

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mel Red Recana

BARDIA AARON AKHAVAN, ESQ. (State Bar No. 316493)

Bardia@baalaw.com

NAHAL BARAHMAND, ESQ. (State Bar No. 316526)

Nahal@baalaw.com

AKHAVAN & ASSOCIATES

15760 Ventura Boulevard #950

Encino, California 91436

Phone: (855) 463-4733

Attorneys for PLAINTIFF **LISA LUGO**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LISA LUGO,

Plaintiff,

v.

MINDY'S COSMETICS, INC., doing
business as ULTRALUXE SKINCARE;
NATE DAKAR, an individual;
and DOES 1 THROUGH 100, inclusive,

Defendants.

) Case No.: **23STCV03939**

) **COMPLAINT FOR DAMAGES:**

) **(1) FAILURE TO PAY WAGES IN**
) **VIOLATION OF CAL. LABOR**
) **CODE §§ 200 ET SEQ.;**

) **(2) FAILURE TO PAY OVERTIME**
) **WAGES, VIOLATION OF CAL.**
) **LABOR CODE § 510 & IWC WAGE**
) **ORDER NO. 4;**

) **(3) FAILURE TO PROVIDE MEAL**
) **AND REST PERIODS, VIOLATION**
) **OF CAL. LABOR CODE §§ 226.7,**
) **512 & IWC WAGE ORDER NO. 4;**

) **(4) FAILURE TO FURNISH**
) **COMPLIANT WAGE**
) **STATEMENTS AND MAINTAIN**
) **ACCURATE PAY RECORDS,**
) **VIOLATION OF CAL. LABOR**
) **CODE §§ 226, 1174(D), AND 1198;**

) **(5) WAITING TIME PENALTIES;**

) **(6) UNFAIR BUSINESS PRACTICES,**
) **VIOLATION OF CAL. BUS. &**
) **PROF. CODE §§ 17200 ET SEQ.;**

) **(7) WRONGFUL TERMINATION AND**
) **RETALIATION IN VIOLATION OF**
) **PUBLIC POLICY;**

-) (8) CIVIL PENALTIES UNDER PAGA,
) VIOLATION OF CAL. LABOR
) CODE §§ 2698, 2699, AND PAGA;
) AND
)
) (9) FAILURE TO PROVIDE
) EMPLOYEE PERSONNEL FILE IN
) VIOLATION OF CAL. LABOR
) CODE §§ 432 and 1198.5
)
) JURY TRIAL DEMANDED

COMES NOW PLAINTIFF LISA LUGO (hereinafter referred to as “Lugo” or “Plaintiff”) and complains against the above-named Defendants and for causes of action against the Defendants, and each of them, as follows:

I.

FIRST CAUSE OF ACTION

For Failure to Pay Wages

[California Labor Code §§ 200 et seq.]

Against All Defendants & DOES 1 Through 100, Only

1. At all times mentioned herein, Plaintiff was, and now is, an individual domiciled in the County of Los Angeles, State of California.
2. Plaintiff is informed and believes, and thereon alleges that at all times relevant herein, Defendant MINDY’S COSMETICS, INC. doing business as ULTRALUXE SKINCARE (hereinafter referred to as Defendant “Mindy’s” and/or “Employer Defendant(s)”) was, and now is, a valid corporation organized and existing under the laws of the State of California, having their principal places of business in the Los Angeles, State of California.
3. At all times mentioned herein, Defendant NATE DAKAR (hereinafter referred to as “Defendant Dakar” and collectively with all other Defendants as “Defendants”), was, and now is, an individual, who was, and now is, acting on behalf of Employer Defendant, domiciled in the County of Los Angeles, State of California, and was a Manager, Officer, Shareholder, Director, Supervisor, Manager, Managing Agent, Owner, Principal, and/or Employee of Defendant Mindy’s and DOES 1 through 100, and each of them.

1 4. Plaintiff is ignorant of the true names and capacities, whether corporate, associate,
2 individual, or otherwise, of Defendants sued herein as DOES 1 - 100, inclusive, and therefore
3 sues said Defendants by such fictitious names. Plaintiff will seek leave of Court to amend this
4 Complaint to assert the true names and capacities of the fictitiously named Defendants when the
5 same have been ascertained. Plaintiff is informed and believes, and thereon alleges, that each
6 Defendant designated as "DOES" herein is legally responsible for the events, happenings, acts,
7 occurrences, indebtedness, damages and liabilities hereinafter alleged and caused injuries and
8 damages proximately thereby to the Plaintiff, as hereinafter alleged.

9 5. Plaintiff is informed, believes, and herein alleges that at all times relevant herein, a unity
10 of interest and ownership existed between Defendants and DOES 1 through 100, such that
11 individuality and separateness between these entities had ceased and that they were actually the
12 alter ego of one another.

13 6. Plaintiff is informed, believes, and herein also alleges that at all times relevant herein,
14 Defendants and DOES 1 through 100, were used merely as shells, instrumentalities, and/or
15 conduits of one another and by which the others were doing business.

16 7. Plaintiff is further informed and herein alleges that despite the formation of purported
17 corporate existence, Defendants and DOES 1 through 100, are in reality, one and the same thing.

18 8. Plaintiff is informed and believes, and herein further alleges, that the business affairs of
19 Defendants and DOES 1 through 100, are, and at all times relevant hereto, were, so mixed and
20 intermingled that the same cannot reasonable be segregated, and the same are in inextricable
21 confusion.

