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DELILAH RIVAS and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DELILAH RIVAS, an individual on
behalf of herself and all other similarly
situated,

Plaintiff,

v.

ARCHDIOCESE OF LOS ANGELES
FUNERAL AND MORTUARY
SERVICES CORPORATION, a
corporation; and DOES 1 through 10,

Defendant.

CASE NO. 22STCV38599

CLASS ACTION

**PLAINTIFF'S FIRST AMENDED CLASS
ACTION COMPLAINT FOR:**

1. VIOLATIONS OF LABOR CODE § 204, 226.2, 1194, 1197, AND WAGE ORDER (WAGES)
 2. VIOLATIONS OF LABOR CODE §§ 226.2, 510, 1194, 1198, AND WAGE ORDER (OVERTIME WAGES)
 3. VIOLATIONS OF LABOR CODE §§ 226.7 AND 512 AND WAGE ORDER (MEAL PERIODS)
 4. VIOLATION OF LABOR CODE §§ 226.2, 226.7, 516, 558 AND WAGE ORDER (REST PERIODS)
 5. VIOLATIONS OF LABOR CODE § 2802 (FAILURE TO REIMBURSE)
 6. VIOLATIONS OF LABOR CODE § 226(A) (NON-COMPLIANT WAGE STATEMENTS)
 7. VIOLATIONS OF LABOR CODE §§ 201-203 (FAILURE TO PAY ALL WAGES OWED UPON TERMINATION)
 8. VIOLATIONS OF LABOR CODE § 227.3 (FAILURE TO PAY VACATION/PTO WAGES)
 9. VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200
 10. VIOLATIONS OF CALIFORNIA LABOR CODE SECTION 2698 ET SEQ. - THE PRIVATE ATTORNEYS GENERAL ACT OF 2004
- [FILED PURSUANT TO CCP § 472 & LABOR CODE § 2699.3(a)(2)(C)]
JURY TRIAL DEMANDED

1 Plaintiff Delilah Rivas (“Plaintiff”) alleges as follows on knowledge as to her own
2 acts/interactions and on information and belief as to all other matters.

3 **JURISDICTION AND VENUE**

4 1. This Court has personal jurisdiction over Defendant because it conducts
5 business in the State of California.

6 2. Under California Code of Civil Procedure section 395(a), venue is proper in
7 this county because Defendant does business in this county and the harm to Plaintiff
8 occurred in this county.

9 **EXHAUSTION OF ADMINISTRATIVE REQUIREMENTS**

10 3. On December 12, 2022, counsel for Plaintiff prepared and electronically
11 submitted a letter to the California Labor & Workforce Development Agency (“LWDA”)
12 via the California Department of Industrial Relations’ “PAGA Filing” website. A copy
13 of the letter was mailed to Defendant, also via USPS Certified Mail. The letter contained
14 the specific provisions of the California Labor Code violated by Defendant, as well as the
15 facts and theories in support of Plaintiff’s claims.

16 4. Now that sixty-five (65) days have passed since Plaintiff notified Defendant
17 of these violations, the statutory time period for the LWDA to investigate and/or respond,
18 and for the employer to respond, has concluded. Plaintiff has exhausted the
19 administrative requirements for bringing a claim under the PAGA for these violations.

20 **PARTIES**

21 5. Plaintiff, at all times relevant hereto, was and is a resident of the State of
22 California.

23 6. Plaintiff is informed and believes that Defendant ARCHDIOCESE OF LOS
24 ANGELES FUNERAL AND MORTUARY SERVICES CORPORATION
25 (“Defendant”), is a corporation organized and existing under the laws of California with
26 its principal place of business located at 3424 Wilshire Blvd., Los Angeles, California
27 90010.
28

1 7. Plaintiff is informed and believes that at all times relevant herein, each
2 defendant designated, including Does 1 through 10, was the agent, managing agent,
3 principal, owner, partner, joint venturer, representative, manager, servant, employee
4 and/or co-conspirator of each of the other Defendant, and was at all times mentioned
5 herein acting within the course and scope of said agency and employment, and that all
6 acts or omissions alleged herein were duly committed with the ratification, knowledge,
7 permission, encouragement, authorization and consent of each defendant designated
8 herein.

9 **PLAINTIFF'S FACTUAL ALLEGATIONS**

10 8. Between approximately December of 2018 and November 30, 2022,
11 Plaintiff worked for Defendant as a Preeed Sales Consultant, making sales of funeral
12 and burial arrangements, services, and products.

13 9. Plaintiff and other non-exempt employees working for Defendant were
14 compensated based on an hourly rate.

