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Attorneys for Plaintiff MARISA REFE

FILED
Superior Court of California
County of Los Angeles
10/25/2024

David W. Slayton, Executive Officer / Clerk of Court
By: T. Bivins Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARISA REFE, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

STARK 2 LLC; SYNERGY TRAINING
CENTERS LLC, STARK MGT, LLC, TODD
VANDE HEI, and DOES 1 through 50,
Inclusive,

Defendants.

Case Number: 22STCV29855
[Unlimited Jurisdiction]

**THIRD AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES**

[Amended as of Right Pursuant to Labor Code
Section 2699.3(2)(C)]

1. Failure to Pay Overtime Compensation [Cal. Lab Code §§ 510, 1198 and 1199];
2. Failure to Provide Meal Periods [Cal. Lab Code §§ 226.7, 512(a)]
3. Failure to Authorize and Permit Rest Periods [Cal. Lab Code §§ 226 and 226.7];
4. Failure to Pay Minimum and Regular Rate Wages [Cal. Lab Code §§204, 1194, 1194.2, and 1197];
5. Failure to Timely Pay Final Wages at Termination [Cal. Lab Code §§ 201-203];
6. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab Code §226(a)];
7. Failure to Reimburse Business Expenses [Cal. Lab Code §§ 2800 and 2802]; and
8. Unfair Business Practices [Cal. Lab Code §§ 17200 *et seq.*]
9. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, *et seq.*]

[DEMAND FOR JURY TRIAL]

1 Plaintiff Marisa Refe (hereinafter “Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further investigation
3 and discovery, alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This class action is brought pursuant to the California Code of Civil Procedure section
6 382. The monetary damages and restitution sought by Plaintiff exceeds the minimum jurisdiction of
7 the Superior Court and will be established according to proof at trial. The “amount in controversy”
8 for the named Plaintiff, including claims for compensatory damages, restitution, penalties, wages,
9 premium pay, and pro rata share of attorneys’ fees is less than seventy-five thousand dollars (\$75,000).

10 2. Plaintiff brings the Ninth Cause of Action as a representative action under the
11 California Private Attorney General Act (“PAGA”) to recover civil penalties that are owed to Plaintiff,
12 the State of California, and past and present employees of Defendants (hereinafter referred to as the
13 “Aggrieved Employees”).

14 3. This Court has jurisdiction over this action pursuant to the California Constitution,
15 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except
16 those given by statute to other courts. The statutes under which this action is brought do not specify
17 any other basis for jurisdiction.

18 4. This Court has jurisdiction over Defendants because, based upon information and
19 belief, Defendants are citizens of California, have sufficient minimum contacts in California, or
20 otherwise intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play and
22 substantial justice.

23 5. Venue is proper in this Court, because upon information and belief, Defendants
24 maintain offices, have agents, and/or transact business in the State of California, including in the
25 County of Orange. The majority of the acts and omission alleged herein relating to Plaintiff took place
26 in the State of California. Defendants employed Plaintiff within the State of California.

27 **PARTIES**

28 6. Plaintiff MARISA REFE is an individual residing in the State of California.

1 7. Defendant, STARK 2 LLC, (“STARK”) at all times herein mentioned, was and is, upon
2 information and belief, a Limited Liability Company, and at all times herein mentioned, was and is an
3 employer whose employees are engaged throughout the State of California including the County of
4 Los Angeles.

5 8. Defendant, STARK MGT, LLC, (“STARK MGT”) at all times herein mentioned, was
6 and is, upon information and belief, a Limited Liability Company, and at all times herein mentioned,
7 was and is an employer whose employees are engaged throughout the State of California including
8 the County of Los Angeles.

9 9. Defendant, SYNERGY TRAINING CENTERS, LLC, (“SYNERGY”) at all times
10 herein mentioned, was and is, upon information and belief, a Limited Liability Company, and at all
11 times herein mentioned, was and is an employer whose employees are engaged throughout the State
12 of California including the County of Los Angeles.

13 10. Defendant, STARK WEHO, LLC, (“STARK WEHO”) at all times herein mentioned,
14 was and is, upon information and belief, a Limited Liability Company, and at all times herein
15 mentioned, was and is an employer whose employees are engaged throughout the State of California
16 including the County of Los Angeles.

