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8 *Attorneys for Plaintiff, Mirielle Vilbrun on*
9 *behalf of herself and all others similarly situated*

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN MATEO

12
13 MIRIELLE VILBRUN on behalf of herself and
14 all others similarly situated,

15 Plaintiff,

16 vs.

17 PRESTO STAFFING, LLC, GOLDEN
18 HEIGHTS OPERATIONS, LLC, and Does 1
19 through 50, inclusive,

20 Defendants.

No. 23-CIV-00362

Assigned for all purposes to the Honorable:
Marie S. Weiner in Department 2

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1 Plaintiff Mirielle Vilbrun (“Plaintiff”), by her attorneys, brings this lawsuit, a class action,
2 against Presto Staffing, LLC (“Presto Staffing”) and Golden Heights Operations, LLC (“Golden
3 Heights”) (collectively “Defendants”) seeking to recover for Defendants’ violations of applicable
4 California Labor Code provisions, applicable Industrial Welfare Commission (“IWC”) Wage
5 Orders, and Unfair Business Practices Act, California Business and Professions Code §§ 17200, *et*
6 *seq.* (“UCL”). Plaintiff, on behalf of herself and all other similarly situated, complains and alleges
7 as follows:

8 **I. NATURE OF ACTION**

9 1. This class action arises from ongoing wrongful conduct committed by Defendants
10 Presto Staffing and Golden Heights, and alleges that Defendants: (1) failed to pay employees all
11 wages due, including at the time of termination, in violation of California Labor Code sections
12 201-203; (2) failed to pay for all hours worked, and overtime and double-time owed, in violation
13 of California Labor Code sections 510 and 1194; (3) failed to provide and/or make available rest
14 and meal breaks in violation of California Labor Code sections 226.7 and 512, or failed to pay
15 additional compensation owed for missed meal and/or rest breaks; (4) failed to provide accurate,
16 itemized, wage statements to employees as required by California Labor Code section 226; (5)
17 failed to provide all similarly situated California employees with a record of available sick leave in
18 violation of California Labor Code section 246; (6) failed to reimburse employees for the costs
19 incurred to use their personal cell phones for work, in violation of California Labor Code section
20 2802; and, (7) made false representations to influence, persuade, or engage Ms. Vilbrun, and those
21 similarly situated employees, to change from one place to another in this State or from any place
22 outside to any place within the State, for the purpose of providing labor at the entities with whom
23 Presto Staffing contracts, in violation of California Labor Code sections 970-972. Said conduct, in
24 addition to the foregoing, violated each Labor Code section as set forth in California Labor Code
25 section 2699.5. With respect to the claims under Labor Code section 2699.5, Plaintiff seeks to
26 represent all similarly aggrieved employees, who contracted with Presto Staffing to perform
27 services for employers in California from November 15, 2021, to the present.

28 2. Plaintiff is a non-exempt employee whom Defendant Presto Staffing contacted to

1 perform services for Defendant Golden Heights in California. Based on representations by
2 Defendant Presto Staffing, Plaintiff moved from Florida to California to work as a Licensed
3 Vocational Nurse (“LVN”) at Defendant Golden Heights in Daly City, California. Plaintiff seeks
4 to represent all non-exempt employees with whom Defendant Presto Staffing contracted to
5 perform services in California, including those non-exempt employees who performed services at
6 Golden Heights Operations, from four years prior to November 15, 2022, the date Plaintiff
7 notified the LWDA of her intent to file suit, to the present. Plaintiff alleges that Defendants
8 engaged in unlawful patterns and practices of failing to comply with the requirements of the
9 California Labor Code and California Business and Professions Code and applicable Industrial
10 Commission Wage Orders.

11 **II. JURISDICTION AND VENUE**

12 3. Defendants are, and at all relevant times were, corporations doing business within
13 the State of California and are employers under the California Labor Code and applicable
14 Industrial Welfare Commission Wage Orders. Defendants conduct business throughout the State
15 of California.

16 4. Venue is proper in the County of San Mateo because Plaintiff, and similarly
17 situated employees, performed work for Defendants in the County of San Mateo, and the legal
18 obligations of Defendants to Plaintiff, were breached in the County of San Mateo.

19 5. The San Mateo County Superior Court has jurisdiction in this matter because
20 Plaintiff, and similarly situated employees, regularly worked for Defendants in California,
21 Defendants are qualified to do business in California, and Defendants regularly conduct business
22 in California, including in San Mateo County. Further, there is no federal question at issue, as the
23 claims alleged herein are based solely on California law.

