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County of Monterey
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

SARA CASTRO,

Plaintiff,

v.

LYDIA ORTIZ dba BLUSH MAKEUP AND
SKIN STUDIO; and DOES 1 through 50,
inclusive,

Defendants.

Case No.23CV001041

**INDIVIDUAL AND REPRESENTATIVE
ACTION**

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

DEMAND FOR JURY

Plaintiff Sara Castro, complains and alleges against the above-captioned Defendants as follows:

1. Plaintiff Sara Castro ("Plaintiff") is a competent adult who is, and at all times mentioned in this complaint has been, a resident of Monterey County, California. Plaintiff was employed by Defendants from approximately 2016, through approximately August 28, 2022, pursuant to an unwritten contract, some of the terms of which were the product of an oral agreement, with other terms implied from or incorporated from written materials and policies maintained by Defendants and from the conduct of the parties. The terms of this contract included working as a non-exempt employee, and at all times as an employee not exempted from the California Labor Code. Plaintiff is, and at all relevant times was, an individual as defined in Business and Professions Code §§ 17201 and 17204.

2. Defendant LYDIA ORTIZ dba BLUSH MAKEUP AND SKIN STUDIO ("BLUSH") is, and at all times mentioned in this complaint has been, a sole proprietor

1 registered to do business in the State of California. Plaintiff is informed and believes and
2 thereon alleges that BLUSH is authorized to and does conduct business throughout the State of
3 California, and has purposefully availed itself of the privileges and benefits of doing business
4 in the State of California.

5 3. Plaintiff is ignorant of the true names, identities, capacities and relationships of
6 the Defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these
7 Defendants by such fictitious names. Plaintiff is informed and believes, and thereon alleges,
8 that each of these fictitiously named Defendants are responsible in some manner for the
9 occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately
10 caused by DOES 1 through 50. Plaintiff will amend this Complaint to allege the true names
11 and capacities of said DOE Defendants when such information is ascertained. Each reference
12 to "Defendants," and each reference to any particular Defendant herein, shall be construed to
13 refer to all Defendants, including, but not limited to, all of those fictitiously named herein as a
14 "DOE" Defendant, and each of them.

15 4. Plaintiff is informed and believes, and thereon alleges, that each of the
16 Defendants herein was at all times relevant to this action the agent, employee, representative,
17 partner, and/or joint venturer of the remaining Defendants, and each of them, and that each of
18 the Defendants herein was at all times acting within the course and scope of that relationship.
19 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
20 herein consented to, ratified, and/or authorized the acts of each of the remaining Defendants
21 herein. The conduct of each of the Defendants was at all times herein in accordance with and
22 represents the official policy of Defendants. Additionally, at all times herein mentioned,
23 Defendants, and each of them, aided and abetted the acts and omissions of each and all of the
24 other Defendants, which proximately caused the damages herein alleged. Plaintiff is further
25 informed and believes, and thereon alleges, that all of the Defendants jointly employed the
26 Plaintiff herein and/or carried out a joint scheme, business plan and/or uniform policy, and the
27 acts and omissions of each Defendant are legally attributable to the other Defendants such that
28 they are deemed a single integrated enterprise and agents of one another so that all Defendants

1 are each jointly and severally liable for the acts and omissions hereinafter alleged.

2 5. Defendants BLUSH and DOES 1 through 50 (collectively referred to herein as
3 “Defendants”) are, and at all times herein were, “persons” as defined in California Business
4 and Professions Code § 17201.

5 6. At all times herein, Defendants directly or indirectly, or through an agent or
6 representative, exercised control over the wages, hours and/or working conditions of the
7 Plaintiff, and directly or indirectly or through an agent or other person engaged, suffered, or
8 permitted Plaintiff to work.