17 11. Plaintiff is informed and believes, and based thereon alleges, that defendant TODD
18 VANDE HEI, (“VANDE HEI”) is, and at all times relevant hereto was, an individual residing in
19 California and doing business in the County of Los Angeles as the President and Chief Executive
20 Officer of STARK, STARK MGT, SYNERGY, STARK WEHO, LLC and DOES 1 -50, as further
21 discussed below. Plaintiff is further informed and believes, and based thereon alleges, that VANDE
22 HEI violated, or caused to be violated, the above-referenced and below referenced Labor Code
23 provisions in violation of Labor Code section 558.1.

24 12. At all times relevant, Defendants STARK, STARK MGT, SYNERGY; TODD
25 VANDE HEI (STARK, STARK MGT, SYNERGY; STARK WEHO, LLC; TODD VANDE HEI and
26 Does 1-50 are collectively “Defendants”), and each of them, were the agents, partners, joint venturers,
27 joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and
28 assigns, each of the other and at all times relevant hereto were acting within the course and scope of

1 their authority as agents, partners, joint venturers, joint employers, representatives, servants,
2 employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein were duly
3 committed with the ratification, knowledge, permission, encouragement, authorization, and consent
4 of each defendant designated herein.

5 13. The true names and capacities, whether corporate, associate, individual, or otherwise
6 of Defendant DOES 1 through 50, inclusive are unknown to Plaintiff, who sues said defendants by
7 such fictitious names. Plaintiff is informed and believes, and based on that information and belief
8 alleges, that each of the Defendants designated as a DOE is legally responsible for the events and
9 happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff
10 and the other class members as alleged in this Complaint. Plaintiff will seek leave of court to amend
11 this Complaint to show the true names and capacities when the same have been ascertained.

12 14. Plaintiff further alleges that Defendants directly or indirectly controlled or affected the
13 working conditions, wages, working hours, and conditions of employment of Plaintiff and the other
14 class members so as to make each of said Defendants employers and employers liable under the
15 statutory provisions set forth herein.

16 15. Plaintiff is informed and believes and based thereon alleges that all the times mentioned
17 herein, each of the Defendants was the agent, principal, employee, employer representative, joint
18 venture or co-conspirator of each of the other defendants, either actually or ostensibly, and in doing
19 the things alleged herein acted within the course and scope of such agency, employment, joint venture,
20 and conspiracy.

21 16. All of the acts and conduct described herein of each and every corporate defendant was
22 duly authorized, ordered, and directed by the respective and collective defendant corporate employers,
23 and the officers and management-level employees of said corporate employers. In addition thereto,
24 said corporate employers participated in the aforementioned acts and conduct of their said employees,
25 agents, and representatives, and each of them; and upon completion of the aforesaid acts and conduct
26 of said corporate employees, agents, and representatives, the defendant corporation respectively and
27 collectively ratified, accepted the benefits of, condoned, lauded, acquiesced, authorized, and otherwise
28

1 approved of each and all of the said acts and conduct of the aforementioned corporate employees,
2 agents, and representatives.

3 17. Plaintiff is further informed and believes, and based thereon alleges, that VANDE HEI
4 violated, or caused to be violated, the above-referenced and below-referenced Labor Code provisions
5 in violation of Labor Code section 558.1.

6 18. Plaintiff is further informed and believes, and based thereon alleges that there exists
7 such a unity of interest and ownership between Defendants, and each of them, that their individuality
8 and separateness have ceased to exist.

9 **CLASS ACTION ALLEGATIONS**

10 19. Plaintiff brings this action on her own behalf and on behalf of all the other members of
11 the general public similarly situated and, thus, seeks certification under California Code of Civil
12 Procedure section 382.

13 20. The proposed class is defined as follows:

14 *All current and former hourly-paid or non-exempt employees (either directly or*
15 *through a staffing agency or labor contractor) of Defendants within the State of*
16 *California at any time during the period from four years preceding the filing of this*
17 *Complaint to final judgment.*

18 21. Plaintiff reserves the right under California Rule of Court rule 3.765(b) to amend or
19 modify the class description with greater specificity, further divide the defined class into subclasses,
20 and to further specify or limit the issues for which certification is sought.