22 9. Accordingly, Defendants and DOES 1 through 100, constitute the alter egos for each
23 other and the fiction of their separate existence must be disregarded in the interest of justice.

24 10. At all times relevant herein, Plaintiff performed services for each and all of Defendants,
25 and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff as an
26 employee, either directly or indirectly, and the manner in which Defendants' business was and is
27 conducted.

28 11. Plaintiff is informed and believes and thereon alleges that each of the Defendants named
herein and DOES, has at all times relevant to this action, been the officer, agent, employee

1 and/or representative of the remaining Defendants and has acted within the course and scope of
2 such agency and employment, and with the permission and consent of the co-defendants.

3 12. Plaintiff began working at Mindy's as an Account Executive on March 20, 2019 until her
4 wrongful termination on or about July 1, 2022.

5 13. Defendants intentionally misclassified Plaintiff as an independent contractor throughout
6 her employment, thereby depriving Plaintiff of overtime compensation, rest periods, and other
7 protections under the California Labor Code.

8 14. Throughout Plaintiff's employment, she routinely worked over eight (8) hours per day
9 which she should have been compensated for at her overtime rate of pay.

10 15. Further, Mindy's implemented a pattern of failure to pay Plaintiff wages in a timely
11 manner. By way of example,

12 a) After Plaintiff's wrongful termination, Plaintiff's final check was not mailed to
13 her until one week later;

14 b) On another occasion, Plaintiff's check was short over \$800; and

15 c) Plaintiff worked between five (5) and eight (8) hours per week on her non-
16 scheduled workdays which Mindy's routinely failed to account for and compensate.

17 16. Failure to properly classify employees may subject an employer to liability for minimum
18 wage and overtime pay, denied rest and meal period compensation, expense reimbursement, and
19 all other wage and hour violations. California Labor Code § 226.8(b) provides for a civil penalty
20 of \$5,000 to \$15,000 for the willful misclassification of an individual as an independent
21 contractor. It is further provided that, in the event that an employer is found to have engaged in
22 "a pattern or practice of these violations," the penalties increase to "not less than ten thousand
23 dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in
24 addition to any other penalties or fines permitted by law." Cal. Labor Code § 226.8(b).

25 17. Plaintiff is also entitled to attorney's fees and costs pursuant to Cal. Labor Code § 218.5,
26 which declares that in any action brought for the nonpayment of wages, the Court shall award
27 reasonable attorneys' fees and costs to the prevailing party if any party to the action requests
28 attorneys' fees and costs upon the initiation of the action.

18. As a result of the acts of Defendants and DOES 1 through 100, and each of them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically provided by Cal. Code of Civil Procedure § 1021.5. Plaintiff's action enforces important rights affecting the public interest by bringing forth this lawsuit to ensure Defendants as an employer, compensates its employees with the full and correct amount of earned wages, accrued vacation pay, and reimbursement for work-related expenses immediately upon termination, thereby conferring a significant benefit on the general public. The necessity and financial burden of this private enforcement, as well as the interest of justice, entitles Plaintiff to reasonable attorneys' fees and costs under Cal. Code of Civil Procedure § 1021.5.

19. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 200 et seq., may be held liable as the employer for such violation. The term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and in this case, including Defendant Dakar.

II.

SECOND CAUSE OF ACTION

For Failure to Pay Overtime Wages

[California Labor Code § 510 and IWC Wage Order No. 4]

Against Employer Defendants & DOES 1 Through 100, Only

20. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this Complaint as though duly set forth in full herein.

21. Plaintiff began working at Mindy's as an Account Executive on March 20, 2019 until her wrongful termination on or about July 1, 2022.

22. Defendants intentionally misclassified Plaintiff as an independent contractor throughout her employment, thereby depriving Plaintiff of overtime compensation, rest periods, and other protections under the California Labor Code.

23. Throughout Plaintiff's employment, she routinely worked over eight (8) hours per day which she should have been compensated for at her overtime rate of pay.

24. However, despite Plaintiff routinely working overtime and thus being entitled to overtime pay, Defendants intentionally failed to compensate Plaintiff the true and/or full amount of overtime pay.

25. Failure to properly classify employees may subject an employer to liability for minimum wage and overtime pay, denied rest and meal period compensation, expense reimbursement, and all other wage and hour violations. California Labor Code § 226.8(b) provides for a civil penalty of \$5,000 to \$15,000 for the willful misclassification of an individual as an independent contractor. It is further provided that, in the event that an employer is found to have engaged in “a pattern or practice of these violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.” Cal. Labor Code § 226.8(b).

26. At all times relevant herein, Cal. Labor Code § 510 et seq. and IWC Wage Order No. 4, § 3(A) generally declare eight (8) hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

27. As a result of Defendants failure to compensate the true and/or full and/or correct amount of her overtime pay, Plaintiff is entitled to recover in a civil action the unpaid balance of the overtime compensation, including interest, reasonable attorney’s fees, and costs of suit pursuant to California Labor Code § 1194, which declares:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest, reasonable attorney’s fees, and costs of suit.

28. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

1 **III.**

2 **THIRD CAUSE OF ACTION**

3 **Failure to Provide Meal and Rest Periods**

4 **[California Labor Code § 226.7, 512 and Wage Order No. 4]**

5 **Against All Defendants & DOES 1 Through 100, Only**

6 29. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
7 Complaint as though duly set forth in full herein.

8 30. Plaintiff began working at Mindy's as an Account Executive on March 20, 2019 until her
9 wrongful termination on or about July 1, 2022.

10 31. Throughout Plaintiff's employment, Defendants failed to provide Plaintiff with all of her
11 timely mandatory rest periods as required by California law.

12 32. At all times herein relevant, the public policy of the State of California, as codified,
13 expressed and mandated by Industrial Welfare Commission ("IWC") Wage Order No. 4, Section
14 11(A) also declares unless the employee is relieved of all duty during his/her thirty minute meal
15 period, the meal period shall be considered an "on duty" meal period and counted as hours
16 worked, which must be compensated at the employee's regular rate of pay. An "on duty" meal
17 period shall be permitted only when the nature of the work prevents an employee from being
18 relieved of all duty and when by written agreement between the employer and employee an on-
19 the-job paid meal period is agreed to.

20 33. At all times herein relevant, the public policy of the State of California, as codified,
21 expressed and mandated by IWC Wage Order No. 4, Section 12(a) requires that every employer
22 shall authorize and permit all employees to take rest periods, which insofar as practicable shall
23 be in the middle of each work period. The authorized rest period time shall be based on the total
24 hours worked daily at the rate of ten minutes net rest time per four hours or major fraction
25 thereof. Authorized rest period time shall be counted as hours worked for which there shall be no
26 deduction from wages.

34. At all times herein relevant, the public policy of the State of California, as codified, expressed and mandated by Labor Code § 226.7(a) declares that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the IWC.

35. Section § 226.7(b), IWC Wage Order No. 4 §§ 11(B), 12(B) declare that if an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

36. As such, Plaintiff is entitled to one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period was not provided.

37. As a result of the acts of Defendants and DOES 1 through 100, and each of them, Plaintiff is also entitled to compensation for each meal period where Plaintiff was "on duty."

38. Plaintiff is also entitled to any and all relief as provided for by Cal. Labor Code § 203.

39. As a result of the retaliatory acts of Defendants and DOES 1 through 100, and each of them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically provided in Cal. Code of Civil Procedure § 1021.5. Plaintiff's action enforces important rights affecting the public interest by bringing forth this lawsuit to ensure Defendants, as an employer, offers its employees meal and rest periods, thereby conferring a significant benefit on the general public's health and well-being as a result. The necessity and financial burden of this private enforcement, as well as the interest of justice, entitles Plaintiff to reasonable attorneys' fees and costs under Cal. Code of Civil Procedure § 1021.5.

40. The acts of Defendants and DOES 1 through 100, were willful, wanton, malicious, intentional, oppressive and despicable and were done in willful and conscious disregard of the rights, welfare and safety of Plaintiff, and were done by managerial agents and employees of Defendants and DOES 1 through 100, and with the express knowledge, consent, and ratification of managerial agents and employees of Defendants and DOES 1 through 100, thereby justifying the awarding of punitive and exemplary damages in an amount to be determined at the time of trial pursuant to Cal. Civil Code §§ 3294(a) and (b).

41. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 226.7, may be held liable as the employer for such violation. The term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and in this case, including Defendant Dakar.

42. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

IV.

FOURTH CAUSE OF ACTION

For Failure to Furnish Complaint Wage Statements and Maintain Accurate Pay Records

[California Labor Code § 226, 1174 (D), and 1198]

Against Employer Defendants & DOES 1 Through 100, Only

43. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this Complaint as though duly set forth in full herein.

44. Plaintiff began working at Mindy’s as an Account Executive on March 20, 2019 until her wrongful termination on or about July 1, 2022.

45. Defendants intentionally misclassified Plaintiff as an independent contractor throughout her employment, thereby depriving Plaintiff of overtime compensation, rest periods, and other protections under the California Labor Code.

46. Pursuant to Cal. Labor Code §§ 226 and 1174, employers have a duty to provide their non-exempt employees with accurate itemized statements showing total hours worked, hourly wages, gross wages, total deductions net wages earned and name of the employer. An employer who violates these Code sections is liable to its employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay period, up to a statutory maximum of \$4,000.00.

47. Pursuant to Cal. Labor Code § 558.1, any employer or other person acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 226, may be held liable as the employer for such violation. The term ‘other person acting on behalf of an employer’ is limited

1 to a natural person who is an owner, director, officer, or managing agent of the employer, and in
2 this case, including Defendant Dakar.

3 48. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff
4 with uniform, incomplete, and inaccurate wage statements.

5 49. Because Defendants failed to document and deducted time worked from Plaintiff's wage
6 statements and employment records for meal periods they did not actually receive, Defendants
7 unlawfully deducted wages earned and meal period premiums that should have been paid. Thus,
8 Defendants did not furnish wage statements to Plaintiff containing: the correct amount of gross
9 wages earned in violation of Cal. Labor Code § 226(a)(1), the accurate total hours worked in
10 violation of Cal. Labor Code § 226(a)(2), correct amount of net wages earned in violation of
11 Cal. Labor Code § 226(a)(5), or accurate number of hours worked at each corresponding hourly
12 rate in violation of Cal. Labor Code § 226(a)(9).