15 10. Plaintiff and certain other non-exempt employees working for Defendant
16 were also compensated through commissions, bonuses, and other forms of non-
17 discretionary compensation. For example, Plaintiff earned a percentage of the sales she
18 achieved among other forms of non-discretionary compensation.

19 11. Plaintiff and other employees working for Defendant were not compensated
20 for all time worked, had their time entries altered/decreased by Defendant, were required
21 to work "off the clock," were not paid for mandatory trainings, and not paid for reporting
22 time pay.

23 12. For example, Plaintiff was required to work approximately 20 extra hours
24 of off-the-clock work each month filling out forms and following up with potential
25 customers and their families. Plaintiff was also required to spend approximately 12 extra
26 hours of off-the-clock work per month in updating Defendant's customer relationship
27 manager software (Premiere Suites).

1 13. Plaintiff and other employees are entitled to liquidated damages equal to
2 unlawfully unpaid minimum wages with interest pursuant to Labor Code § 1194.2.

3 14. Due to these and other issues, Plaintiff and other employees were also not
4 compensated appropriately for overtime wages and double overtime wages. Plaintiff and
5 other employees worked overtime during their employment with Defendant by working
6 over eight (8) hours in a workday and/or forty (40) hours in a workweek. Plaintiff and
7 other employees were not compensated for all hours worked and were not compensated
8 at the appropriate overtime rate, which resulted in underpayments of overtime wages and
9 double overtime wages.

10 15. Under California law, the determination of the regular rate of pay for
11 purposes of determining the amount of overtime pay must include all remuneration
12 earned by the employee including the employee's commissions, bonuses, shift-
13 differential pay or other non-hourly compensation. See DLSE Manual § 49.2.1.2
14 (“Compute the regular rate by dividing the total earnings for the week, including earnings
15 during overtime hours, by the total hours worked during the week, including the overtime
16 hours.”); see also 29 C.F.R. § 778.118-120 (“When the commission is paid on a weekly
17 basis, it is added to the employee's other earnings for that workweek . . . and the total is
18 divided by the total number of hours worked in the workweek to obtain the employee's
19 regular hourly rate for the particular workweek.”).

20 16. The “regular rate of pay” must include “all remuneration for employment
21 paid to, or on behalf of, the employee.” Alonzo v. Maximus, Inc., 832 F. Supp. 2d 1122,
22 1130 (C.D. Cal. 2011). “Thus, when an employer calculates 1.5 times an employee's
23 regular rate of pay to pay overtime, *the employer must include bonuses, commissions, or*
24 *any other income not subject to an exception in that calculation.*” Brum v.
25 Marketsource, Inc., No. 2:17-cv-241-JAM-EFB, 2017 U.S. Dist. LEXIS 94079, at *10
26 (E.D. Cal. June 16, 2017) (emphasis added).

27 17. Defendant did not include non-discretionary compensation in calculating
28 the hourly rate of pay for overtime purposes. Instead, the regular rate of pay used for

1 calculating the overtime rate of pay was strictly based on the employees' hourly wage
2 (not including the non-discretionary compensation). As such, Defendant owes Plaintiff
3 and other members of the proposed classes additional overtime pay based on a
4 calculation using the correct, higher rate of pay (taking into account the non-discretionary
5 compensation).

6 18. Further, Defendant failed to pay Plaintiff and other employees all wages
7 due to them within any time period specified by Labor Code § 204, including earned and
8 unpaid minimum, overtime, and premium wages.

9 19. During Plaintiff's employment by Defendant, Plaintiff and other employees
10 working for Defendant were forced to miss taking compliant meal periods (30-minute
11 meal periods after the first five hours worked) due to the demands placed on them by
12 Defendant and lack of coverage. Moreover, Plaintiff and other non-exempt hourly
13 employees were deprived of taking a second meal period after ten hours worked.

14 20. During Plaintiff's employment by Defendant, Plaintiff and other employees
15 working for Defendant were forced to miss taking compliant rest periods (ten minutes
16 rest time per four hours worked) due to the demands placed on them by Defendant and
17 lack of coverage.

18 21. Defendant failed to pay penalties for noncompliant rest and meal periods
19 (premium pay as required by Labor Code § 226.7(b) and Sections 11 and 12 of the
20 applicable Wage Order in lieu of meal and/or rest periods).