21 22. The class is ascertainable and there is a well-defined community of interest in the
22 litigation:

- 23 a. **Numerosity**: the class members are so numerous that joinder of all class members is
24 impracticable. The membership of the entire class is unknown to Plaintiff at this time;
25 however, the class is estimated to be greater than twenty-five (25) individuals and the
26 identity of such membership is readily ascertainable by inspection of Defendants'
27 employment records. Accounting for employee turnover during the relevant periods
28 necessarily increases this number. Plaintiff alleges that Defendants' employment

records would provide information as to number and location of all class members. Joinder of all members of the proposed class is not practicable.

- b. **Typicality**: Plaintiff's claims are typical of all other class members' claims as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom she has a well-defined community of interest.
- c. **Adequacy**: Plaintiff will fairly and adequately protect the interests of each class member, with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- d. **Superiority**: a class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impracticable.
- e. **Public Policy Considerations**: Certification of this lawsuit as a class action will advance public policy objections. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in this complaint anonymity that allows for the vindication of their rights.

23. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;

- b. Whether Defendants failed to paid their hourly-paid, or non-exempt employees within the State of California for all hours worked, missed, late, interrupted meal and rest periods in violation of California law;
- c. Whether Defendants required Plaintiff and other members of the class to work over eight (8) to twelve (12) hours per day and/or over (40) hours per week and failed to pay the legally required overtime and double-time compensation to Plaintiff and the other class members;
- d. Whether Defendants properly calculated the regular rate of pay for Plaintiff and the other class members who worked overtime and who earned incentive pay based on earned incentive pay;
- e. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensations;
- f. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- g. Whether Defendants failed to pay all wages due to Plaintiff and other class members within the required time upon their discharge or resignation;
- h. Whether Defendants failed to pay all wages due to Plaintiff and other class members during their employment;
- i. Whether Defendants complied with wage reporting as required by the California Labor Code, including inter alia, section 226;
- j. Whether Defendants' conduct was willful or reckless;
- k. Whether Defendants engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq*;
- l. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- m. Whether Plaintiff and other class members are entitled to compensatory damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

24. During the relevant time period set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, including the County of Orange.

25. Defendants, jointly and severally, employed Plaintiff as an hourly-paid non-exempt employee from approximately November 2020 until March 2022 in the State of California.

26. Defendants, jointly and severally, hired Plaintiff and other class members and classified them as hourly-paid, non-exempt employees, and failed to compensate them for all hours worked, missed meal periods, missed rest periods, and failed to reimburse their necessary business expenses.

27. Defendants had the authority to hire and terminate Plaintiff and other class members; to set work rules and conditions governing Plaintiff's and the other class members' employment; and to supervise their daily employment activities.

28. Defendants exercised sufficient authority over the terms and conditions of Plaintiff and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

29. Defendants directly hired and paid wages and benefits to Plaintiff and other class members.

30. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

31. Plaintiff and other class members worked over eight (8) and twelve (12) hours in a day; and/or forty (40) in a week during their employment with Defendants.

32. Plaintiff is informed and believes, and based thereon alleges that, Defendants engaged in a pattern and practice of wage abuse against their hourly paid or non-exempt employees within the State of California. This scheme involved, inter alia, failing to accurately track and/or to pay them for all hours worked, missed/interrupted/on premises- meal and rest periods, in violation of California law.

33. Plaintiff is informed and believes, and based thereon alleges that, Defendants knew or should have known that Plaintiff and other class members were entitled to receive certain wages for

1 overtime and double time compensation and that they were not receiving wages for overtime and
2 double-time hours worked.

3 34. Plaintiff is informed and believes, and based thereon alleges that, Defendants failed to
4 provide Plaintiff and other class members with the required meal periods during the relevant time
5 period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled
6 to any and all applicable penalties.

7 35. Plaintiff is informed and believes, and based thereon alleges that, Defendants knew or
8 should have known that Plaintiff and other class members were entitled to receive all timely,
9 uninterrupted, duty-free, off-premises, meal periods or payment of an additional hour of pay at
10 Plaintiff's and other class member's regular rate of pay when a meal period was missed, late, on-
11 premises, or interrupted, and they did not receive all timely and proper meal periods of payment of
12 one additional hour of pay at the Plaintiff's and other class members' regular rate of pay when a meal
13 period was missed.