24 6. This action seeks relief for unremedied violations of California law, including, inter
25 alia, damages, restitution, penalties, interest, and attorneys’ fees, as appropriate, to members of the
26 proposed class, aggrieved employees, and to victims of the practices at issue, who have not been
27 paid all wages due in violation of California Labor Code sections 201-204, 510, and 1194; who
28 have not been provided accurate wage statements in violation of California Labor Code section

226; who were not provided rest and meal periods, as well as compensation for work without rest and meal periods, in violation of California Labor code sections 226.7 and 512; who were not reimbursed for all expenses incurred to do their jobs, in violation of California Labor Code section 2802; who were not provided with a record of available sick leave in violation of California Labor Code section 246; and, who, through false representations of Defendant Presto Staffing meant to influence, persuade, or engage them to change from one place to another in this State or from any place outside to any place within the State to provide services for Defendants, suffered losses in violation of California Labor Code sections 970-972. Plaintiff is informed and believes that the damages, restitution, penalties, interest, and attorneys' fees do not exceed an aggregate of \$4,999,999.99 and that Plaintiff's individual claims do not exceed \$74,999.99.

7. The names and capacities of the Defendants sued herein under California Code of Civil Procedure section 474 as Does 1 through 50, inclusive, are not presently known to Plaintiff, who therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this Complaint and include these Doe defendants' names and capacities when they are ascertained. Each fictitiously named Defendants are responsible in some manner for the conduct alleged herein and for the injuries suffered by Plaintiff, the members of the proposed class, aggrieved employees, and the general public.

8. At all times mentioned in the causes of action alleged herein, each and every Defendant was an agent and/or employee of each and every other Defendants. In doing the things alleged in the causes of action stated herein, each and every Defendant was acting within the course and scope of this agency or employment and was acting with the consent, permission, and authorization of each of the remaining Defendants. All actions of each Defendant as alleged in the causes of action stated herein were ratified and approved by every other Defendant or their officers or managing agents.

III. PARTIES

9. The named Plaintiff, Mirielle Vilbrun, is and was at all relevant times an adult over 21 years of age and performed services for Defendants in the State of California.

10. Plaintiff worked for Defendants between May of 2022 and May of 2023.

11. Defendant Presto Staffing, LLC is a corporation doing business throughout California. Defendant Golden Heights Operations, LLC is a corporation doing business in San Mateo County, California.

12. Defendants are “employers,” as that term is used in the California Labor Code and the IWC Wage Orders.

IV. CLASS ACTION ALLEGATIONS

13. **Class Definition.** This action seeks relief on behalf of a class of non-exempt employees in the employ of Defendants from four years prior to November 15, 2022, the date Plaintiff first notified the LWDA of her intent to file suit, defined as follows:

a. **Subclass A:** All non-exempt employees in the employ of Defendant Presto Staffing; and,

b. **Subclass B:** All non-exempt employees whom Defendant Golden Heights Operations retained through staffing companies such as Defendant Presto Staffing.

14. **Numerosity of the Class.** The Class Members are sufficiently numerous since they are estimated to include approximately 50, but less than 100, or more persons geographically dispersed throughout California, the joinder of whom in one action is impracticable, and the disposition of whose claims in a class action will provide substantial benefits to both the parties and the Court.

15. **Ascertainable Class.** The proposed class is ascertainable. The litigation of the questions of fact and law involved in this action will resolve the rights of all members of the Class and hence, will have a binding effect on all Class Members. These Class Members can be readily identified from records of Defendants and other means readily available to the Defendants, and thus the Plaintiff, through minimally intrusive discovery.

16. **Common Questions of Fact and Law Exist and Predominate over Individual Issues.** There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact common to the Class predominate over questions that may affect individual Class Members, including but not limited to

1 the following:

- 2 a. Whether Defendants implemented and engaged in a systematic practice
3 whereby they unlawfully failed to pay overtime and double time pay to
4 employees at the proper legal rate;
- 5 b. Whether Defendants implemented and engaged in a systematic practice
6 whereby they unlawfully failed to provide rest periods to employees as
7 required by law and failed to pay employees compensation for the lack of
8 rest periods;
- 9 c. Whether Defendants implemented and engaged in a systematic practice
10 whereby they unlawfully failed to provide meal periods to employees as
11 required by law and failed to pay employees compensation for the lack of
12 meal periods
- 13 d. Whether Defendants implemented and engaged in a systematic practice
14 whereby they unlawfully failed to timely pay for all hours worked including
15 at the time of termination;
- 16 e. Whether Defendants implemented and engaged in a systematic practice
17 whereby they unlawfully failed to provide accurate wage statements to
18 employees;
- 19 f. Whether Defendants implemented and engaged in a systematic practice
20 whereby they unlawfully failed to reimburse employees for costs incurred
21 to perform their jobs;
- 22 g. Whether Defendants implemented and engaged in a systematic practice
23 whereby they failed to provide employees sick leave or with a record of
24 available sick leave;
- 25 h. Whether Defendants, through false representations influenced, persuaded,
26 or engaged persons to change from one place to another in this State or
27 from any place outside to any place within the State in order to work for
28 Defendants;

1 i. Whether the systematic acts and practices of Defendants, as alleged herein
2 violated, inter alia, applicable provisions of the California Labor Code,
3 including but not limited to sections California Labor Code §§ 201, 202,
4 203, 226, 226.3, 226.7, 246, 510, 512, 558, 970-972, 1194, and 2802;
5 California Business and Professions Code §§ 17200, *et seq.*; Applicable
6 Industrial Welfare Commission Wage Orders, and pursuant to California
7 Labor Code Section 2699 and 2699.5.