13 50. To the extent that Defendants paid any meal break premium and/or rest break premium
14 payments, Defendants failed to identify such payments on Plaintiff's wage statements and
15 employment records, and Defendants otherwise failed to provide information on the wage
16 statements sufficient to identify how many premium payments were paid during each pay period,
17 the specific dates worked giving rise to the premium payments owed, or to determine whether
18 such premium payments adequately and/or accurately compensated Plaintiff for any and all
19 premiums owed.

20 51. California Labor Code § 1198 provides that the maximum hours of work and the standard
21 conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
22 applicable IWC Wage Orders. California Labor Code § 1198 further provides that "the
23 employment of any employees for longer hours than those fixed by the order or under conditions
24 of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order,
25 employers are required to keep accurate time records showing when the employee begins and
26 ends each work period and meal period. At all relevant times, Defendants failed, on a company-
27 wide basis, to keep records of meal period start and stop times for Plaintiff in violation of Cal.
28 Labor Code § 1198.

52. California Labor Code §1174(d) provides that “every person employing labor in this state shall... keep a record showing the names and addresses of all employees employed and the ages of all minors” and “keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” At all relevant times, and in violation of Cal. Labor Code § 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff showing the daily hours she worked and the wages paid thereto as a result of unlawfully classifying Plaintiff as an independent contractor.

53. Plaintiff is entitled to recover from Defendants the greater of her actual damages caused by Defendants’ failure to comply with Cal. Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars \$4,000 per employee, in addition to attorneys’ fees and costs.

V.

FIFTH CAUSE OF ACTION

For Waiting Time Penalties

[California Labor Code § 203]

Against All Defendants & DOES 1 Through 100, Only

54. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this Complaint as though duly set forth in full herein.

55. Defendant willfully failed to pay Plaintiff all wages due as set forth above and owe her wages in an amount to be ascertained at trial. Defendants’ failure to pay the full amount due to Plaintiff on termination of her employment violates the provisions of California Labor Code §§ 200, 201, 206, and 216.

56. Defendants violated or caused to be violated this section of the California Labor Code.

57. Pursuant to the California Labor Code § 200 et seq., it is a violation of law for an employer to fail to pay wages, immediately upon termination of an employee by the employer or within seventy-two hours of the employee's quitting her employment and/or to forfeit an employee's wages to the employer. Pursuant to California Labor Code § 216, it is a misdemeanor

1 for an employer to keep the wages and not pay it to the employee either immediately or within
2 seventy-two hours of the employee's termination, depending on whether the employee was
3 discharged or quit, as after that time the pay becomes the property of the employee as a matter of
4 law.

5 58. By willfully failing to pay Plaintiff unpaid overtime to which Plaintiff was entitled to, as
6 set forth above, in a timely manner as required by California Labor Code § 201 and § 202,
7 Defendants are liable to Plaintiff for penalties pursuant to California Labor Code § 203, in an
8 amount equal to 30 days of Plaintiff's per diem wage rate in an amount according to proof.

9 59. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

10 60. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an
11 employer, who violates, or causes to be violated, Labor Code § 226.7, may be held liable as the
12 employer for such violation. The term "other person acting on behalf of an employer" is limited
13 to a natural person who is an owner, director, officer, or managing agent of the employer, and in
14 this case, including Defendant Dakar.

15 VI.

16 SIXTH CAUSE OF ACTION

17 For Unfair Business Practices

18 [California Business & Professions Code §§ 17200 et seq.]

19 Against Defendant Mindy's Cosmetics, Inc. & DOES 1 Through 100, Only

20 61. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
21 Complaint as though duly set forth in full herein.

22 62. Plaintiff began working at Mindy's as an Account Executive on March 20, 2019 until her
23 wrongful termination on or about July 1, 2022.

24 63. Defendants engaged in unfair, unlawful, fraudulent, deceptive, untrue, and/or misleading
25 business practices through the following, among others:

- 26 a) Defendants intentionally misclassified Plaintiff as an independent contractor
27 throughout her employment, thereby depriving Plaintiff of overtime compensation, rest
28 periods, and other protections under the California Labor Code.

b) Defendants failed to lawfully provide meal and rest periods to Plaintiff, in violation of Cal. Labor Code §§ 226.7, 512 and IWC Wage Order No. 4.

c) Defendants failed to lawfully pay Plaintiff her overtime compensation despite Plaintiff routinely working in excess of eight (8) hours per day, in violation of Cal. Labor Code § 510 et seq. and IWC Wage Order No. 4.

64. Through the aforementioned acts, Defendant's engaged in unfair, unlawful, fraudulent, deceptive, untrue, and/or misleading business practices in direct violation of Cal. Bus. & Prof. Code § 17200, which prohibits conducting such business.

65. Defendant's willful and/or reckless conduct constituted unfair business practices and acts because the harm to the general public outweighed any utility that its conduct may have produced.

66. As a direct result of the conduct, act and omissions of Defendant's and DOES 1 through 100, and each of them, Plaintiff has been harmed and damaged in an amount to be shown at the time of trial, together with prejudgment interest thereon from the time owed until paid, all within an amount within the jurisdictional limits of this Court.