14 36. Plaintiff is informed and believes, and based thereon alleges that, Defendants knew or
15 should have known that Plaintiff and other class members were entitled to receive all timely, timely,
16 uninterrupted, duty-free, off-premises, rest periods without interruption or a payment of one additional
17 hour of pay at Plaintiff and the other class member's regular rate of pay when a rest period was missed,
18 late, on-premises, or interrupted and they did not receive all rest periods or payment of one additional
19 hour of pay at Plaintiff and the other class members' regular rate of pay when a rest period was
20 missed/late/on-premises/or interrupted.

21 37. Plaintiff is informed and believes, and based thereon alleges that, Defendants knew or
22 should have known that Plaintiff and other class members were entitled to receive at least minimum
23 wages for compensation that they were not receiving and at least minimum wage for all hours worked.

24 38. Plaintiff is informed and believes, and based thereon alleges that, Defendants knew or
25 should have known that Plaintiff and other class members were entitled to receive the wages owed to
26 them upon discharge or resignation, including overtime, double-time, and minimum wages, meal and
27 rest period premiums, and unreimbursed business expenses (including but not limited to costs and fees
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1 incurred in using cellular phones for work-related purposes), and they did not in fact, receive such
2 wages owed to them at the time of their discharge or resignation.

3 39. Plaintiff is informed and believes, and based thereon alleges that, Defendants knew or
4 should have known that Plaintiff and other class members were entitled to receive complete and
5 accurate wage statements in accordance with California law, but in fact, they did not receive complete
6 and accurate wage statements from Defendants. The deficiencies included, inter alia, the failure to
7 include the total number of hours worked, and the correct regular rate of pay earned, and all applicable
8 hourly rates and all gross and net wages earned by Plaintiff and other class members.

9 40. Plaintiff is informed and believes, and based thereon alleges that, Defendants knew or
10 should have known that Defendants had to keep complete and accurate payroll records for Plaintiff
11 and other class members in accordance with California law, but, in fact, did not keep complete and
12 accurate payroll records.

13 41. Plaintiff is informed and believes, and based thereon alleges that, Defendants knew or
14 should have known that Defendants knew or should have known that they had a duty to compensate
15 Plaintiff and other class members pursuant to California law, and that Defendants had the financial
16 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
17 falsely represented to Plaintiff and other class members that they were properly denied wages in order
18 to increase Defendants' profits.

19 42. As a pattern and practice, during the relevant time period set forth herein, Defendants
20 failed to pay overtime and double-time wages to Plaintiff and other class members for all hours
21 worked. Plaintiff and other class members were required to work more than eight (8) to twelve (12)
22 and/or forty (40) hours per week without overtime or double-time compensation.

23 43. As a pattern and practice, during the relevant time period set forth herein, Defendants
24 failed to provide the requisite uninterrupted and timely meal and rest periods to Plaintiff and other
25 class members.

26 44. As a pattern and practice, during the relevant time period set forth herein, Defendants
27 failed to pay Plaintiff and other class members at least minimum wages for all hours worked.
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45. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to provide complete or accurate wage statements to Plaintiff and other class members.

46. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiff and other class members the wages owed to them upon discharge or resignation.

47. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to keep complete or accurate payroll records for Plaintiff and other class members.

48. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to properly compensate Plaintiff and other class members pursuant to California law in order to increase Defendants' profits.

49. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of Labor Code §§ 510, 1198, 1199 and All Applicable Wage Orders

Against All Defendants)

50. Plaintiff re-alleges and incorporates all previous and subsequent paragraphs of this Complaint, as though fully set forth herein.

51. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay of either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

52. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other class members employed by Defendants, who work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

53. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

1 54. California Labor Code section 510 codifies the right to overtime compensation at one-
2 and-one half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
3 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
4 overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours
5 in a day or in excess of eight (8) hours in a day on the seventh day of work.

6 55. During the relevant time period set forth herein, Plaintiff and other class members
7 worked in excess of eight (8) hours in a day and/or in excess of forty (40) hours in a week. Likewise,
8 during the relevant time period set forth herein, Plaintiff and other class members worked in excess of
9 twelve (12) hours in a day.