21 22. To the extent Defendant paid some penalties (one hour of pay) for certain
22 missed or non-compliant meal or rest periods, Defendant paid such penalties at an
23 incorrect rate that is lower than the rate required by law. More specifically, because the
24 Legislature intended "regular rate of compensation" under Lab. Code, § 226.7, subd. (c),
25 to have the same meaning as "regular rate of pay" under Lab. Code, § 510, subd. (a), the
26 calculation of premium pay for a noncompliant meal, rest, or recovery period, like the
27 calculation of overtime pay, had to account for not only hourly wages but also other
28 nondiscretionary payments. Thus, an employer calculating premium pay for

1 noncompliant meal or rest breaks according to the employee's base hourly rate while
2 omitting nondiscretionary incentive payments failed to pay in accordance with the
3 employee's regular rate of compensation. *Ferra v. Loews Hollywood Hotel, LLC*, 11
4 Cal. 5th 858 (2021). By doing so, Defendant underpaid each meal and rest period penalty
5 payment. Also, by doing so, Defendant underpaid overtime wages to Plaintiff and other
6 employees at the incorrect rate.

7 23. Plaintiff and other employees were not reimbursed for all business expenses
8 and, to the extent such reimbursement was provided, it was provided in an amount not
9 sufficient to reimburse Plaintiff and other employees for such expenses, including use of
10 their personal vehicle and mileage, and other necessary business expenses.

11 24. Based on these underpayments of regular wages, overtime wages, double
12 overtime wages, and unpaid or underpaid meal/rest period penalties, Plaintiff and other
13 employees who were terminated or resigned did not receive all wages owed to them upon
14 termination or within seventy-two (72) hours after resignation.

15 25. In addition, Defendant did not provide Plaintiff and other employees with
16 accurate wage statements as required under California law. More specifically, the wage
17 statements provided to Plaintiff and other employees did not reflect or did not accurately
18 reflect the: (1) gross wages earned, (2) total hours worked by the employee, (3) the
19 number of piece-rate units earned and any applicable piece rate if the employee is paid on
20 a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the
21 period for which the employee is paid, (7) the name and address of the legal entity that is
22 the employer, and (8) all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee.

24 Accordingly, Plaintiff and other employees were not able to promptly and easily
25 determine the missing information without reference to other documents or information.

26 26. The wage statements also did not provide accurate information by omitting
27 the lack of meal/rest break premium pay that should have been paid to Plaintiff and the
28 other employees. See *Naranjo v. Spectrum Sec. Servs., Inc.*, 13 Cal. 5th 93 (2022)

1 (Because premium pay for missed meal and rest breaks under Lab. Code, § 226.7,
2 compensated employees for the work performed during a break period and therefore
3 constituted wages within the meaning of Lab. Code, §§ 200, subd. (a), 203, 226, penalties
4 could be available for an employer's alleged failure to timely pay or report such
5 payments.).

6 27. The wage statements also did not include the commission rate and amount
7 of sales. The DLSE Enforcement Manual specifically provides that the information on
8 the wage statements required under Labor Code section 226(a)(3) must include "3. The
9 number of piece rate units earned and any applicable piece rate whenever an employee is
10 being paid on a piecework basis (and commissioned employees, i.e., commission rate and
11 amount of sales.)" (emphasis added). See DLSE Enforcement Policies and
12 Interpretations Manual § 14.1.1; see also Balboa Acquisition v. Ratkovich, No. SACV 07-
13 00091-JVS (RNBx), 2008 U.S. Dist. LEXIS 126625, at *6-7 (C.D. Cal. Feb. 27, 2008).

14 28. Defendant maintained unlawful business practices in their exercise of
15 improperly calculating and improperly paying out the accrued vacation hours of Plaintiff
16 and other non-exempt employees.

17 29. Defendant violated California Labor Code §§ 1174, 1174.5 by failing to
18 keep at a central location in the state or at the plants or establishments at which
19 employees are employed, payroll records showing the hours worked daily by and the
20 wages paid to employees employed at the respective plants or establishments.

21 CLASS ACTION ALLEGATIONS

22 30. This class action is filed under the provisions of Code of Civil Procedure
23 section 382, which provides that a class action may be brought when the question is one
24 of common interest to many persons, or when the number of persons is numerous and it
25 is impractical to bring them all before the court. This action is properly maintained as a
26 class action as set forth below.

1 31. Plaintiff brings this action on behalf of herself and all others similarly
2 situated in the “Class”, as follows: All persons within California who worked for a
3 Defendant as an hourly (non-exempt) employee at any time on or after December 12,
4 2018 through class certification.

5 32. Plaintiff also brings this action on behalf of herself and all others similarly
6 situated in the “Incentive Compensation Class”, as follows: All persons within California
7 who worked for a Defendant as an hourly (non-exempt) employee at any time on or after
8 December 12, 2018 through class certification who earned any form of non-discretionary
9 compensation.

10 33. Plaintiff also brings this action on behalf of herself and all others similarly
11 situated in the “Former Employee Class”, as follows: All persons within California who
12 formerly worked for a Defendant as an hourly (non-exempt) employee at any time on or
13 after December 12, 2018 through class certification.