67. Plaintiff is also entitled to all penalties provided by Cal. Bus. & Prof. Code § 17206.

68. Additionally, Cal. Bus. & Prof. Code § 17205 declares, unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

69. As a result of the retaliatory acts of Defendants and DOES 1 through 100, and each of them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically provided in Cal. Code of Civil Procedure § 1021.5. Plaintiff's action enforces important rights affecting the public interest by bringing forth this lawsuit to ensure Defendants, as an employer, does not engage in unfair business practices, thereby conferring a significant benefit on the general public's health and well-being as a result. The necessity and financial burden of this private enforcement, as well as the interest of justice, entitles Plaintiff to reasonable attorneys' fees and costs under Cal. Code of Civil Procedure § 1021.5.

70. The acts of Defendants and DOES 1 through 100, were willful, wanton, malicious,

1 intentional, oppressive and despicable and were done in willful and conscious disregard of the
2 rights, welfare and safety of Plaintiff, and were done by managerial agents and employees of
3 Defendants and DOES 1 through 100, and with the express knowledge, consent, and ratification
4 of managerial agents and employees of Defendants and DOES 1 through 100, thereby justifying
5 the awarding of punitive and exemplary damages in an amount to be determined at the time of
6 trial pursuant to Cal. Civil Code §§ 3294(a) and (b).

7 71. Plaintiff is entitled to both declaratory and injunctive relief as a result of Defendants'
8 unlawful conduct.

9 72. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

10 **VII.**

11 **SEVENTH CAUSE OF ACTION**

12 **For Wrongful Termination and Retaliation in Violation of Public Policy**

13 **Against Employer Defendants & DOES 1 Through 100, Only**

14 73. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
15 Complaint as though duly set forth in full herein.

16 74. Plaintiff began working at Mindy's as an Account Executive on March 20, 2019 until her
17 wrongful termination on or about July 1, 2022.

18 75. Plaintiff was retaliated against due to Plaintiff's aforesaid legally protected activities
19 (complaints/protests against the failure to pay her lawful wages, among others) as aforesaid.

20 76. As such, Plaintiff was retaliated against for reasons that violate a public policy(s).

21 77. At all times relevant herein, Plaintiff was employed by Defendants.

22 78. Accordingly, the actions of Defendants and DOES 1 through 100, in retaliating against
23 Plaintiff on the grounds alleged and described herein were wrongful and do not promote the
24 welfare and well-being of the community at large.

25 79. As a direct and legal result of the acts and omissions of Defendants and DOES 1 through
26 100, and each of them, Plaintiff was rendered sick, sore, lame, disabled and/or disordered, both
27 internally and/or externally, and suffered, among other things, emotional distress, including but
28 not limited to shock, pain, discomfort and/or anxiety.

1 80. As a further legal result of the acts and omissions of Defendants, and DOES 1 through
2 100, and each of them, Plaintiff has been forced to incur expenses for medical care, X-rays,
3 and/or laboratory costs during the period of Plaintiff's disability, and is informed and believes,
4 and/or thereon alleges, that Plaintiff will in the future be forced to incur additional expenses of
5 the same nature, all in an amount which is at present unknown. Plaintiff will pray leave of court
6 to show the exact amount of said expenses at the time of trial.

7 81. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since
8 said incidents has been unable to engage fully in Plaintiff's occupation, and/or is informed and
9 believes, and thereon alleges, that Plaintiff will be partially and/or fully incapacitated and/or
10 unable to perform Plaintiff's usual work for an indefinite period of time in the future, all to
11 Plaintiff's damages in an amount which is at present unascertained. Plaintiff will pray leave of
12 court to show the total amount of loss of earnings at the time of trial.

13 82. As a further direct and legal result of the acts and conduct of Defendants, and DOES 1
14 through 100, and each of them, Plaintiff has been caused, and did suffer, and continues to suffer
15 severe and/or permanent emotional and/or mental distress and anguish, humiliation,
16 embarrassment, fright, shock, pain, discomfort and/or anxiety. The exact nature and extent of
17 said injuries is presently unknown to Plaintiff, who will pray leave of court to assert the same
18 when they are ascertained.

19 83. The aforementioned acts of Defendants and DOES 1 through 100, and each of them, were
20 willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful
21 and conscious disregard of the rights, welfare and safety of Plaintiff, and were done by
22 managerial agents and employees of Defendants, and with the express knowledge, consent,
23 and/or ratification of managerial agents and employees of Defendants and DOES 1 through 100,
24 thereby justifying the awarding of punitive and exemplary damages in an amount to be
25 determined at the time of trial pursuant to Cal. Civil Code §§ 3294(a) and (b).

26 84. By the aforesaid acts and conduct of Defendants and DOES 1 through 100, and each of
27 them, Plaintiff has been directly and legally caused to suffer actual damages pursuant to Cal.
28 Civil Code § 3333 including, but not limited to, loss of earnings and future earning capacity,

1 medical and related expenses for care and procedures both now and in the future, attorneys' fees,
2 and other pecuniary loss not presently ascertained, for which Plaintiff will seek leave of court to
3 amend when ascertained.

4 85. As a result of the unlawful acts of Defendants and DOES 1 through 100, and each of
5 them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as
6 specifically provided in Cal. Code of Civil Procedure § 1021.5. Plaintiff's action enforces
7 important rights affecting the public interest by bringing forth this lawsuit to ensure Defendants
8 refrain from unlawfully and wrongfully terminating their employees, thereby conferring a
9 significant benefit on the general public's health and well-being as a result. The necessity and
10 financial burden of this private enforcement, as well as the interest of justice, entitles Plaintiff to
11 reasonable attorneys' fees and costs under Cal. Code of Civil Procedure § 1021.5.