9 **JURISDICTION AND VENUE**

10 7. This Court has jurisdiction over this action pursuant to Article VI, section 10 of
11 the California Constitution. Plaintiff brings this Complaint for violations of California law
12 occurring in the County of Monterey, including without limitation violations of the California
13 Labor Code, Business and Professions Code, Civil Code and common law, and the amount in
14 controversy exceeds the minimum jurisdictional amount of the Superior Court. Based on
15 information and belief, Defendants have intentionally availed themselves of the benefits and
16 privileges available within this State, economic or otherwise, so as to render the exercise of
17 jurisdiction over them by the courts of the State of California consistent with traditional
18 notations of fair play and substantial justice. Accordingly, this Court has jurisdiction over the
19 parties and claims in this matter.

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

25 **ADMINISTRATIVE PROCEEDINGS**

26 9. Pursuant to California Labor Code § 2699.3, Plaintiff gave written notice on
27 November 15, 2022, by electronic filing with the Labor and Workforce Development Agency,
28 and by certified mail to Defendant BLUSH of factual and legal basis for the labor law

violations alleged in this Complaint.

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

GENERAL ALLEGATIONS

11. Defendants now, and at all times did, own, operate and control a company that employs persons within the meaning of all applicable wage orders, including, but not limited to, IWC Wage Order No. 4-2001 (California Code of Regulations, title 8, section 11040) (“the Wage Order”).

12. At all times relevant herein, Defendant willfully misclassified Plaintiff and all current and former aggrieved employees (“the Employees”) as independent contractors exempting them from the laws requiring the payment of overtime pay and the provision of meal periods, rest periods and other related benefits.

13. At all times relevant herein, Plaintiff worked for Defendants without the provision of being compensated for all hours worked, without being paid overtime premium wages for all overtime hours worked, without being paid all wages on time, working without meal or rest breaks as required by law, without being compensated for missed meal and break breaks, without being paid the full payment of wages owed at the end of Plaintiff’s employment, and without having been provided with complete and accurate wage statements as required by law.

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

1 15. Likewise, at all times relevant herein, Defendants maintained and enforced a
2 uniform policy by which they repeatedly failed to authorize, permit and provide Plaintiff with
3 paid duty-free rest periods of at least ten (10) consecutive uninterrupted minutes during which
4 Plaintiff was relieved of all duties for every four (4) hours worked or major fraction thereof
5 and which were counted as hours worked for which there would be no deduction from wages,
6 and failed to compensate Plaintiff one (1) hour of wages at Plaintiff's regular rate of
7 compensation as required by California Labor Code § 226.7 and the Wage Order for each rest
8 period not provided.

9 16. At all times relevant herein, Defendants maintained and enforced a uniform
10 policy by which they regularly and consistently required Plaintiff to work more than eight (8)
11 hours in a single workday and more than forty (40) hours in a single workweek without paying
12 Plaintiff premium overtime wages for such overtime hours worked. As a result of this policy,
13 Plaintiff worked unpaid hours in excess of eight (8) in a day and forty (40) in a week.
14 Consequently, Defendants failed to pay Plaintiff overtime premium wages of one and one-half
15 times the employee's regular rate of pay for all hours worked over eight (8) hours in a single
16 workday and/or more than forty (40) hours in a single workweek, as required by California
17 Labor Code §§ 510 and 1194 and the Wage Order.

18 17. At all times relevant herein, Defendants maintained and enforced a uniform
19 policy by which they regularly and consistently failed to provide Plaintiff with complete and
20 accurate itemized wage statements stating the total hours worked, overtime hours worked,
21 gross wages earned, net wages earned, all applicable rates of pay and the corresponding
22 number of hours worked under each rate, all deductions, wages owed for missed rest and meal
23 periods, and accurate accounting for all wages paid to Plaintiff.

24 18. At all times relevant herein, Defendants maintained and enforced a uniform
25 policy by which they regularly and consistently violated California Labor Code §§ 201, 202,
26 204, 216, 218, 221, 223, 1194, 1198 and the Wage Order by unlawfully refusing to pay wages
27 to Plaintiff.

28 19. At all times relevant herein, Defendants maintained and enforced a uniform

1 policy by which they regularly and consistently violated California Labor Code §§ 201, 202,
2 and 203 by failing to pay Plaintiff all owing and unpaid wages for work performed by Plaintiff
3 during Plaintiff's employment and at the end of Plaintiff's employment.