8 17. **Typicality.** Because Plaintiff did not timely receive compensation for all hours
9 worked; was not provided accurate wage statements; was not provided rest and meal periods, or
10 compensation for work without rest and meal periods; was not reimbursed for all expenses
11 incurred to do her job; was not provided a record of available sick leave; and, through false
12 representations of Defendant Presto Staffing changed residences from Florida to California to
13 perform services for Defendants, Plaintiff is asserting claims that are typical of the claims of the
14 Class.

15 18. **Adequacy.** Plaintiff is an adequate and proper class representative. Plaintiff
16 brings this action in her individual capacity, on behalf of all others similarly situated, and pursuant
17 to California Business & Professions Code section 17204, on behalf of the general public.
18 Plaintiff has been employed by Defendants as an hourly, non-exempt employee in California,
19 within the four years of the filing of this complaint.

20 19. Defendant Presto Staffing, through false promises and representations, persuaded
21 Plaintiff to move from Florida to California to perform work for Defendants. While employed as
22 an hourly, non-exempt LVN by Defendants, Plaintiff was required to work regular and overtime
23 hours on a routine basis. Plaintiff's wages were routinely not paid on a timely basis and, when
24 Plaintiff complained and Defendants paid some wages, the wages paid were not accurate and did
25 not compensate Plaintiff for all hours worked. This happened to other similarly situated
26 employees whom Defendants employed. Plaintiff moved to California based on the Defendants'
27 representations regarding the frequency, i.e., weekly, and rate of her pay. Defendants failed to
28 comply with these representations, instead requiring Plaintiff to work without receiving her pay on

1 a timely and accurate basis. As such, Defendants failed to pay Plaintiff for all hours worked
2 including at the time of termination. In addition to the foregoing, Defendants failed to provide
3 Plaintiff with rest and meal periods, failed to pay compensation for the lack of rest and meal
4 periods, and failed to provide Plaintiff with accurate statements of wages. Wage statements were
5 only available online, and there was no option to receive a hard-copy wage statement. Defendants
6 also failed to provide Plaintiff with a written record of available sick leave. Defendants required
7 Plaintiff to use her personal cell phone to download applications for work in order to access her
8 schedule and to receive other work-related notifications. However, Defendants failed to reimburse
9 Plaintiff for costs incurred to use her cell phone for the job. Plaintiff will fairly and adequately
10 represent and protect the interests of the Class in that she has no disabling conflict of interest that
11 would be antagonistic to those of the other members of the Class. Plaintiff has retained counsel
12 who is competent and experienced in the prosecution of class action wage and hour violations.

13 20. **Community of Interest.** The common questions of law and fact are predominant
14 with respect to liability issues, relief issues, and anticipated affirmative defenses. There is a well-
15 defined community of interest in the questions of law and fact involved affecting the proposed
16 Class in that the claims of all such class members relate to and arise out of a common scheme and
17 practices utilized by Defendants. Plaintiff and the members of the Class have a well-defined
18 community of interest in the questions of fact and law to be litigated, have all similarly suffered
19 irreparable harm and damages as a result of Defendants' unlawful and wrongful conduct,
20 including but not limited to Defendants' systematic failure to timely and accurately pay regular
21 and overtime wages based upon hours worked, systematic failure to pay for all hours worked,
22 systematic failure to provide rest and meal periods or pay compensation for missed rest or meal
23 breaks, systematic failure to reimburse for expenses incurred, systematic failure to provide
24 accurate wage statements, systematic failure to provide sick leave and a record of available sick
25 leave, and systematic practice of persuading persons to change from one place to another in this
26 State or from any place outside to any place within the State, to provide services for Defendants,
27 makes class treatment especially appropriate.

28 21. **Superiority of Class Adjudication.** The certification of a class in this action is

1 superior to the litigation of a multitude of cases by members of the putative class. Class
2 adjudication will conserve judicial resources and will avoid the possibility of inconsistent rulings.
3 Equity dictates that all persons who stand to benefit from the relief sought herein should be subject
4 to the lawsuit and hence subject to an order spreading the costs of the litigation among the Class
5 Members in relation to the benefits received. The damages and other potential recovery for each
6 individual member of the proposed Class are modest, relative to the substantial burden and
7 expense of individual prosecution of these claims. Given the amount of the individual Class
8 Members' claims, few, if any, Class Members could afford to seek legal redress individually for
9 the wrongs complained of herein. Even if Class Members themselves could afford individual
10 litigation, the court system could not. Individualized litigation presents a potential for inconsistent
11 or contradictory judgments. Individualized litigation increases the delay and expense to all parties
12 and the court system presented by the complex legal and factual issues of the case. By contrast,
13 the class action device presents far fewer management difficulties and provides the benefits of
14 single adjudication, economy of scale, and comprehensive supervision by a single court.