10 56. As a pattern and practice, during the relevant time period set forth herein, Defendants
11 intentionally and willfully failed to pay overtime and double time wages owed to Plaintiff and other
12 class members.

13 57. Defendants' pattern and practice of failing to pay Plaintiff and other class members the
14 unpaid balance of overtime and double time compensation as required by California laws, violates the
15 provisions of the California Labor Code sections 510 and 1198, and others, and is therefore unlawful.

16 58. Pursuant to California Labor Code section 1194, and 1199 Code of Civil Procedure
17 section 1021.5, 1032, and Civil Code section 3287, Plaintiff and other class members are entitled to
18 recover unpaid overtime and double time compensation, as well as interest, cost, and attorneys' fees.

19 **SECOND CAUSE OF ACTION**

20 **(Violation of Labor Code §§ 226.7 and 512(a)**

21 **Against All Defendants)**

22 59. Plaintiff re-alleges and incorporates all previous and subsequent paragraphs of this
23 Complaint, as though fully set forth herein.

24 60. During the relevant time period set forth herein, the IWC Order and California Labor
25 Code sections 226.7 and 512(a) were applicable to Plaintiff's and other class members' employment
26 by Defendants.

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1 61. During the relevant time period set forth herein, California Labor Code section 226.7
2 provides that no employer shall require an employee to work during any meal or rest period mandated
3 by the applicable order for the California IWC.

4 62. During the relevant time period set forth herein, the applicable IWC Wage Order and
5 California Labor Code section 512(a) provides that an employer may not require, cause or permit and
6 employee to work for a work period of more than five (5) hours per day without providing the
7 employee with a meal period of not less than thirty (30) minutes, except that if the total work period
8 per day of the employee is no more than six (6) hours, the meal period may be waived by mutual
9 consent of both the employer and employee.

10 63. During the relevant time period set forth herein, the applicable IWC Wage Order and
11 California Labor Code section 512(a) further provide that an employer may not require, cause or
12 permit an employee to work for a period of more than then (10) hours per day without providing the
13 employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if
14 the total hours worked is no more than twelve (12) hours, the second meal period may be waived by
15 mutual consent of both the employer and employee only if the first meal period was not waived.

16 64. As a pattern and practice, during the relevant time period set forth herein, Plaintiff and
17 other class members who were scheduled to work for a period of time no longer than six (6) hours,
18 and who did not waive their legally -mandated meal periods by mutual consent, were required to work
19 for periods longer than five hours (5) hours without an uninterrupted meal period of not less than
20 thirty (30) minutes and/or without a rest period. Further, as a pattern and practice during the relevant
21 time period set forth herein, Plaintiff and other class members who were scheduled to work for a period
22 of more than ten (10) hours were day without a second uninterrupted meal period.

23 65. As a pattern and practice, during the relevant time period set forth herein, Plaintiff and
24 other class members who were scheduled to work for a period of time in excess of six (6) and ten (10)
25 hours per day were required to work for periods longer than five (5) hours without an uninterrupted
26 meal period of not less than thirty (30) minutes and/or without a rest period.

27 66. As a pattern and practice during the relevant time period set forth herein, Defendants
28 intentionally and willfully required Plaintiff and other class members to work during meal periods and

1 failed to compensate Plaintiff and the other class members the full meal period premium for work
2 performed during meal periods.

3 67. As a pattern and practice, during the relevant time period set forth herein, Defendants
4 failed to pay Plaintiff and other class members the full meal period premium due pursuant to California
5 Labor Code section 226.7.

6 68. Defendants conduct violates applicable IWC Wage Order and California Labor Code
7 sections 226.7 and 512(a).

8 69. Pursuant to the applicable IWC Wage Order and California Labor Code section 226
9 226.7(b), and others, Code of Civil Procedure section 1021.5, 1032, and Civil Code section 3287,
10 Plaintiff and other class members are entitled to recover from Defendants one additional hour of pay
11 at the employee's regular rate of compensation for each work day that the meal or rest period was not
12 provided.

13 **THIRD CAUSE OF ACTION**

14 **(Violation of Labor Code § 226 and 226.7**

15 **Against All Defendants)**

16 70. Plaintiff re-alleges and incorporates all previous and subsequent paragraphs of this
17 Complaint, as though fully set forth herein.