12 86. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

13 **VIII.**

14 **EIGHTH CAUSE OF ACTION**

15 **For Civil Penalties Under PAGA**

16 **[California Labor Code §§ 2698, 2699; Private Attorneys General Act ("PAGA")]**

17 **Against Employer Defendants & DOES 1 Through 100, Only**

18 87. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
19 Complaint as though duly set forth in full herein.

20 88. Plaintiff is an "aggrieved employee" under the Labor Code Private Attorneys General Act
21 ("PAGA"), as Plaintiff is or was employed by Defendants during the applicable statutory period
22 and suffered one or more of the Cal. Labor Code violations set forth herein. Accordingly,
23 Plaintiff seeks to recover, on behalf of Plaintiff and all other aggrieved current and former
24 employees of Defendants, the civil penalties provided by PAGA, plus reasonable attorneys' fees
25 and costs.

26 89. Plaintiff seeks to recover the PAGA civil penalties through a representative action
27 permitted by PAGA and the California Supreme Court in, among other authorities, Arias v.
28

1 Superior Court, (2009) 46 Cal.4th 969. According to the same authorities, class certification of
2 the PAGA allegations described herein is not required.

3 90. California Labor Code § 2699(a) and (g), as well as Cal. Labor Code §§ 210, 226.3, 558,
4 1174.5 and 1197.1 authorizes aggrieved employees such as Plaintiff, on behalf of herself and
5 other current and former employees within the statutory period, to bring a civil action to recover
6 civil penalties pursuant to the procedures specified in Cal. Labor Code § 2699.3.

7 91. Plaintiff complied with the procedures for bringing suit specified in Cal. Labor Code
8 § 2699.3. Specifically, on or about December 22, 2022, Plaintiff gave written notice to the
9 California Labor and Workforce Development (“LWDA”) and to Defendants of the specified
10 provisions of the Cal. Labor Code alleged to have been violated and those included below
11 (“PAGA Notice”). Plaintiff is informed and believes that, to date, the LWDA has still not elected
12 to investigate, pursuant to Amaral v. Cintas Corp. No. 2, (2008) 163 Cal.App.4th 1157.

13 92. During the period beginning one (1) year preceding the filing of the Complaint in this
14 Action (the “Civil Penalty Period”), Defendants violated, *inter alia*, Cal. Labor Code §§ 200,
15 201, 203, 204, 226, 226.7, 227.3, 510, 512, 2810.5 and the applicable Wage Order(s), among
16 other things. In connection with the violations of Cal. Labor Code §§ 200, 201, 203, 204, 226,
17 226.7, 227.3, 510, 512, 2810.5, Plaintiff seeks to represent only non-exempt current and former
18 employees of Defendants working in California from one (1) year prior to filing the PAGA
19 Notice with the LWDA through the present. In connection with the violation of Cal. Labor Code
20 §§ 227 et seq., and 2810.5, Plaintiff seeks to represent all current and former employees of
21 Defendants working in California from one (1) year prior to filing the PAGA Notice with the
22 LWDA through the present. Collectively, the employees that Plaintiff plans to represent shall be
23 referred to as “Aggrieved Employees.”

24 93. For at least four (4) years prior to the filing of this action and continuing to the present,
25 Defendants have, at times, failed to pay overtime wages to Plaintiff and Aggrieved Employees,
26 or some of them, in violation of California state wage and hour laws as a result of, without
27 limitation, Plaintiff and Aggrieved Employees working over eight (8) hours per day, forty (40)
28 hours per week, and seven consecutive work days in a work week without being properly

1 compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per
2 week in a work week, and/or hours worked on the seventh consecutive work day in a work week
3 by, among other things, failing to, at times, accurately track and/or pay for all hours actually
4 worked at the proper overtime rate of pay to the detriment of Plaintiff and Aggrieved Employees
5 including, without limitation, due to failure to account for shift differential pay.

6 94. For at least four (4) years prior to the filing of this Action and continuing to the present,
7 Defendants have, at times, failed to provide Plaintiff and Aggrieved Employees, or some of
8 them, full, timely thirty (30) minute uninterrupted meal period for days on which they worked
9 more than five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period
10 for days on which they worked in excess of ten (10) hours in a work day, and failing to, at times,
11 provide compensation for such unprovided meal periods as required by California wage and hour
12 laws due to, without limitation, assigning tasks to employees during what should be an
13 uninterrupted meal period.

14 95. For at least three (3) years prior to the filing of this action and continuing to the present,
15 Defendants have, at times, failed to pay Plaintiff and Aggrieved Employees, or some of them, the
16 full amount of their wages owed to them upon termination and/or resignation as required by Cal.
17 Labor Code §§ 201 and 202, including for, without limitation, Defendants' occasional failing to
18 pay overtime wages and premium wages.

19 96. For at least one (1) year prior to the filing of this Action and continuing to the present,
20 Defendants have, at times, failed to furnish Plaintiff and Aggrieved Employees, or some of them,
21 with itemized wage statements that accurately reflect gross wages earned; total hours worked;
22 net wages earned; all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate; and other such information as
24 required by Cal. Labor Code § 226(a). As a result thereof, Defendants have occasionally failed to
25 furnish employees with an accurate calculation of gross and gross wages earned, as well as gross
26 and net wages paid.