15 **V. FACTUAL ALLEGATIONS**

16 22. Defendant Presto Staffing is in the business of providing employees to California
17 employers, including employees to provide nursing services to patients in skilled nursing facilities.
18 Defendant Golden Heights is a nursing facility that employs LVNs like Plaintiff to provide
19 nursing services to its patients. Both Defendants operate within the State of California.

20 23. Plaintiff, and those she seeks to represent, are current and former non-exempt
21 employees who through Defendants provide services to California employers, including
22 employers who provide skilled nursing services. As Defendants' employees, Plaintiff, and the
23 Class Members she seeks to represent, routinely worked without receiving accurate and timely
24 wages, rest or meal breaks or compensation for missed rest or meal breaks, sick leave or a record
25 of available sick time, reimbursement for work-related expenses, or accurate wage statements.

26 24. Plaintiff was working in Florida as an LVN when, in early 2022, she was contacted
27 by Defendant Presto Staffing to work in California. Defendant Presto Staffing provides
28 acquisition and staffing services to various entities, including Defendant Golden Heights and other

1 entities located in California, and follows the practice it used with Plaintiff with other similarly
2 situated employees, i.e., it offers these employees employment working in California. Based on
3 the representations made to Plaintiff regarding the timeliness and rate of pay, which turned out to
4 be false, Plaintiff moved from Florida to California and began to perform work as an LVN at
5 Golden Heights's facility in Daly City, California. Other similarly situated employees did
6 likewise, taking jobs in various California locations based on representations made by Defendant
7 Presto Staffing. Although Plaintiff worked on the premises of Golden Heights, was supervised by
8 Golden Heights personnel, received all of her assignments and schedule from employees of
9 Golden Heights, and complied with Golden Heights rules and procedures, Plaintiff received her
10 compensation from Defendant Presto Staffing. Defendants followed the same practice with the
11 other similarly situated employees who performed work in California for entities to whom
12 Defendant Presto Staffing sent the employees.

13 25. As an incentive for Plaintiff to move from Florida to California, Defendants made
14 certain representations regarding the work she would perform and her compensation. Defendants
15 represented that Plaintiff would be paid on a weekly basis, would receive \$55.00 per hour, or other
16 rates as designated, and would receive overtime and double-time compensation if she worked
17 more than 8 hours in one day or 40 hours in one week. Defendants made similar representations
18 to the other similarly situated employees, namely that they would be paid on a weekly basis and, at
19 that time, would receive all compensation owed to them. However, these representations turned
20 out to be false. The compensation, when paid, did not include all hours worked and was not paid
21 on a timely basis. Defendants made these false representations to influence, persuade, and/or
22 engage Plaintiff, and those other similarly situated employees, to change from one place to another
23 in this State or from any place outside to any place within the State, for the purpose of providing
24 labor to Defendants and the entities to which Defendants provided the employees.

25 26. All aspects of Plaintiff's employment, and that of other similarly situated
26 employees, were handled via various online applications. Defendants required Plaintiff, and other
27 similarly situated employees, to download various applications onto their personal cell phones to,
28 among other things, obtain their schedules, (through an application called Homebase), and to

1 receive their compensation, (through an application called Workful, and then through an
2 application called Gusto). Defendants never reimbursed the employees for the costs incurred to
3 use their personal cell phones for these work-related activities. In addition, during her
4 employment with Defendants, Plaintiff did not receive all the compensation owed to her, and
5 when payment of any part of the compensation owed to her was paid, it was often not paid on
6 time. The same is true for other similarly situated employees who provided services pursuant to
7 employment with Defendants. Plaintiff made routine complaints to both Defendants regarding the
8 failure to pay her for all hours worked and the failure to pay her on time. Defendant Golden
9 Heights would verify the hours that Plaintiff worked, and then would transmit payment for
10 Plaintiff's hours worked to Defendant Presto Staffing. Defendant Presto Staffing was then
11 supposed to pay Plaintiff. Defendant Golden Heights, when faced with Plaintiff's complaints,
12 stated that it paid Defendant Presto Staffing for her time and that Defendant Presto Staffing was
13 responsible for processing the payroll payments. Defendant Presto Staffing, however, did not do
14 so in a complete and timely fashion. This process applied to all Defendants' employees who
15 provided services to entities in California. *i.e.*, payments for compensation were not paid on time
16 and the payments did not include all compensation owed during the pay period. In addition,
17 Defendants never provided, or made available, meal or rest breaks. No discussion of breaks ever
18 occurred, and no attempts were ever made to provide either rest or meal breaks. The time records
19 reflect this fact. In addition, Defendants never paid an additional hour of compensation for missed
20 rest or meal breaks. Defendants also never made wage statements available in any manner other
21 than online through a system that frequently was not working. Defendants provided no alternative
22 to online wage statements. Defendants similarly failed to provide Plaintiff, and the other similarly
23 situated employees, with sick leave or a record of available sick time.