18 71. During the relevant time period set forth herein, the IWC Order and California Labor
19 Code sections 226 and 226.7 was applicable to Plaintiff's and other class members' employment by
20 Defendants.

21 72. During the relevant time period set forth herein, California Labor Code section 226.7
22 provides that no employer shall require an employee to work during any meal or rest period mandated
23 by the applicable order for the California IWC.

24 73. During the relevant time period set forth herein, the applicable IWC Wage Order
25 provides that "[e]very employer shall authorize and permit all employees to take rest periods, which
26 insofar as practicable shall be in the middle of each work period" and that the "rest period time shall
27 be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
28 or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

1 74. As a pattern and practice, during the relevant time period set forth herein, Defendants
2 required Plaintiff and other class members to work four (4) or more hours without authorizing or
3 permitting a ten (10) minute rest period for each four (4) hour period worked. To the extent Plaintiff
4 or class members did attempt to take a rest period, Defendants required Plaintiff and other class
5 members to remain on premises during rest periods.

6 75. As a pattern and practice, during the relevant time period set forth herein, Defendants
7 willfully required Plaintiff and the other class members to work during rest periods and failed to pay
8 Plaintiff and other class members the full rest period premium for work performed during rest periods.

9 76. As a pattern and practice, during the relevant time period set forth herein, Defendants
10 failed to pay Plaintiff and the other class members the full rest period premium due pursuant to
11 California Labor Code section 226.7.

12 77. Defendants conduct violates applicable IWC Wage Orders and California Labor Code
13 section 226.7.

14 78. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226,
15 226.7(b), and others, Code of Civil Procedure section 1021.5, 1032, and Civil Code section 3287,
16 Plaintiff and the other class members are entitled to recover from Defendants one additional hour of
17 pay at the employees' regular hourly rate of compensation for each work day that the rest period was
18 not provided.

19 **FOURTH CAUSE OF ACTION**

20 **(Violation of Labor Code §§ 1194 and 1197**

21 **Against All Defendants)**

22 79. Plaintiff re-alleges and incorporates all previous and subsequent paragraphs of this
23 Complaint, as though fully set forth herein.

24 80. During the relevant time period set forth herein, California Labor Code sections 1194
25 and 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser wage
26 than the minimum so fixed is unlawful.

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1 81. As a pattern and practice, during the relevant time period set forth herein, Defendants
2 failed to pay minimum wages to Plaintiff and other class members as required pursuant to California
3 Labor Code sections 1194 and 1197.

4 82. Defendants' failure to pay Plaintiff and other class members the minimum wage as
5 required violates California Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiff
6 and other class members are entitled to recover the unpaid balance of their minimum wage
7 compensation as well as interest, costs, and attorneys' fees, and liquidated damages in an amount equal
8 to the wages unlawfully unpaid and interest thereon.

9 83. Pursuant to California Labor Code section 1194.2, and others, and Code of Civil
10 Procedure section 1021.5, 1032, and Civil Code section 3287 Plaintiff and other class members are
11 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
12 thereon.

13 **FIFTH CAUSE OF ACTION**

14 **(Violation of Labor Code §§ 201 and 202**

15 **Against All Defendants)**

16 84. Plaintiff re-alleges and incorporates all previous and subsequent paragraphs of this
17 Complaint, as though fully set forth herein.

18 85. During the relevant time period set forth herein, California Labor Code sections 201
19 and 202 provide that if an employer discharges and employee, the wages earned and unpaid at the time
20 of discharge are due and payable immediately, and if an employee quits his or her employment, his or
21 her wages shall become due and payable not later than seventy-two (72) hours thereafter unless the
22 employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the
23 employee is entitled to his or her wages at the time of quitting.

24 86. As a pattern and practice, during the relevant time period set forth herein, Defendants
25 intentionally and willfully failed to pay Plaintiff and other class members (but not all) who are no
26 longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their
27 leaving Defendants' employ.

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87. Defendants' pattern and practice of failing to pay Plaintiff and other class members (but not all) who are no longer employed by Defendants their wages earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

88. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; the wages shall not continue for more than thirty (30) days.

