not limited penalties, and costs to the extent permitted by law and according to proof at trial.

### **THIRTEENTH CAUSE OF ACTION**

#### **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

**(California Business and Professions Code Section 17200)**

**(Plaintiff against corporate entity PENSAR BIG, INC. and all DOE defendants)**

103. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 102, inclusive, of this Complaint as though fully set forth herein.

104. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants constitutes unfair and unlawful business practices under California Business and Professions Code Section 17200, et seq.

105. Defendant's violations of the California labor laws and the Labor Code constitutes a business practice because it was done repeatedly over a significant period of time in a systematic manner that was detrimental to Plaintiff and others.

106. For the four years preceding the filing of this action, Plaintiff has suffered damages and request damages and/or restitution of all monies and profits to be disgorged from corporate defendant PENSAR BIG, INC. in an amount according to proof at time of trial, but in excess of the jurisdiction of this Court.

WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as follows:

1. For compensatory damages including lost past and future wages, regular wages, overtime, and all other sums of money, including employment benefits, together with

- 1 interest on said amounts, and any other economic injury to Plaintiff, according to  
2 proof;
- 3 2. For special and consequential damages to the extent allowed by law;
  - 4 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof  
5 at trial;
  - 6 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount  
7 subject to proof at trial;
  - 8 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to  
9 proof at trial;
  - 10 6. For restitution and disgorgement for all unfair business practices by corporate Defendant  
11 PENSAR BIG, INC. against Plaintiff in an amount subject to proof at trial;
  - 12 7. For an order enjoining corporate Defendant PENSAR BIG, INC. from further unfair  
13 and unlawful business practices in violation of Business and Professions Code Sections  
14 17200, et seq.;
  - 15 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours  
16 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
  - 17 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major  
18 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
  - 19 10. For maximum civil penalties available under the Labor Code and applicable Wage  
20 Order against Defendants as described more particularly in the Complaint and  
21 representative PAGA claim;
  - 22 11. For all remedies available to Plaintiff under the applicable Wage Order and the  
23 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,  
24 liquidated damages, damages, penalties, and waiting time penalties according to proof  
25 to the extent permitted by law via PAGA;
  - 26 12. For the imposition of civil penalties and/or statutory penalties;
  - 27 13. For all interest as allowed by law;
  - 28 14. For all costs and disbursements incurred in this suit;
  15. Reasonable attorney's fees where available by law, including but not limited to,

1 pursuant to Labor Code section 2698 et seq., the Labor Code; and/or other applicable  
2 laws; and

3 16. For such other and further relief as this Court may deem proper.  
4

5 **DATED:** January 11, 2023

**MESSRELIAN LAW INC.**

6 By   
7 Harout Messrelian, Esq.  
8 Attorneys for Plaintiff Catherine Sweat  
9

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

12 **DATED:** January 11, 2023

**MESSRELIAN LAW INC.**

13 By   
14 Harout Messrelian, Esq.  
15 Attorneys for Plaintiff Catherine Sweat  
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