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1 **FIRST CAUSE OF ACTION**

2 **(Failure to Pay All Wages Due: Cal. Lab. Code §§ 201-204, 510, and 1194)**

3 **(Against All Defendants)**

4 **(On Behalf of Subclass A and Subclass B)**

5 27. Plaintiff realleges and incorporates by reference the allegations contained in the
6 foregoing paragraphs as if fully set forth herein.

7 28. During all relevant periods, Defendants did not timely pay Plaintiff and Class
8 Members for all hours worked. Defendants also routinely required Plaintiff and proposed Class
9 Members to work in excess of 8 hours per day and 40 hours per week. Payments for wages due
10 were either never paid, late, inaccurate, or both.

11 29. Pursuant to California Labor Code section 204(b), Defendants agreed to pay
12 Plaintiff, and all similarly situated employees, on a weekly basis. California Labor Code sections
13 201 and 202 provide when such payments must be made upon termination, and section 203
14 provides penalties for the failure to make such timely payments at termination.

15 30. During all relevant periods, both the California Labor Code and the pertinent
16 Industrial Welfare Commission Wage Orders required that employers timely pay employees for all
17 hours worked and that all work performed by an employee in excess of 8 hours per day and 40
18 hours per week be compensated at no less than one and one-half times the employee's regular rate
19 of pay. Defendants failed to timely pay employees, failed to pay for all hours worked, and failed
20 to pay overtime wages for overtime hours worked. As a result, Defendants failed to pay Plaintiff
21 and Class Members all wages due as required by California Labor Code sections 201-204, 510,
22 and 1194. Given Defendants' failures, it did not pay Plaintiff and Class Members whose
23 employment terminated during the class period, all wages owed at the time of termination.
24 Plaintiff and Class Members are entitled to recover their unpaid regular and overtime
25 compensation and penalties arising therefrom.

26 31. Plaintiff and proposed Class Members are therefore entitled to the relief requested
27 below.

1 **SECOND CAUSE OF ACTION**

2 **(Failure to Authorize, Permit, and/or Make Available Rest Periods Cal. Lab. Code § 226.7)**

3 **(Against All Defendants)**

4 **(On Behalf of Subclass A and Subclass B)**

5 32. Plaintiff realleges and incorporates by reference the allegations contained in the
6 foregoing paragraphs as if fully set forth herein.

7 33. California Labor Code § 226.7 and the applicable IWC Wage Orders require
8 Defendants to authorize, permit and/or make available timely and compliant rest periods to its
9 employees. Per IWC Wage Orders, “Every employer shall authorize and permit all employees to
10 take rest periods, which insofar as practicable shall be in the middle of each work period. The
11 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
12 minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not
13 be authorized for employees whose total daily work time is less than three and one-half (3½)
14 hours.”

15 34. Under Labor Code § 226.7 (b) and applicable Wage Orders, an employer who fails
16 to authorize and permit a required rest period must, as compensation, pay the employee one hour
17 of pay at the employee’s regular rate of compensation for each workday that the rest period was
18 not authorized or permitted.

19 35. Despite these requirements, Defendants knowingly and willfully refused to
20 perform their obligations to authorize and permit Plaintiff and Class Members to take timely and
21 compliant off-duty rest breaks to which they are entitled. Defendants made no mention of rest
22 breaks, the ability to take rest breaks, or additional compensation that was owed if employees were
23 not able to take rest breaks. Plaintiff and Class Members were routinely denied their required rest
24 periods. Defendants failed to pay Plaintiff and Class Members one hour of pay for each untimely
25 and non-compliant rest period that they are denied in violation of Labor Code § 226.7 and
26 applicable Wage Orders.

27 36. Plaintiff and Class Members are entitled to compensation pursuant to Labor Code
28 § 226.7(b), plus interest pursuant to California Labor Code section 218.6, attorney’s fees,

1 expenses, and costs of suit as set forth below.

2 37. Plaintiff and Class Members are therefore entitled to the relief requested below.

3 **THIRD CAUSE OF ACTION**

4 **(Failure to Provide Meal Periods: Cal. Lab. Code §§ 226.7 and 512)**

5 **(Against All Defendants)**

6 **(On Behalf of Subclass A and Subclass B)**

7 38. Plaintiff realleges and incorporates by reference the allegations contained in the
8 foregoing paragraphs as if fully set forth herein.