4 20. At all times relevant herein, Defendants maintained and enforced a uniform
5 policy by which they regularly and consistently violated California Labor Code §§ 201, 202,
6 204, 218, 1194, 1198, 1199 and the Wage Order by failing to pay Plaintiff for all hours
7 worked, minimum wage for all hours worked, overtime premium wages for all overtime hours
8 worked, and compensation for missed meal and rest periods.

9 21. At all times relevant herein, Defendants maintained and enforced a uniform
10 policy by which they regularly and consistently violated California Labor Code § 2802 by
11 failing to reimburse Plaintiff for using her personal cell phone and vehicle for work-related
12 purposes.

13 22. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
15 and advisors knowledgeable about California labor and wage law, employment and personnel
16 practices, and about the requirements of California law. Plaintiff is informed and believes, and
17 thereon alleges, that at all relevant times, Defendants knew or should have known each of the
18 following:

19 a. That Plaintiff was entitled to receive an uninterrupted 30-minute meal
20 period before working more than five hours, and, if such meal periods were not provided to
21 Plaintiff, Plaintiff was entitled to the payment of one additional hour of pay at Plaintiff's
22 regular rate of pay, and that Plaintiff was not being provided such meal periods and was not
23 receiving one additional hour of pay at Plaintiff's regular rate of pay on occasions when such
24 meal periods were not so provided;

25 b. That Plaintiff was entitled to receive an uninterrupted 10-minute duty-
26 free rest period for every four hours or major fraction thereof worked, and, if such rest period
27 were not so provided, Defendants were required to pay Plaintiff one additional hour of pay at
28 Plaintiff's regular rate of pay, and that Defendants did not authorize, permit and provide such

1 rest periods and, on such occasions, did not provide Plaintiff with one additional hour of pay at
2 Plaintiff's regular rate of pay;

3 c. That Plaintiff was entitled to receive premium overtime wages for the
4 overtime hours Plaintiff worked and that Plaintiff was in fact not receiving premium overtime
5 wages for such overtime hours;

6 d. That Plaintiff was entitled to receive an agreed wage, and no less than
7 minimum wage, as compensation for any and all hours worked by Plaintiff and that, in
8 violation of the California Labor Code, Plaintiff was not in fact receiving either the agreed
9 wage or at least minimum wage for any and all hours worked;

10 e. That Plaintiff was entitled to receive compensation;

11 f. That Plaintiff was entitled to receive complete and accurate wage
12 statements in accordance with California law, and that, in violation of the California Labor
13 Code, Plaintiff was not provided complete and accurate wage statements;

14 g. That Defendants failed and refused to pay Plaintiff agreed wages;

15 h. That Defendants violated Labor Code § 2802 by failing to reimburse
16 Plaintiff for all business expenses;

17 i. That Plaintiff was entitled to timely payment of wages during her
18 employment, and that Plaintiff did not receive payment of all wages, including but not limited
19 to, meal and rest period premium wages, overtime wages, minimum wages and agreed hourly
20 wages within permissible time periods; and

21 j. That Plaintiff was entitled to timely payment of all owing and unpaid
22 wages upon termination of Plaintiff's employment, and that Plaintiff did not receive payment
23 of all wages, including but not limited to, overtime wages, minimum wages, meal and rest
24 period premium wages and agreed hourly wages within permissible time periods after
25 termination of her employment.

26 23. California Labor Code § 218 states that nothing in Article I of the Labor Code
27 shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to
28 him under this Article."

FIRST CAUSE OF ACTION
Willful Misclassification
(Labor Code §§ 226.8, 2699; and the Wage Order)
(Plaintiff and the Employees against Defendants)

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

25. Plaintiff and the Employees were employees of Defendants.

26. At all times relevant herein, Defendants engaged in a pattern and practice of willfully misclassifying Plaintiff and the Employees as independent contractors.

27. Pursuant to Labor Code § 226.89(c), Defendants are subject to a civil penalty of \$25,000.00 for each violation of California Labor Code § 226.8(a)(1).