27 97. Plaintiff, on Plaintiff's own behalf and on behalf of Aggrieved Employees, pursuant to
28 Cal. Bus. & Prof. Code §§ 17200 through 17208, also seeks (an) injunction(s) prohibiting

Defendants from further violating the Cal. Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as all monies owed but withheld and retained by Defendants to which Plaintiff and Aggrieved Employees are entitled, as well as restitution of amounts owed.

98. California Labor Code § 204, requires and required that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

99. California Labor Code § 210(a) states that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

100. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants had and have a consistent policy or practice of failing to pay Plaintiff and during their employment on a timely basis as per Cal. Labor Code § 204.

101. As a direct and proximate result of the herein-described Cal. Labor Code violations, and pursuant to Cal. Labor Code § 210, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Cal. Labor Code § 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in connection with each payment that was made in violation of Cal. Labor Code § 204.

102. California Labor Code § 226.3 states that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee

1 for each violation in a subsequent citation, for which the employer fails to provide the employee
2 a wage deduction statement or fails to keep the records required in subdivision (a) of Section
3 226.”

4 103. California Labor Code § 226.3 further provides that “[t]he civil penalties provided for in
5 this section are in addition to any other penalty provided by law.”

6 104. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges,
7 that Defendants, and each of them, had and have a policy or practice of failing to comply with
8 Cal. Labor Code § 226(a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
9 with itemized wage statements that accurately reflect gross wages earned; total hours worked;
10 net wages earned; the name and address of each employer with whom they have been placed to
11 work; all applicable hourly rates in effect during the pay period and the corresponding number of
12 hours worked at each hourly rate; the legal name of the employer and/or the name and address of
13 the legal entity securing the employer's services if the employer is a farm labor contractor and
14 other such information as required by Cal. Labor Code § 226(a).

15 105. As a direct and proximate result of the herein-described Cal. Labor Code violations, and
16 pursuant to Cal. Labor Code § 226.3, Plaintiff and other Aggrieved Employees are entitled to
17 recover civil penalties for Defendants’ violation of Cal. Labor Code § 226(a) in the amount of
18 two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period for the initial
19 violation, and one thousand dollars (\$1000) for each Aggrieved Employee per pay period for
20 each subsequent violation.

21 106. California Labor Code § 558(a) states: “Any employer or other person acting on behalf of
22 an employer who violates, or causes to be violated... any provision regulating hours and days of
23 work in any of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
24 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay
25 period for which the employee was underpaid in addition to an amount sufficient to recover
26 underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each
27 underpaid employee for each pay period for which the employee was underpaid in addition to an
28

amount sufficient to recover underpaid wages; (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

107. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, violated, or caused to be violated, the Cal. Labor Code sections described herein, including causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during their employment and after their employment separation; and receive accurate, itemized wage statements.

108. As a direct and proximate result of the herein-described Cal. Labor Code violations, and pursuant to Cal. Labor Code § 558, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants’ herein-described Cal. Labor Code violations in the amount fifty dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars.

109. California Labor Code § 1174(b) states that every person employing labor in California is required to “[a]llow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.”

110. California Labor Code § 1174(c) has required every person employing labor in California to “[k]eep a record showing the names and addresses of all employees employed and the ages of all minors.”

111. California Labor Code § 1174(d) has required every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less

1 than three years. An employer shall not prohibit an employee from maintaining a personal record
2 of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

3 112. California Labor Code § 1174.5 states that, “[a]ny person employing labor who willfully
4 fails to maintain the records required by subdivision (c) of [Cal. Labor Code] Section 1174 or
5 accurate and complete records required by subdivision (d) of [Cal. Labor Code] Section 1174, or
6 to allow any member of the commission or employees of the division to inspect records pursuant
7 to subdivision (b) of [Cal. Labor Code] Section 1174, shall be subject to a civil penalty of five
8 hundred dollars (\$500).”

9 113. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges,
10 that Defendants, and each of them, have willfully failed to maintain the records required by Cal.
11 Labor Code 1174(c), failed to maintain accurate and complete records required by Cal. Labor
12 Code 1174(d), and/or failed to allow inspection of records as required by Cal. Labor Code
13 1174(b).

14 114. As a direct and proximate result of the herein-described Cal. Labor Code violations, and
15 pursuant to Cal. Labor Code § 1174.5, Plaintiff and other Aggrieved Employees are entitled to
16 recover civil penalties for Defendants’ herein-described Cal. Labor Code violations in the
17 amount of five hundred dollars (\$500) per violation per Aggrieved Employee.