9 39. Pursuant to California Labor Code section 226.7(b), an “employer shall not require
10 an employee to work during a meal or rest or recovery period...” Section 226.7(c) provides that
11 “[i]f an employer fails to provide an employee a meal or rest or recovery period...the employer
12 shall pay the employee one additional hour of pay at the employee’s regular rate of compensation
13 for each workday that the meal or rest or recovery period is not provided.”

14 40. Pursuant to California Labor Code section 512(a), an “employer may not employ
15 an employee for a work period of more than five hours per day without providing the employee
16 with a meal period of not less than 30 minutes, except that if the total work period per day of the
17 employee is no more than six hours...”

18 41. Plaintiff and Class Members were employed by Defendants. Defendants took no
19 steps to provide Plaintiff and Class Members with meal breaks. Defendants never discussed meal
20 breaks, the ability to take meal breaks, or additional compensation owed for missed meal breaks.
21 Plaintiff, and Class Members, often worked through their meal periods. Furthermore, Defendants
22 failed to provide Plaintiff, and Class Members, with an additional hour of compensation for
23 missed meal breaks.

24 42. As a result of these failures, Plaintiff, and Class Members, are entitled to recover
25 the additional hour of compensation for meal breaks as set forth in California Labor Code sections
26 226.7(c) and pre-judgment interest on all amounts recovered for unpaid meal periods as set forth
27 in California Labor Code section 218.6.

28 43. Plaintiff and proposed Class Members are therefore entitled to the relief requested

1 below.

2 **FOURTH CAUSE OF ACTION**

3 **(Failure to Reimburse for Necessary Business Expenditures: Cal. Lab. Code § 2802)**

4 **(Against All Defendants)**

5 **(On Behalf of Subclass A and Subclass B)**

6 44. Plaintiff realleges and incorporates by reference the allegations contained in the
7 foregoing paragraphs as if fully set forth herein.

8 45. California Labor Code § 2802 provides that an employer “shall indemnify his or
9 her employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
11 employer.”

12 46. Defendants required Plaintiff and Class Members to have internet and/or mobile
13 data access via a cell phone through which to access the apps and software used by Defendants so
14 that Plaintiff and Class Members could access Defendants’ documents, including wage payment
15 details, receive communications from supervisors, including phone calls, texts, or emails
16 throughout the day. Defendants did not reimburse Plaintiff or Class Members for any internet,
17 mobile data costs, or cell phone usage.

18 47. Plaintiff and Class Members have suffered damages as a direct consequence of
19 Defendants’ failure to comply with Labor Code § 2802 and seek reimbursement for the necessary
20 expenditures they incurred in direct consequence of the discharge of their duties in an amount
21 according to proof at the time of trial with interest thereon, costs, applicable civil penalties and
22 attorney’s fees as set forth below.

23 48. Plaintiff and Class Members are therefore entitled to the relief requested below.

24 **FIFTH CAUSE OF ACTION**

25 **(Failure to Provide Accurate Wage Statements: Cal. Lab. Code § 226)**

26 **(Against All Defendants)**

27 **(On Behalf of Subclass A and Subclass B)**

28 49. Plaintiff realleges and incorporates by reference the allegations contained in the

1 foregoing paragraphs as if fully set forth herein.

2 50. Labor Code § 226(a) provides that employers shall provide accurate itemized
3 statements and that those wage statements must show, among other things, “gross wages earned,”
4 “total hours worked by the employee,” “net wages earned,” “the rate if the employee is paid on a
5 piece-rate basis,” “all applicable hourly rates in effect during the pay period and the corresponding
6 hours worked at each hourly rate by the employee,” and “the name and address of the legal entity
7 that is the employer.”

8 51. Defendants failed to provide timely, accurate, itemized wage statements to Plaintiff
9 and Class Members in accordance with Labor Code § 226(a). In particular, Defendants only made
10 wage statements available online, and had no option for obtaining hard copy wage statements.
11 Also, the wage statements Defendants provided Plaintiff and the Class Members, do not accurately
12 reflect the actual hours worked, actual gross wages earned, or actual net wages earned. This is
13 because, in part, Defendants failed to pay for all “hours worked.” Defendants also fail to list the
14 correct name and address of the employer on the wage statements.

15 52. Defendants’ failure to comply with Labor Code § 226(a) was and continues to be
16 knowing and intentional. Defendants were aware that Plaintiff and Class Members performed
17 work for which they receive no compensation. Yet, Defendants systematically failed to include
18 this time worked in the wage statements and failed to pay all wages owed on a timely basis.
19 Defendants also intentionally and knowingly failed to list the correct name and address of the
20 employer.

21 53. Defendants are liable to Plaintiff and the Class Members alleged herein for the
22 wages not paid as well as the damages and civil penalties set forth in Labor Code section 226(e)
23 and 226.3, with interest thereon. Furthermore, Plaintiff and the Class Members are entitled to an
24 award of attorneys’ fees and costs as set forth below. Plaintiff and the Class Members are also
25 entitled to the penalties for violating Labor Code section 246, in that the wage statements do not
26 reflect available sick time.