28. As a result of the unlawful conduct of Defendants, Plaintiff and the Employees have been deprived of wages and other compensation in amounts to be determined at trial, and are entitled to recovery of such amounts.

29. WHEREFORE, Plaintiff and the Employees requests relief as herein prayed for.

SECOND CAUSE OF ACTION
Failure to Provide Meal Periods or Compensation in Lieu Thereof
(Labor Code §§ 226.7 and 1198; and the Wage Order)
(Plaintiff against Defendants)

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

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

32. At all times relevant to this action, the Wage Order and California Labor Code § 1198 provided that an employer may not require, cause or permit an employee to work for a

1 period of more than five (5) hours per day without providing the employee with an
2 uninterrupted meal period of not less than thirty (30) minutes, except that if the total work
3 period per day of the employee is not more than six (6) hours, the meal period may be waived
4 by mutual consent of both the employer and the employee.

5 33. At all times relevant herein, Defendants and/or their authorized supervisors
6 repeatedly failed to comply with the meal period requirements of the Labor Code and the
7 Wage Order by failing to provide Plaintiff with a thirty (30) minute uninterrupted duty-free
8 meal period within five (5) hours of the beginning of Plaintiff's shift, in violation of Labor
9 Code §§ 512, 226.7, and the Wage Order. Defendants also failed to compensate Plaintiff one
10 (1) hour of wages for any of the missed meal periods not provided by Defendants, as alleged
11 above, which failure also violated Labor Code §§512 and 226.7 and the Wage Order.

12 34. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiff is
13 entitled to recover from Defendants one (1) additional hour of pay at Plaintiff's regular hourly
14 rate of compensation for each meal period violation as alleged herein.

15 35. Defendants were at all times aware of the Labor Code and Wage Order
16 requirements that they provide Plaintiff with such meal periods and was aware that Plaintiff
17 regularly worked more than five (5) hours in a shift without receiving mandated meal periods.
18 Thus, Defendants willfully violated the provisions of Labor Code §§ 226.7 and 512 and the
19 Wage Order.
20

21 36. As a result of the unlawful conduct of Defendants, Plaintiff has been deprived of
22 wages and other compensation in amounts to be determined at trial, and are entitled to
23 recovery of such amounts.

24 37. WHEREFORE, Plaintiff requests relief as herein prayed for.

25 **THIRD CAUSE OF ACTION**
26 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
(Labor Code §§ 226.7 and 1198; and The Wage Order)
27 **(Plaintiff against Defendants)**

28 38. Plaintiff alleges and incorporates by reference all of the allegations contained in
the preceding paragraphs as though fully set forth herein.

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

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

14 41. At all times relevant herein, on days in which Plaintiff worked at least three and
15 one half hours, Defendants regularly and repeatedly required Plaintiff to work four (4) hours
16 and/or a major fraction thereof without providing, authorizing or permitting at least one ten
17 (10) minute rest period during which Plaintiff's was relieved of all duties (hereafter "rest
18 period") per each four (4) hour period, or a major fraction thereof, worked.

19 42. At all times relevant herein, Defendants failed to pay Plaintiff a premium of one
20 hour pay at Plaintiff's regular rate of pay for each rest period not provided, authorized, and
21 permitted as alleged herein, pursuant to Labor Code § 226.7.

22 43. Defendants were at all times aware of the Labor Code and Wage Order
23 requirements that they provide Plaintiff with the rest periods described above and were aware
24 that Plaintiff regularly worked more than four (4) hours or major fraction thereof without
25 receiving mandated rest periods. Defendants therefore at all times willfully violated the
26 provisions of Labor Code § 226.7 and the Wage Order.

27 44. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiff is
28 entitled to recover from Defendants one (1) additional hour of pay at Plaintiff's regular hourly

1 rate of compensation for each workday that a rest period was not provided. As a result of the
2 unlawful conduct of Defendant, Plaintiff has been deprived of wages and compensation in
3 amounts to be determined at trial, and are entitled to recovery of such amounts.

4 45. WHEREFORE, Plaintiff requests relief as herein prayed for.