18 115. California Labor Code § 2699(f), provides that for all provisions of the Cal. Labor Code
19 “except those for which a civil penalty is specifically provided, there is established a civil
20 penalty for a violation of these provisions, as follows:... (2) If, at the time of the alleged
21 violation, the person employs one or more employees, the civil penalty is one hundred dollars
22 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
23 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

24 116. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges,
25 that Defendants, and each of them, violated the Cal. Labor Code sections described herein,
26 including, without limitation, for the failure to: pay overtime wages; provide meal and rest
27 periods or compensation in lieu thereof; provide accurate, itemized wage statements; pay timely
28 wages during employment and after the cessation of the employment relationship; reimburse

1 Aggrieved Employees for costs incurred in furtherance of their work duties as required under
2 Cal. Labor Code § 2802; provide notice as required under Cal. Labor Code § 2810.5; paying
3 employees all owed paid time off and vacation time owed by separation at the proper rate of pay;
4 placing restraints on competition, whistleblowing and freedom of speech; and entitling Plaintiff
5 and other Aggrieved Employees to civil penalties for each of these Cal. Labor Code violations in
6 the amounts set forth in Cal. Labor Code § 2699(f).

7 117. As a direct and proximate result of the herein-described Cal. Labor Code violations, and
8 pursuant to Cal. Labor Code section 2699(g), among other authorities, Plaintiff and similarly
9 Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of the
10 herein and therein described Cal. Labor Code violations during the Civil Penalty Period in the
11 amount of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial
12 violation, and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each
13 subsequent violation.

14 118. Moreover, Plaintiff and Aggrieved Employees are also entitled to an award of reasonable
15 attorneys' fees and costs in connection with their herein-described claims for civil penalties.

16 **IX.**

17 **NINTH CAUSE OF ACTION**

18 **For Failure to Provide Employee Personnel Files**

19 **[California Labor Code §§ 432 and 1198.5]**

20 **Against Employer Defendants & DOES 1 Through 100, Only**

21 119. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
22 Complaint as though duly set forth in full herein.

23 120. Plaintiff began working at Mindy's as an Account Executive on March 20, 2019 until her
24 wrongful termination on or about July 1, 2022.

25 121. Through her counsel, via a letter dated October 24, 2022, Plaintiff sent a written request
26 to receive copies of her employee personnel file and any instrument she signed during her
27 employment with Defendants.
28

1 122. California Labor Code § 432 declares that if an employee or applicant signs any
2 instrument relating to the obtaining or holding of employment, he/she shall be given a copy of
3 the instrument upon request.

4 123. Further, Cal. Labor Code § 1198.5(a) declares that every employee has the right to
5 inspect the personnel records that the employer maintains relating to the employee's performance
6 or to any grievance concerning the employee.

7 124. Defendants failed to abide by Cal. Labor Code § 432 to timely provide Plaintiff with
8 copies of any instruments she signed.

9 125. Plaintiff's letter dated October 24, 2022, specifically stated: "...pursuant to Cal. Labor
10 Code § 432, Ms. Lugo requests copies of all documents she signed relating to obtaining and
11 retaining employment with you. Ms. Lugo also requests copies of documents in her personnel
12 file related to her performance and any grievances concerning her pursuant to Cal. Labor Code
13 § 1198.5(a). Section 1198.5(a) authorizes Ms. Lugo's representatives to receive copies of said
14 documents."

15 126. However, Defendants never provided said files nor an inspection of said files.

16 127. As such, Plaintiff is entitled to the remedies and penalties provided by Cal. Labor Code
17 § 1198.5(k), which declares:

18 If an employer fails to permit a current or former employee, or his or his
19 representative, to inspect or copy personnel records within the times specified in
20 this section, or times agreed to by mutual agreement as provided in this section,
21 the current or former employee or the Labor Commissioner may recover a penalty
of seven hundred fifty dollars (\$750) from the employer.

22 128. Plaintiff is also entitled to costs and attorney's fees for instituting this action pursuant to
23 Cal. Labor Code § 1198.5(l).

24 129. Plaintiff also prays for damages and remedies as this Court deems appropriate.
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26
27
28

1 WHEREFORE, PLAINTIFF LISA LUGO prays for judgment against the Defendants, and each
2 of them, as follows:

- 3 1. For general damages in an amount within the jurisdictional limits of this Court;
- 4 2. For special damages in an amount within the jurisdictional limits of this Court;
- 5 3. For medical expenses and related items of expense, according to proof;
- 6 4. For loss of earnings, according to proof;
- 7 5. For consequential and incidental damages according to proof;
- 8 6. For prejudgment interest according to proof;
- 9 7. For declaratory relief;
- 10 8. For injunctive relief;
- 11 9. For damages, penalties, cost of suit, and attorney fees against Defendants provided for by
- 12 Cal. Labor Code §§ 226, 226.7, 432, 510, 512, 558.1, 1174, 1198.5, and IWC Wage Order No. 4;
- 13 10. For civil penalties and attorneys' fees for each violation of Cal. Labor Code §§ 226.3,
- 14 558, 1102.5, 2699;
- 15 11. For punitive and exemplary damages as provided for by Cal. Civil Code § 3294;
- 16 12. For damages, penalties and costs of suit as provided for by Cal. Civil Code § 3333;
- 17 13. For civil penalties as provided for by Cal. Bus. & Prof. Code §§ 17200 and 17206;
- 18 14. For damages, penalties and reasonable attorneys' fees and costs of suit against
- 19 Defendants as provided for by Cal. Code of Civil Procedure § 1021.5, according to proof;
- 20 15. For such other and further relief as the Court may deem just and proper.

21
22 Dated: February 22, 2023

AKHAVAN & ASSOCIATES

23
24 By: 

25 BARDIA AARON AKHAVAN, ESQ.
26 Attorney for PLAINTIFF
27 LISA LUGO
28