89. Plaintiff and other class members (but not all) are entitled to recover from Defendants' the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203 and 218.6 and others, Code of Civil Procedure section 1021.5, 1032, and Civil Code section 3287.

SIXTH CAUSE OF ACTION

(Violation of Labor Code § 226(a))

Against All Defendants)

90. Plaintiff re-alleges and incorporates all previous and subsequent paragraphs of this Complaint, as though fully set forth herein.

91. During the relevant time period set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees and accurate itemized wage statement in writing showing (1) gross wages earned; (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates for the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the

1 deductions shall be kept on file by the employer for at least three years at the place of employment or
2 at a central location within the State of California.

3 92. As a pattern and practice, Defendants have intentionally and willfully failed to provide
4 Plaintiff and other class members (but not all) with complete and accurate wage statements. The
5 deficiencies include but are not limited to: the failure to include the total number of hours worked by
6 Plaintiff and other class members.

7 93. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
8 and other class members (but not all) have suffered injury and damage to their statutorily protected
9 rights.

10 94. More specifically, Plaintiff and other class members (but not all) have been injured by
11 Defendants' intentional and willful violation of California Labor Code section 226(a) because they
12 were denied both their legal right to receive, and their protected interest in receiving, accurate and
13 itemized wage statements pursuant to California Labor Code section 226(a).

14 95. Plaintiff and other class members are entitled to recover from Defendants the greater
15 of their actual damages caused by Defendants' failure to comply with California Labor Code section
16 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

17 96. Plaintiff and other class members (but not all) are also entitled to injunctive relief to
18 ensure compliance with this section, pursuant to California Labor Code section 226(g).

19 **SEVENTH CAUSE OF ACTION**

20 **(Violation of Labor Code §§ 2800 and 2802**

21 **Against All Defendants)**

22 97. Plaintiff re-alleges and incorporates all previous and subsequent paragraphs of this
23 Complaint, as though fully set forth herein.

24 98. Pursuant to California Labor Code sections 2800 and 2802, an employer must
25 reimburse its employees for all necessary expenditures incurred by the employee in direct consequence
26 of the discharge of his or her job duties or in direct consequence of his or her obedience to the
27 directions of the employer.

28 ///

99. Defendants have intentionally and willfully failed to reimburse Plaintiff and other class members (but not all) for all necessary business-related expenses and costs. Plaintiff and other class members (but not all) are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest, accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgment in civil actions in the State of California.

EIGHTH CAUSE OF ACTION

(Violation of Business and Professions Code §§ 17200, *et seq.*

Against All Defendants)

100. Plaintiff re-alleges and incorporates all previous and subsequent paragraphs of this Complaint, as though fully set forth herein.

101. Defendants' conduct, as alleged herein, has been, and continues to be unfair, unlawful, and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure section 1021.5.

102. Defendants' activities as alleged here are violations of California law, and constitute unlawful business acts and practices in violation of California Business and Professions Code section 17200, *et seq.*

103. A violation of California Business and Professions Code section 17200, *et seq.*, may be predicated on the violation of any state or federal law. In this instant case, Defendants' pattern and practice of requiring Plaintiff and other class members work overtime and double time hours without paying them proper compensation violation California Labor Code sections 510 and 1198. Additionally, Defendants' pattern and practice of requiring Plaintiff and other class members to work through their meal and rest periods without paying them proper compensation violations California Labor Code section 226.7 and 512(a) and others. Moreover, Defendants' pattern and practice of failing to timely pay wages to Plaintiff and other class members, violation California Labor Code sections 201 and 202. Defendants also violated California Labor Code sections 226(a), 1194, 1197, 2800, and 2802 and others.

104. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

105. Plaintiff and other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

106. Pursuant to California Business and Professions Code section 17200 *et seq.*, Plaintiff and other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable law; and an award of costs.

NINTH CAUSE OF ACTION

(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of 12

2004, Cal. Lab. Code§ 2698 et seq.)

107. Plaintiff re-alleges and incorporates all previous and subsequent paragraphs of this Complaint, as though fully set forth herein.

108. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

109. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3."