27 54. Plaintiff and Class Members are therefore entitled to the relief requested below.
28

1 **SIXTH CAUSE OF ACTION**

2 **(Unlawful, Unfair and Fraudulent Business Practices Pursuant**
3 **To Business & Professions Code Section 17200, et seq.)**

4 **(Against All Defendants)**

5 **(On Behalf of Subclass A and Subclass B)**

6 55. Plaintiff realleges and incorporates by reference the allegations contained in the
7 foregoing paragraphs as if fully set forth herein.

8 56. California Business & Professions Code section 17200, et seq. prohibits acts of
9 unfair competition, which shall mean and include any “unlawful, unfair, or fraudulent business act
10 or practice.”

11 57. The policies, acts and practices heretofore described were and are unlawful
12 business acts or practices because Defendants’ systematic failure to pay regular and overtime
13 wages based upon hours worked, systematic failure to pay for all hours worked including at the
14 time of termination, systematic failure to provide rest and meal periods, systematic failure to
15 reimburse for expenses incurred, systematic failure to provide accurate wage statements,
16 systematic failure to provide a written record of available sick time, and systematic practice of
17 persuading persons to change from one place to another in this State or from any place outside to
18 any place within the State to provide services for Defendants, violates applicable Labor Code
19 sections, including but not limited to California Labor Code Sections by Labor Code §§ 201, 202,
20 203, 226, 226.7, 246, 510, 512, 558, 970-972, 1194, and 2802; California Business and
21 Professions Code §§ 17200, *et seq.*; applicable Industrial Welfare Commission Wage Orders,
22 California Labor Code Section 2699 and 2699.5, the Labor Code Private Attorney General Act of
23 2004 (“PAGA”), California Labor Code section 2698, et seq., and other provisions of California
24 common and/or statutory law. Plaintiff reserves the right to allege additional statutory and
25 common law violations by Defendants. Such conduct is ongoing to this date.

26 58. The policies, acts or practices described herein were and are an unfair business act
27 or practice because any justifications for Defendants’ illegal and wrongful conduct were and are
28 vastly outweighed by the harm such conduct caused Plaintiff, the Class Members, and the
members of the general public. Such conduct is ongoing to this date.

1 59. As a result of their unlawful and/or unfair and/or fraudulent acts, Defendants
2 reaped unfair benefits and illegal profits at the expense of Plaintiff, and Class Members.
3 Defendants should be made to disgorge ill-gotten gains and provide restitution to Plaintiff, and
4 Class Members, for the wrongfully withheld wages pursuant to Business and Professions Code
5 section 17203.

6 60. Accordingly, Plaintiff, and Class Members, request that the Court award judgment
7 and relief in their favor, to provide restitution and other types of equitable relief.

8 61. Plaintiff and Class Members are therefore entitled to the relief requested below.

9 **SEVENTH CAUSE OF ACTION**

10 **(Fraud and Influencing, Persuading, or Engaging a Worker to Relocate Based on**
11 **Misrepresentations; Labor Code Sections 970-972)**

12 **(Against Defendant Presto Staffing, LLC and Does 1 to 5)**

13 **(On Behalf of Subclass A)**

14 62. Plaintiff realleges and incorporates by reference the allegations contained in the
15 foregoing paragraphs as if fully set forth herein.

16 63. California Labor Code § 970 specifies that “No person, or agent or officer thereof,
17 directly or indirectly, shall influence, persuade, or engage any person to change from one place to
18 another in this State or from any place outside to any place within the State, or from any place
19 within the State to any place outside, for the purpose of working in any branch of labor, through or
20 by means of knowingly false representations....”

21 64. California Labor Code § 970 prevents employers from inducing relocation, such as
22 Plaintiff’s cross-country move from Florida, based upon misrepresentation, concealment, or
23 nondisclosure.

24 65. To induce Plaintiff’s acceptance, Defendant Presto Staffing promised an increase in
25 pay that would justify moving across the country to an area with higher living costs; steady,
26 permanent work; and prompt weekly payment of wages.

27 66. In reality, Defendant Presto Staffing failed to pay Plaintiff and similarly situated
28 employees all wages due, including at the time of termination; failed to timely pay for all hours

1 worked, including overtime and double-time owed; failed to provide and/or make available rest
2 and meal breaks, or pay compensation for same; failed to provide accurate, itemized, wage
3 statements; failed to provide sick time or a written record of available sick time; and, failed to
4 reimburse employees for the costs incurred to use their personal cell phones for work. Said
5 conduct, in addition to the foregoing, violated each Labor Code section as set forth in California
6 Labor Code section 2699.5 promised employment which differed materially from the initial job
7 offer and interview process.