5 **FOURTH CAUSE OF ACTION**
6 **Failure to Pay Hourly and Overtime Wages**
7 **(California Labor Code §§ 1194 and 1198; and The Wage Order)**
8 **(Plaintiff against Defendants)**

9 46. Plaintiff alleges and incorporates by reference all of the allegations contained in
10 the preceding paragraphs as though fully set forth herein.

11 47. Plaintiff basis this cause of action upon Defendants' willful and intentional
12 violations of the California Labor Code and Industrial Welfare Commission requirements that
13 Defendants pay Plaintiff for all hours worked, including the requirement to pay premium
14 overtime wages to Plaintiff for work Plaintiff performed in excess of eight hours in a workday
15 and/or 40 hours in a workweek, and/or on the seventh consecutive day in a workweek.

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

18 49. Labor Code § 1198 provides that "The maximum hours of work and the standard
19 conditions of labor fixed by the commission shall be the maximum hours of work and the
20 standard conditions of labor for employees. The employment of any employee for longer hours
21 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

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

27 51. The Wage Order provides that "such employees shall not be employed more
28 than eight (8) hours in any workday or more than forty (40) hours in any workweek unless the
employee receives one and one-half (1 ½) times such employee's regular rate of pay for all
hours worked over 40 hours in the workweek and for the first eight (8) on the seventh (7th)

1 day of work and double the employee's regular rate of pay for all hours worked over eight (8)
2 on the seventh (7th) day of work in the workweek.

3 52. At all times relevant herein, Defendants required Plaintiff on a regular and
4 repeated basis to work shifts exceeding eight hours in a workday, to work more than 40 hours
5 in a workweek, which hours were often not recorded, without paying overtime premium wages
6 at a rate of no less than one and one-half times the employee's regular rate of pay.

7 53. At all times relevant herein, Defendants knew or had reason to know that
8 Plaintiff was regularly and consistently required to work more than eight hours in a day and
9 work more than 40 hours in a week, without being paid the appropriate premium overtime
10 wage required by Labor Code §§ 1194 and 1198, and the Wage Order.

11 54. At all times relevant herein, Defendants' conduct as alleged herein amounted to a
12 uniform pattern of unlawful wage and hour practices which resulted from the implementation
13 of uniform policies and practices by which Defendants failed to accurately record all hours
14 worked by Plaintiff thereby denying payment of overtime premium wages to Plaintiff for
15 overtime hours worked.

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

20 56. As a direct result of Defendants' unlawful wage practices as alleged herein,
21 Plaintiff has been denied full compensation for all hours worked by Plaintiff, including, but
22 not limited to, premium overtime wages for overtime hours.

23 57. The Labor Code and the Wage order set forth various exemptions by which
24 certain categories of employees are exempt from the protections of the overtime laws
25 contained in the Labor Code. At no time during Plaintiff's employment did any of these
26 exemptions apply to Plaintiff. Moreover, at no time was Plaintiff subject to a valid collective
27 bargaining agreement that would preclude the causes of action set forth in this complaint.
28 Rather, Plaintiff brings this action because of Defendants' violations of non-waiveable rights

1 guaranteed to Plaintiff by the State of California.

2 58. As a direct consequence of Defendants' unlawful failure to pay Plaintiff the full
3 and accurate amount of all earned wages at the appropriate rate for the true number of hours
4 worked, Plaintiff has suffered and will continue to suffer economic injuries in an amount
5 which is presently unknown to Plaintiff, and which will be ascertained according to proof at
6 trial.

7 59. In performing the acts and practices in violation of California labor laws as
8 herein alleged, Defendants have acted and continue to act intentionally, oppressively and
9 maliciously towards Plaintiff, with a conscious disregard for Plaintiff's legal rights and the
10 consequences to Plaintiff, and with the intent of depriving Plaintiff of Plaintiff's property and
11 legal rights and otherwise causing Plaintiff injury, in order to increase Defendants' profits at
12 the expense of Plaintiff.