14 34. The classes identified above are collectively referred to herein as the
15 “Classes.”

16 35. Numerosity: Plaintiff does not know the number of members in the defined
17 Classes but believes the number is in the hundreds, if not substantially higher. Thus,
18 joinder of all the defined class members is impractical due to the size and relatively small
19 value of each member’s claim.

20 36. Typicality: Plaintiff’s claims are typical of the claims of each member of
21 the Classes because Plaintiff did not receive all wages owed, correct overtime
22 compensation, did not receive meal/rest periods in compliance with the requirements of
23 California law, did not receive all reimbursements for business expenses, and did not
24 receive accurate wage statements as required under California law.

25 37. Commonality: The members of the Classes share a well-defined
26 community of interest regarding questions of law and fact, which predominate over
27 questions that may affect individual members of the Class. These common questions of
28 law and fact include (but are not limited to):

1 (a) Whether Defendant failed to pay the Classes wages and overtime
2 compensation in accordance with the requirements of California law;

3 (b) Whether Defendant included non-discretionary commissions in
4 calculating employee's hourly rate of pay for overtime purposes;

5 (c) Whether Defendant failed to maintain accurate records of the actual
6 hours worked by each member of the Classes as required by subsection 7 of the
7 applicable Industrial Welfare Commission Orders (see Franco v. Athens Disposal
8 Co., Inc., 171 Cal. App. 4th 1277, 1299 (2009) ("By law, an employer must
9 maintain time records showing an employee's (1) 'total daily hours worked' and
10 (2) meal periods, unless 'operations cease' during meals.") (quoting Wage Order,
11 § 7(A)(3));

12 (d) Whether Defendant did not permit Plaintiff and members of the
13 Classes to take a meal period after five (5) hours of work or ten (10) hours of work
14 due to lack of coverage, the need for the employees to continue working, or some
15 other unwritten practice/policy;

16 (e) Whether Defendant failed to pay premium pay for missed meal
17 periods displayed on Plaintiff's and members of the Classes' time records;

18 (f) Whether Defendant failed to pay premium pay for missed rest
19 periods;

20 (g) Whether Defendant correctly calculated the regular rate of pay for
21 purposes of meal or rest period penalties;

22 (h) Whether Defendant and its management regularly witnessed Plaintiff
23 and members of the Classes not taking a meal period within five (5) hours of
24 commencing work and a second meal period after working ten (10) hours;

25 (i) Whether Defendant and its management regularly witnessed Plaintiff
26 and members of the Classes not taking uninterrupted, full 30-minute meal periods
27 within five (5) hours of commencing work and a second meal period after working
28 ten (10) hours;

(j) Whether Defendant provided reimbursements for all necessary business expenses;

(k) Whether Defendant engaged in unfair business practices in violation of California Business & Professions Code sections 17200, et seq.;

(l) Whether Plaintiff and the Classes are entitled to compensatory damages pursuant to the California Labor Code; and

(m) The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendant's violations of California law,

38. Predominance: The questions that are common to all class members predominate over any questions that are unique to individual class members because the answers to these questions will determine Defendant's liability to all class members and because any remaining individual questions with respect to amounts of relief may be resolved by reference to Defendant's records.

39. Superiority: A class action is vastly superior to other available means for the fair and efficient adjudication of class members' claims. Because this case involves large numbers of employees, most, if not all, of whom have relatively small individual claims, it would be beneficial to the parties and this Court to allow them to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. Additionally, because the monetary amounts due to many individual class members are likely to be relatively small, it would make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of moneys owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

40. Ascertainable Class: The members of the Classes can be easily ascertained from Defendant's records.

1 41. Adequacy of Class Representatives: Plaintiff will fairly and adequately
2 represent and protect the interests of the Classes in that Plaintiff have no interests
3 antagonistic to any member of the Class. There are no material conflicts between the
4 claims of Plaintiff and the members of the Classes that would make class certification
5 inappropriate.

6 42. Adequacy of Class Counsel: Plaintiff has retained counsel experienced in
7 litigation class action claims and wage and hour claims.

8 43. Pursuant to Rule of Court 3.765(b), Plaintiff reserve the right to amend or
9 modify the class definition with greater specificity, by further division into subclasses
10 and/or by limitation to particular issues.

11 **FIRST CAUSE OF ACTION**

12 **VIOLATION OF CALIFORNIA LABOR CODE §§ 204, 226.2, 1194, 1197, AND**
13 **IWC WAGE ORDER (UNDERPAYMENT OF HOURLY WAGES)**
14 **(BY PLAINTIFF AND THE CLASSES AGAINST DEFENDANT)**

15 44. Plaintiff incorporates by this reference all preceding and subsequent
16 paragraphs.