8 67. Plaintiff and similarly situated employees have suffered and continue to suffer
9 economic losses as a result of Defendant Presto Staffing's wrongful conduct. Moving expenses to
10 California, eventual moving expenses back to their home state, lost wages, retirement
11 contributions, fringe benefits, and emotional strife all resulted from Defendant Presto Staffing's
12 recruitment tactics.

13 68. California Labor Code section 972 provides that in addition to criminal penalties,
14 any person "who violates any provision of section 970 is liable to the party aggrieved, in a civil
15 action, for double damages resulting from such misrepresentations."

16 **EIGHTH CAUSE OF ACTION**

17 **(Labor Code Private Attorneys General Act of 2004: Labor Code Sec. 2698)**

18 **(Against All Defendants)**

19 **(On Behalf of all Aggrieved Employees)**

20 69. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing
21 paragraphs as if fully set forth herein.

22 70. The policies, acts and practices heretofore described were and are unlawful because
23 Defendants' failure to timely pay employees all wages due, including at the time of termination, in
24 violation of California Labor Code sections 201-203; failure to timely pay for all hours worked,
25 and overtime and double-time owed, in violation of California Labor Code sections 510 and 1194;
26 failure to provide and/or make available rest and meal breaks in violation of California Labor
27 Code sections 226.7 and 512, or pay the additional hour of compensation owed for missed rest and
28 meal breaks; failure to provide accurate, itemized, wage statements to employees as required by

1 California Labor Code section 226; failure to provide sick time or a written record of available
2 sick time in violation of California Labor Code section 246; failure to reimburse employees for the
3 costs incurred to use their personal cell phones for work, in violation of California Labor Code
4 section 2802; and, making false representations to influence, persuade, or engage Plaintiff and
5 those similarly situated employees, to change from one place to another in this State or from any
6 place outside to any place within the State, for the purpose of providing labor at the entities to
7 whom Defendants provides services in violation of California Labor Code sections 970-972
8 violates applicable Labor Code sections and gives rise to statutory and civil penalties as a result of
9 such conduct, including but not limited to penalties as provided by Labor Code sections 210,
10 226(3), 226.3, 248.5, 2699(f), and 2699.5, and applicable Industrial Welfare Commission Wage
11 Orders. Plaintiff, as an aggrieved employee, hereby seeks recovery of civil penalties as prescribed
12 by the Labor Code Private Attorney General Act of 2004 on behalf of herself and other current
13 and former employees of Defendants against whom one or more of the violations of the Labor
14 Code was committed.

15 71. On November 15, 2022, Plaintiff gave written notice to the California Labor and
16 Workforce Development Agency by online submission through their website and by certified mail
17 to Defendants Presto Staffing and Golden Heights of Labor Code violations as prescribed by
18 California Labor Code section 2699.3. Plaintiff has not received written notification by the
19 LWDA of an intention to investigate the allegations set forth in Plaintiff's November 15, 2022,
20 letter or a written notice of cure by December 19, 2022, as prescribed by California Labor Code
21 section 2699.3.

22 72. On January 24, 2023, Plaintiff gave further written notice to the California Labor
23 and Workforce Development Agency by online submission through their website and by certified
24 mail to Defendant Presto Staffing and Golden Heights of Labor Code violations as prescribed by
25 California Labor Code section 2699.3. Plaintiff has not received written notification by the
26 LWDA of an intention to investigate the allegations set forth in Plaintiff's January 24, 2023, letter
27 or a written notice of cure by February 27, 2023, as prescribed by California Labor Code section
28 2699.3.

1 73. On May 26, 2023, Plaintiff gave further written notice to the California Labor and
2 Workforce Development Agency by online submission through their website and by certified mail
3 to Defendants Presto Staffing and Golden Heights of Labor Code violations as prescribed by
4 California Labor Code section 2699.3. Defendants had until June 28, 2023, to submit any letter or
5 a written notice of cure to the LWDA, as prescribed by California Labor Code section 2699.3.
6 Defendants did not do so.

7 **PRAYER FOR RELIEF**

8 WHEREFORE Plaintiff and Class Members pray for judgment and relief as follows:

- 9 1. An order certifying that the action may be maintained as a class action;
10 2. Compensatory and statutory damages, penalties, and restitution, as appropriate and
11 available under each cause of action;
12 3. Reasonable attorneys' fees pursuant to California Labor Code §§ 226, 248.5,
13 1194(a), 2802, and 2699;
14 4. Costs of this suit;
15 5. Pre- and post-judgment interest; and,
16 6. Such other and further relief as the Court deems just and proper.

17 **JURY DEMAND**

18 Plaintiff hereby demands a trial by jury.

19
20 Date: July 31, 2023

WORKMAN LAW FIRM, PC

21
22 By: 

Robin G. Workman

*Attorneys for Mirielle Vilbrun and all others
similarly situated*