13 60. Plaintiff requests recovery of all unpaid wages, including overtime premium
14 wages, in an amount according to proof, interest on such amounts, statutory costs, and the
15 assessment of any and all statutory penalties against Defendants, all in the sums as provided by
16 the California Labor Code and/or other applicable statutes. In addition, to the extent that
17 overtime compensation is owed Plaintiff whose employment has been terminated, Defendants'
18 conduct violates Labor Code §§ 201 and/or 202, entitling Plaintiff to waiting time penalties
19 under Labor Code § 203, which penalties are sought herein on behalf of Plaintiff.

20 61. WHEREFORE, Plaintiff requests relief as herein prayed for.

21 **FIFTH CAUSE OF ACTION**
22 **Failure to Pay Minimum Wage**
(Labor Code §§ 1194, 1197 and 1199; and The Wage Order)
(Plaintiff against Defendants)

23 62. Plaintiff alleges and incorporates by reference all of the allegations contained in
24 the preceding paragraphs as though fully set forth herein.

25 63. Labor Code §1197 provides that it is unlawful to pay less than the minimum
26 wage established by law. At all times relevant herein, Defendants repeatedly failed to pay
27 Plaintiff the minimum wage for all hours worked, as required by the applicable wage order,
28 violating the provisions of Labor Code §1197.

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

6 65. At all times relevant herein, Defendants' conduct as alleged herein amounted to a
7 uniform pattern of unlawful wage and hour practices which resulted from the implementation
8 of uniform policies and practices by which Defendants failed to accurately record all hours
9 worked by Plaintiff thereby denying payment of minimum wages to Plaintiff for hours
10 worked.

11 66. At all times relevant herein, Defendants maintained and enforced a uniform
12 policy by which they required Plaintiff to perform work without being paid at least minimum
13 wage for the work performed.

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

18 68. As a direct result of Defendants' unlawful wage practices as alleged herein,
19 Plaintiff has been denied full compensation for all hours worked, including, but not limited to,
20 minimum wages for hours worked.

21 69. Pursuant to Labor Code §1199, an employer who (a) requires or causes any
22 employee to work for longer hours than those fixed, or under conditions of labor prohibited by
23 an order of the commission (b) pays or causes to be paid to any employee a wage less than the
24 minimum fixed by an order of the commission and (c) violates and refuses or neglects to
25 comply with any provision of this chapter or any order or ruling of the commission, is
26 punishable by a fine of not less than \$100.00.

27 70. Plaintiff is entitled to recover wages from Defendants, in an amount to be proven
28 at trial, because of Defendants' payment of wages less than minimum wage.

1 71. Plaintiff was required to retain attorneys to bring this action and is entitled to
2 interest and an award of reasonable attorneys' fees pursuant to Labor Code § 1194. Plaintiff is
3 entitled to liquidated damages pursuant to Labor Code § 1194.2.

4 72. WHEREFORE, Plaintiff requests relief as herein prayed for.

5 **SIXTH CAUSE OF ACTION**
6 **Failure to Comply with Itemized Employee Wage Statement Requirements**
7 **(California Labor Code §§ 226, 1174 and 1175; and The Wage Order)**
8 **(Plaintiff against Defendants)**

9 73. Plaintiff alleges and incorporates by reference all of the allegations contained in
10 the preceding paragraphs as though fully set forth herein.

11 74. Labor Code § 226(a) and the Wage Order provide that every employer shall,
12 semimonthly or at the time of each payment of wages, furnish each of its employees an
13 accurate itemized statement in writing showing gross wages earned, total hours worked by the
14 employee, the applicable rate, all deductions, net wages earned, the inclusive dates of the
15 period for which the employee is paid, the name of the employee and the last four digits of the
16 employee's social security number (or an employee identification number), the name and
17 address of the legal entity that is the employer and all applicable hourly rates in effect during
18 the pay period and the corresponding numbers of hours worked at each hourly rate by the
19 employee.