17 45. California Labor Code section 204(a) states (in relevant part) that wages
18 “earned by any person in any employment are due and payable twice during each
19 calendar month, on days designated in advance by the employer as the regular paydays.”

20 46. California Labor Code section 1194(a) states (in relevant part):
21 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less
22 than the legal minimum wage or the legal overtime compensation applicable to the
23 employee is entitled to recover in a civil action the unpaid balance of the full amount of
24 this minimum wage or overtime compensation, including interest thereon, reasonable
25 attorney’s fees, and costs of suit.”

26 47. California Labor Code section 1197 states (in relevant part): “The
27 minimum wage for employees fixed by the commission or by any applicable state or
28

1 local law, is the minimum wage to be paid to employees, and the payment of a lower
2 wage than the minimum so fixed is unlawful.”

3 48. The applicable IWC Wage states: “Every employer shall pay to each
4 employee, on the established payday for the period involved, not less than the applicable
5 minimum wage for all hours worked in the payroll period, whether the remuneration is
6 measured by time, piece, commission, or otherwise.”

7 49. As alleged above, Defendant violated the foregoing statutes and regulations
8 through its practice and/or policy of not compensating the members of the Classes for all
9 time that they worked.

10 50. Pursuant to California Labor Code sections 218.5, 1194, 1194.2, 1197.2,
11 Plaintiff and the other members Classes are entitled to recover the full amount of their
12 unpaid wages, liquidated damages equal to unlawfully unpaid minimum wages with
13 interest waiting time penalties, reasonable attorneys’ fees, and costs of suit. Plaintiff and
14 the other members of the Classes are entitled to recover interest on all due and unpaid
15 wages and waiting time penalties under Labor Code section 218.6 and/or Civil Code
16 section 3287(a).

17 **SECOND CAUSE OF ACTION**

18 **VIOLATION OF CALIFORNIA LABOR CODE §§ 226.2, 510, 1194, 1198, AND** 19 **IWC WAGE ORDER (UNDERPAYMENT OF OVERTIME WAGES)** 20 **(BY PLAINTIFF AND THE CLASSES AGAINST DEFENDANT)**

21 51. Plaintiff incorporates by this reference all preceding and subsequent
22 paragraphs.

23 52. The applicable IWC Wage Order states:

24 (A) Daily Overtime – General Provisions

25 (1) The following overtime provisions are applicable to employees 18 years
26 of age or over and to employees 16 or 17 years of age who are not
27 required by law to attend school and are not otherwise prohibited by law
28 from engaging in the subject work. Such employees shall not be

1 employed more than eight (8) hours in any workday or more than 40
2 hours in any workweek unless the employee receives one and one-half
3 (1 ½) times such employee's regular rate of pay for all hours worked
4 over 40 hours in the workweek. Eight (8) hours of labor constitutes a
5 day's work. Employment beyond eight (8) hours in any workday or
6 more than six (6) days in any workweek is permissible provided the
7 employee is compensated for such overtime at not less than:

8 (a) One and one-half (1 ½) times the employee's regular rate of pay
9 for all hours worked In excess of eight (8) hours up to and
10 including twelve (12) hours in any workday, and for the first
11 eight (8) hours worked on the seventh (7th) consecutive day of
12 work in a workweek.; and

13 (b) Double the employee's regular rate of pay for all hours worked in
14 excess of 12 hours in any workday and for all hours worked in
15 excess of eight (8) hours on the seventh (7th) consecutive day of
16 work in a workweek.

17 (c) The overtime rate of compensation required to be paid to a
18 nonexempt full-time salaried employee shall be computed by
19 using the employee's regular hourly salary as one fortieth (1/40)
20 of the employee's weekly salary.

21 53. California Labor Code section 510(a) states: "Eight hours of labor
22 constitutes a day's work. Any work in excess of eight hours in one workday and any
23 work in excess of 40 hours in any one workweek and the first eight hours worked on the
24 seventh day of work in any one workweek shall be compensated at the rate of no less
25 than one and one-half times the regular rate of pay for an employee. Any work in excess
26 of 12 hours in one day shall be compensated at the rate of no less than twice the regular
27 rate of pay for an employee. In addition, any work in excess of eight hours on any
28

seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

54. California Labor Code section 1194(a) states: “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 thereon, reasonable attorney’s fees, and costs of suit.”

55. As alleged above, Defendant violated the foregoing statutes and regulations through its practice and/or policy of not paying Plaintiff and other members of the Classes all overtime compensation owed.