110. Plaintiff has exhausted her administrative remedies pursuant to California Labor Code § 2699.3. On December 15, 2022 Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff and current and former aggrieved

1 employees, including the facts and theories to support the violations. Plaintiff also paid the filing fee
2 on December 15, 2022. At the time of this filing, 65 days has elapsed since Plaintiff provided notice,
3 but the Labor and Workforce Development Agency has not indicated that it intends to investigate
4 Defendants' Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a
5 civil action to recover penalties under Labor Code§ 2699 pursuant to § 2699.3 for the violations of the
6 Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under
7 California Labor Code§§ 210,226.3, 558, 1197.1, and 2699(f)(2).

8 111. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor
9 Code§ 1174(d). Pursuant to California Labor Code§ 1174.5, any person, including any entity,
10 employing labor who willfully fails to maintain accurate and complete records required by California
11 Labor Code § 1174 is subject to a penalty under§ 1174.5. Pursuant to the applicable IWC Order §
12 7(A)(3), every employer shall keep time records showing when the employee begins and ends each
13 work period. Meal periods, and total hours worked daily shall also be recorded. Additionally, pursuant
14 to the applicable IWC Order§ 7(A)(5), every employer shall keep total hours worked in the payroll
15 period and applicable rates of pay.

16 112. During the time period of employment for Plaintiff and the Aggrieved Employees,
17 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
18 maintain accurate records showing meal periods, and accurate records showing when employees begin
19 and end each work period. Defendants' failure to provide and maintain records required by the Labor
20 Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know,
21 understand and question the accuracy and frequency of meal periods, and the accuracy of their hours
22 worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way
23 to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic
24 enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered
25 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest
26 on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its
27 obligation under state law, all to their respective damage in amounts according to proof at trial.
28 Because of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage

1 Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented
2 from knowing, understanding, and disputing the wage payments paid to them.

3 113. Based on the conduct described in this First Amended Complaint, Plaintiff is entitled
4 to an award of civil penalties on behalf of herself, the State of California, and similarly Aggrieved
5 Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be
6 shown according to proof at trial. These penalties are in addition to all other remedies permitted by
7 law.

8 114. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant to
9 California Labor Code§ 2699(g)(1), which states, "Any employee who prevails in any action shall be
10 entitled to an award of reasonable attorney's fees and costs."

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff, individually and on behalf of other members of the general public similarly situated,
13 requests a trial by jury.

14 **PRAYER FOR RELIEF**

15 **WHEREFOR**, Plaintiff, individually and on behalf of all other members of the general public
16 similarly situated, prays for relief and judgment against Defendants, jointly and severally as follows:

- 17 1. That this action be certified as a class action;
- 18 2. An Order appointing Plaintiff as Class representative and appointing Plaintiff's counsel
19 as class counsel;
- 20 3. Damages for all wages earned and owned including, minimum, overtime, under Labor
21 Code sections 510, 558.1, 1194, 1197, 1199;
- 22 4. Liquidated damages pursuant to Labor Code section 558.1 and 1194.2; 226.7;
- 23 5. Damages for unpaid premium wages for non-compliant meal and rest periods under,
24 among other Labor Code sections, 512, 558.1,
- 25 6. Penalties for inaccurate wage statements under Labor Code section 226(e) and 558.1;
- 26 7. Waiting time penalties under Labor Code sections 203 and 558.1;
- 27 8. Penalties to timely pay wages under Labor Code section 210;
- 28 9. Damages under Labor Code sections 558.1 and 2802;

1 10. Civil penalties pursuant to California Labor Code § 2699, et seq., and all other
2 applicable Labor Code provision;

3 11. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
4 Labor Code § 2699;

5 12. Preliminary and permanent injunctions prohibiting defendants from further violating
6 the California Labor Code and requiring the establishment of appropriate and effective means to
7 prevent future violations;

8 13. Restitution of wages and benefits due which were acquired by means of any unfair
9 business practices, according to proof;

10 14. Pre-judgment and post-judgment interest at the maximum rate allowed by law;

11 15. For attorneys' fees in prosecuting this action;

12 16. For costs of suit incurred herein;

13 17. That Defendants provide to Class Counsel immediately, the names and most current
14 contact information (Address, e-mail, and telephone numbers) of all class members; and

15 18. For such other and further relief as the Court deems just and proper.
16

17 Dated: October 25, 2024

MOSSAVAR LAW, P.C. | FOROOTAN LAW CORP.

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