20 75. As a further result of Defendants' failure to provide Plaintiff with accurate wage
21 statements in accordance with Labor Code § 226 and to keep accurate time records as required
22 by the Wage Order, Plaintiff has suffered injuries and is entitled to penalties under Labor Code
23 § 226 and Labor Code § 226.3 which states "that any employer who violates § 226 shall be
24 subject to a civil penalty in the amount of \$250.00 per employee per violation in an initial
25 citation." The civil penalty provided for in this section is in addition to any other penalty
26 provided by law, in an amount to be proven at trial. The injuries suffered by Plaintiff include,
27 but are not limited to, having been, and continuing to be, forced to conduct investigations and
28 perform mathematical computations in an attempt to reconstruct Plaintiff's time records; the
inability to reconstruct Plaintiff's time records; the inability to discern the amount of wages
Plaintiff was paid and/or the applicable wage rate; the inability to determine the number of

1 hours, including but not limited to, overtime hours worked; the inability to determine the
2 number of rest periods and meal periods forced to forego; the inability to determine whether
3 Plaintiff was compensated for all meal and rest periods of which Plaintiff had been deprived;
4 the inability to determine whether Plaintiff was paid all wages due for work performed; the
5 inability to determine the amount of wages owing and unpaid; the inability to determine
6 whether Plaintiff was compensated for any work-related expenses; having been, and
7 continuing to be, forced to hire attorneys and initiate a lawsuit in order to ascertain the
8 aforementioned information.

9 76. Plaintiff is also entitled to injunctive relief to ensure compliance with this
10 section, pursuant to Labor Code § 226(g).

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

17 78. Moreover, an employee is entitled under the Labor Code § 226(h) to injunctive
18 relief to ensure compliance with Labor Code § 226 and is entitled to an award of costs and
19 reasonable attorneys' fees.

20 79. WHEREFORE, Plaintiff requests relief as herein prayed for.

21 **SEVENTH CAUSE OF ACTION**
22 **Failure to Pay All Wages Upon Termination**
(California Labor Code §§ 201, 202 and 203; and The Wage Order)
23 **(Plaintiff against Defendants)**

24 80. Plaintiff alleges and incorporates by reference all of the allegations contained in
the preceding paragraphs as though fully set forth herein.

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

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

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

7 84. Defendants willfully failed to pay Plaintiff all wages due, as alleged hereinabove
8 and hereinafter, at the end of Plaintiff's employment within the times prescribed by Labor
9 Code §§201 and 202 and are therefore subject to a waiting time penalty. Plaintiff is entitled to
10 recover from Defendants the statutory penalty for each day Plaintiff was not paid at Plaintiff's
11 regular hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code
12 § 203.

13 85. WHEREFORE, Plaintiff requests relief as herein prayed for.

14 **EIGHTH CAUSE OF ACTION**
15 **Failure to Reimburse Work-Related Expenses**
16 **Violation of Labor Code § 2802**
17 **(Plaintiff against Defendants)**

18 86. Plaintiff alleges and incorporates by reference all of the allegations contained in
19 the preceding paragraphs as though fully set forth herein.

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

23 88. At all times herein alleged, Defendants regularly and consistently violated Labor
24 Code § 2802 by failing to reimburse Plaintiff for using her personal phone and vehicle for
25 work-related purposes.

26 89. Plaintiff was required to retain attorneys to bring this action and is entitled to an
27 award of reasonable attorneys' fees pursuant to Labor Code § 2802(c).

28 **NINTH CAUSE OF ACTION**
 California Labor Code Private Attorneys General Act of 2004
 (California Labor Code § 2698)
 (Plaintiff and the Employees against Defendant BLUSH)

 90. Plaintiff alleges and incorporates by reference all of the allegations contained in

1 the preceding paragraphs as though fully set forth herein.

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

5 92. Plaintiff is an “aggrieved employee” pursuant to Labor Code § 2699, as Plaintiff
6 has suffered violations including, but not limited to, Labor Code §§ 201-204, 207-209, 216,
7 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 226.8, 510, 512, 558, 1174, 1194, 1197, 1197.1,
8 1198, 1199, 2698 et seq 2699(f) and (g), 2800, 2802, and the Wage Order.

9 93. Pursuant to PAGA, and in particular California Labor Code §§ 226.8(a)(1),
10 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney
11 general, seeks assessment and collection of civil penalties for Plaintiff and the employees, and
12 the State of California against Defendants on behalf of Plaintiff and the employees.