56. Pursuant to Labor Code sections 218.5 and 1194, Plaintiff and the other members of Classes are entitled to recover the full amount of their unpaid overtime wages, waiting time penalties, reasonable attorneys’ fees, and costs of suit. Plaintiff and the other members of the Classes are entitled to recover interest on all due and unpaid wages and waiting time penalties under Labor Code section 218.6 and/or Civil Code section 3287(a).

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226.7, 512 AND IWC WAGE ORDER (MEAL PERIODS)

(BY PLAINTIFF AND CLASSES AGAINST DEFENDANT)

57. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

58. California Labor Code section 512(a) states: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an

1 employee for a work period of more than 10 hours per day without providing the
2 employee with a second meal period of not less than 30 minutes, except that if the total
3 hours worked is no more than 12 hours, the second meal period may be waived by mutual
4 consent of the employer and the employee only if the first meal period was not waived.”

5 59. Section 11(A) of the applicable IWC Wage Orders provides (in relevant
6 part): “No employer shall employ any person for a work period of more than five (5)
7 hours without a meal period of not less than 30 minutes, except that when a work period
8 of not more than six (6) hours will complete the day’s work the meal period may be
9 waived by mutual consent of the employer and the employee.”

10 60. California Labor Code section 226.7(b) provides: “If an employer fails to
11 provide an employee a meal period or rest period in accordance with an applicable order
12 of the Industrial Welfare Commission, the employer shall pay the employee one
13 additional hour of pay at the employee’s regular rate of compensation for each work day
14 that the meal or rest period is not provided.”

15 61. As alleged above, during Plaintiff’s employment by Defendant, Plaintiff
16 and other members of the Classes working for Defendant were forced to miss taking
17 compliant meal periods (30-minute meal periods after the first five hours worked).
18 Moreover, Plaintiff and other members of the Classes were deprived of taking a second
19 meal period after ten hours worked. Plaintiff and these other members of the Classes did
20 not waive their right to their meal periods.

21 62. In addition, it was and continues to be Defendant’s policy and practice not
22 to compensate Plaintiff and other members of the Classes with the pay due and owing as
23 required by California Labor Code section 226.7, and subsection 11 of the applicable
24 Industrial Welfare Commission order (i.e., one hour of pay per day per meal period at the
25 employee’s regular rate of compensation).

26 63. Plaintiff and members of the Classes demand all applicable
27 reimbursements, interest, and penalties.
28

FOURTH CAUSE OF ACTION

**VIOLATION OF CALIFORNIA LABOR CODE §§ 226.2, 226.7 AND IWC WAGE
ORDER (REST PERIODS)**

(BY PLAINTIFF AND THE CLASSES AGAINST DEFENDANT)

64. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

65. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California Industrial Welfare Commission.

66. At all relevant times, the applicable Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the total daily work time is less than three and one-half (3 ½) hours.”

67. During the relevant time period, Defendant required Plaintiff Classes to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

68. During the relevant time period, Defendant willfully required Plaintiff and members of the Classes to work during rest periods and failed to pay the full rest period premium for work performed during rest periods.

69. During the relevant time period, Defendant failed to pay Plaintiff and members of the Classes the full rest period premium due pursuant to California Labor Code section 226.7. Defendant’s conduct violates applicable Wage Orders and California Labor Code section 226.7.

70. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other members of the Classes is entitled to recover

1 from Defendant one additional hour of pay at the employee's regularly hourly rate of
2 compensation for each work day that the rest period was not provided.

3 71. Plaintiff and members of the Classes demand all applicable
4 reimbursements, interest, and penalties.

5 **FIFTH CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE § 2802 – FAILURE TO REIMBURSE**
7 **NECESSARY EXPENDITURES**

8 **(BY PLAINTIFF AND THE CLASSES AGAINST DEFENDANT)**

9 72. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

10 73. California Labor Code § 2802, in relevant part, states: "An employer shall
11 indemnify his or her employee for all necessary expenditures or losses incurred by the
12 employee in direct consequence of the discharge of his or her duties."

13 74. As alleged above, Defendant violated the foregoing statute by not
14 reimbursing necessary business expenses.

15 75. Subsection (c) of Labor Code § 2802 states, "[f]or the purposes of this
16 section, the terms 'necessary expenditure or losses' shall include all reasonable costs,
17 including but not limited to, attorneys' fees incurred by the employee enforcing the rights
18 granted by this section." Accordingly, Plaintiff and the Classes seek damages for all
19 necessary expenditures and losses, including attorney's fees and costs pursuant to Labor
20 Code § 2802(c).

21 **SIXTH CAUSE OF ACTION**

22 **VIOLATION OF CALIFORNIA LABOR CODE § 226(a)**

23 **(NON-COMPLIANT WAGE STATEMENTS)**

24 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)**

25 76. Plaintiff incorporates by this reference all preceding and subsequent
26 paragraphs.

27 77. Labor Code section 226(a) provides that every employer shall furnish each
28 of its employees an accurate itemized statement in writing showing (1) gross wages

1 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
2 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
3 deductions, provided that all deductions made on written orders of the employee may be
4 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
5 period for which the employee is paid, (7) the name of the employee and his or her social
6 security number, (8) the name and address of the legal entity that is the employer, and (9)
7 all applicable hourly rates in effect during the pay period and the corresponding number
8 of hours worked at each hourly rate by the employee.

9 78. Defendant intentionally and willfully failed to provide Plaintiff and the
10 other members of the Classes with complete and accurate wage statements.

11 79. As a result of Defendant's violation of California Labor Code section
12 226(a), Plaintiff and the other members of the Classes have suffered injury and damage to
13 their statutory-protected right to receive accurate and itemized wage statements.

14 80. Pursuant to California Labor Code section 226(e), Plaintiff and the other
15 members of the Classes are entitled to recover from Defendant the greater of their actual
16 damages caused by Defendant's failure to comply with California Labor Code section
17 226(a), or an aggregate penalty not exceeding four thousand dollars per employee, and
18 are entitled to an award of costs and reasonable attorney's fees.

19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO PAY ALL WAGES OWED UPON TERMINATION IN**

21 **VIOLATION OF CALIFORNIA LABOR CODE §§ 201-203**

22 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)**

23 81. Plaintiff incorporates by this reference all preceding and subsequent
24 paragraphs.

25 82. At all relevant times, California Labor Code sections 201-203 provide that
26 if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and if an employee quits his or her
28 employment, his or her wages shall become due and payable not later than seventy-two

1 (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his
2 or her intention to quit, in which case the employee is entitled to his or her wages at the
3 time of quitting.

4 83. As Plaintiff and other members of Classes were denied wages owed to
5 them, they were not paid all wages owed to them at the time of their termination or
6 resignation.

7 84. During the relevant time period, and as alleged above, Defendant
8 intentionally and willfully failed to pay Plaintiff and other members of the Classes their
9 wages, earned and unpaid, and meal/rest period penalties within the required time period.

10 85. Plaintiff is informed and believes that other members of the Classes were
11 not paid their final wages immediately upon their termination or within seventy-two (72)
12 hours of their resignation, is in violation of California Labor Code sections 201 and 202.

13 86. On information and belief, Plaintiff contends that Defendant's failure to
14 pay all wages earned upon termination in accordance with Labor Code section 201 was
15 willful. At all times relevant, Defendant had the ability to pay all earned and unpaid
16 wages in accordance with Labor Code section 201 but intentionally chose not to comply.

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

22 88. Pursuant to Labor Code § 218.5, Plaintiff and members of the Classes are
23 entitled to recover the full amount of their unpaid wages, waiting time penalties,
24 reasonable attorneys' fees, and costs of suit. Plaintiff and the other members of the
25 Classes are entitled to recover interest on all due and unpaid wages and waiting time
26 penalties under Labor Code § 218.6 and/or Civil Code § 3287(a).

EIGHTH CAUSE OF ACTION

FAILURE TO PAY VACATION WAGES

VIOLATION OF CALIFORNIA LABOR CODE § 227.3

(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)

89. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

90. California Labor Code section 227.3 provides:

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to he as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

91. At all relevant times during the applicable limitations period, Plaintiff and members of the Classes accrued vacation/PTO time during their employment with Defendant.

92. As a result of Defendant's policies and practices, Plaintiff is informed and believe and thereon allege that Defendant failed to reimburse for all accrued vacation wages and/or subjected employees to unlawful forfeiture policies.

93. By reason of the above, Plaintiff and the class members are entitled to restitution for all unpaid amounts due and owing.

94. Plaintiff, on behalf of herself and the members of the class, seeks interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California

1 Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of
2 Civil Procedure section 1021.5.

3 **NINTH CAUSE OF ACTION**

4 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200**
5 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)**

6 95. Plaintiff incorporates by this reference all preceding and subsequent
7 paragraphs.

8 96. Business and Professions Code section 17200, et seq. ("UCL"), defines
9 unfair competition to include any "unfair," "unlawful," or "fraudulent" business practice.

10 97. At all times relevant herein the UCL was in full force and effect and
11 binding on Defendant.