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

14 **TENTH CAUSE OF ACTION**
15 **Unfair Business Practices**
(California Business and Professions Code §§ 17200 et seq. and Common Law)
16 **(Plaintiff against Defendants)**

17 95. Plaintiff alleges and incorporates by reference all of the allegations contained in
18 the preceding paragraphs as though fully set forth herein.

19 96. Plaintiff suffered direct injury as a result of the Defendants’ conduct, as alleged
20 in the preceding paragraphs, and bring this action under Code of Civil Procedure § 382. The
21 deprivation by Defendants of Plaintiff of wages due and lawful meal and rest periods, and
22 Defendants’ provision of inaccurate wage statements, are unlawful business practices within
23 the meaning of Business and Professions Code § 17200, et seq. including, but not limited to,
24 a violation of the Wage Order, regulations, and statutes, and further, whether or not in
25 violation of the aforementioned Wage Order, regulation and statutes, amount to practices
26 which are otherwise unfair.

27 97. Under Business and Professions Code § 17200, et seq., including, but not limited
28 to §§ 17201, 17203, and 17208, Plaintiff asserts standing on behalf of herself as alleged
herein. Plaintiff seeks, among others, restitution of compensation due during all times relevant

1 herein.

2 98. At all times relevant herein, Defendants have committed violations of law, as
3 described herein, including, but not limited to, violation of Labor Code §§ 201, 202, 203, 216,
4 218, 221, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, and 2802.

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

10 100. Defendants' unfair and unlawful business practices thus have violated the
11 sections of the Labor Code, California Code of Regulation and the Wage Order referenced in
12 this complaint and have imposed harm on their employees and their competitors and will
13 continue to do so until abated. As a result of these unfair and unlawful business practices,
14 Defendants have retained monies belonging to Plaintiff and they have been unjustly enriched
15 at Plaintiff's expense. Plaintiff is entitled to restitution of the wages and monies withheld and
16 retained by Defendants during the relevant period and a preliminary and permanent injunction
17 requiring Defendants to pay all wages and sums due to Plaintiff, to provide mandatory rest and
18 meal breaks, and to provide accurate and complete wage statements.

19 101. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered
20 injury and loss of money.

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

26 103. WHEREFORE, Plaintiff requests relief as hereinafter prayed for.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays as follows:

1. As to the First Cause of Action, for civil penalties pursuant to Labor Code § 226.8(a)(1);
2. As to the Second and Third Cause of Action, for unpaid premium wages and penalties pursuant to Labor Code §§ 210, 226.7, 512, 1198 and the Wage Order;
3. As to the Fourth and Fifth Cause of Action, for unpaid minimum and overtime wages pursuant to Labor Code §§ 510, 1194, 1197 and 1198, and the Wage Order;
4. As to the Sixth Cause of Action, for wage statement violations pursuant to Labor Code § 226;
5. As to the Seventh Cause of Action, for unpaid wages pursuant to Labor Code §§ 201, 202, and 203;
6. As to the Eighth Cause of Action, for damages and/or penalties pursuant to statute as set forth in Labor Code §§ 2800, 2802, and the Wage Order;
7. As to the Ninth Cause of Action, for civil penalties and attorneys' fees pursuant to Labor Code § 2698 et seq., and Labor Code § 226.3;
8. As to the Tenth Cause of Action, for restitution of unpaid wages and penalties to Plaintiff, and for prejudgment interest from the day such amounts were due and payable pursuant to Business and Professions Code § 17200 et seq.;
9. As to All Causes of Action, for attorneys' fees and costs provided by Labor Code §§ 218.5, 226, 1194 and Code of Civil Procedure § 1021.5; and
10. For such other and further relief as the Court may deem equitable and appropriate.

DEMAND FOR JURY TRIAL

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

Dated: April 4, 2023

FITZPATRICK & SWANSTON

By: /s/ B. James Fitzpatrick
B. James Fitzpatrick
Attorneys for Plaintiff,
SARA CASTRO