12 98. The actions alleged herein by Defendant were "unlawful" under the UCL
13 based on the violations of each of the statutes and regulations alleged herein.
14 Defendant's conduct, as alleged herein, has been, and continues to be, unfair, unlawful
15 and harmful to Plaintiff, members of the Class, the general public, and to Defendant's
16 competitors.

17 99. Plaintiff and members of the Classes have been personally injured by
18 Defendant's unlawful business acts and practices as alleged herein, including, but not
19 necessarily limited to, the loss of money and/or property.

20 100. Pursuant to California Business & Professions Code sections 17200, et seq.,
21 Plaintiff and members of the Classes are entitled to restitution of the wages and overtime
22 wages withheld and retained by Defendant; and a permanent injunction requiring
23 Defendant to pay all outstanding wages due to Plaintiff and the other members of the
24 Class.

TENTH CAUSE OF ACTION

**PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE SECTION
2698 ET SEQ.**

**(REPRESENTATIVE ACTION BY PLAINTIFF AND AGGRIEVED
EMPLOYEES AGAINST DEFENDANT)**

101. Plaintiff incorporates by reference all of the preceding and subsequent paragraphs.

102. Plaintiff seeks penalties pursuant to PAGA for based on Defendant's following violation of the California Labor Code:

- a. Underpayment of minimum wages and hourly wages in violation of California Labor Code §§ 204, 1194, 1194.2, 1197, IWC Wage Order, California Minimum Wage Order.
- b. Underpayment of overtime wages in violation of California Labor Code §§ 510, 1194, and IWC Wage Order.
- c. Failure to provide compliant meal periods in violation of California Labor Code §§ 226.7 and 512 and IWC Wage Order.
- d. Failure to provide compliant rest periods in violation of California Labor Code §§ 226.7 and 512 and IWC Wage Order.
- e. Failure to reimburse business expenses in violation of California Labor Code 2802 and IWC Wage Order.
- f. Non-compliant wage statements in violation of California Labor Code § 226(a).
- g. Failure to pay all wages upon resignation or termination due to the underpayment of wages and/or overtime in violation of California Labor Code §§ 201-203.
- h. Failure to pay, appropriately accrue, and forfeiture of paid time off in violation of California Labor Code § 227.3.
- i. Failure to keep payroll records showing total hours worked and wages paid in violation of California Labor Code §§ 1174-1174.5 and Wage Order 4-2001.

103. Plaintiff seeks civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to the California Labor Code,

1 including California Labor Code §§ 2699(a) and 2699(f), which provides for \$100 for
2 each initial violation and \$200 for each subsequent violation per employee pay period.

3 104. Plaintiff was compelled to retain the services of counsel to file this action to
4 protect Plaintiff's interests and the interests of other similarly aggrieved employees, and
5 to assess and collect the civil penalties owed by Defendant. Plaintiff has thereby incurred
6 attorneys' fees and costs, which Plaintiff is entitled to recover under California Labor
7 Code § 2699(g).

8 **JURY TRIAL DEMANDED**

9 105. Plaintiff demands a jury as to all causes of action permitted for a jury trial
10 under applicable law.

PRAYER FOR RELIEF

106. WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the Classes the following relief against Defendant:

- a. For an order certifying the Classes under California Code of Civil Procedure section 382;
- b. For appointment of Plaintiff as the representatives of the Class;
- c. For general economic and non-economic damages according to proof;
- d. For statutory damages according to proof;
- e. For special damages according to proof;
- f. For penalties where allowed by law;
- g. For prejudgment interest pursuant to California Labor Code section 218.6, California Civil Code section 3287, California Civil Code section 3288, and/or any other provision of law providing for prejudgment interest;
- h. For attorneys' fees where allowed by law;
- i. For costs of suit incurred herein; and
- j. For such other and further relief as this Court deems just and proper.

Dated: March 16, 2023

Respectfully submitted,
AZADIAN LAW GROUP, PC



By: _____
GEORGE S. AZADIAN
Attorneys for Plaintiff, DELILAH RIVAS
and the Proposed Class

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I reside in the State of California. I am over the age of 18. My business address is 707 Foothill Blvd., Suite 200, La Cañada, California 91011.

On March 16, 2023, I served the foregoing documents described as:

PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT

on all interested parties in this action as follows:

DAVID FISHMAN
JESSICA A. GOMEZ
BALLARD ROSENBERG GOLPER & SAVITT, LLP
15760 Ventura Boulevard, Eighteenth Floor
Encino, California 91436
Email: dfishman@brgslaw.com
jgomez@brgslaw.com

xxxx **BY EMAIL:** I caused a copy of the documents to be sent from email address George@azadianlawgroup.com to the persons at the email address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

xxxx **(STATE):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 16, 2023, at La Cañada, California.



CAMILLE L. BANKS