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ELIZABETH MANUYLOVA,
8 individually, and on behalf of all
9 other similarly situated aggrieved employees

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**
12

13 ELIZABETH MANUYLOVA, an individual,
14 individually, and on behalf of herself and other
similarly situated employees,

15 Plaintiffs,

16 vs.

17 LOOPTIFY, INC., a Delaware corporation;
18 NATHANIEL LLORANDO, an individual;
and DOES 1 through 50 inclusive,

19 Defendants.
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County of Los Angeles
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Case No. 23STCV07692

COMPLAINT FOR DAMAGES FOR:

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Periods
3. Failure to Pay Minimum Wages
4. Failure to Pay Overtime Wages
5. Failure to Pay Timely Wages During Employment
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate, Itemized Wage Statements
9. Failure to Reimburse

Necessary Expenditures

10. Failure to Permit Inspection
of Personnel Records

11. Breach of Contract

12. Representative Action for
Civil Penalties Under
Attorneys General Act

Plaintiff ELIZABETH MANUYLOVA (“Plaintiff”) hereby submits this Complaint against LOOPTIFY, INC., a Delaware corporation; NATHANIEL LLORANDO, an individual; and DOES 1 through 50, inclusive (collectively “Defendants”), and each of them. Plaintiff seeks damages and penalties from Defendants for their unlawful employment practices against Plaintiff as an individual. In addition, Plaintiff seeks civil penalties on behalf of current or former employees as other aggrieved employees pursuant to the Private Attorneys General Act (PAGA), California Labor Code §§ 2699 *et seq.*

JURISDICTION

1. This Court is the proper Court, and this action is properly filed in Los Angeles County because Defendants’ obligations and liability arise therein, because Defendant’s principal address is in Los Angeles County, because Defendants maintain offices and transact business within Los Angeles County, and because the work that is the subject of this action was performed by Plaintiff in Los Angeles County.

THE PARTIES

2. Plaintiff ELIZABETH MANUYLOVA is, and at all times relevant hereto was, a resident of the State of California, County of Los Angeles.

3. Defendant LOOPTIFY, INC. (“Looptify”) is, and at all times relevant hereto was, a corporation, existing, doing business, and employing individuals in the County of Los Angeles, State of California.

1 4. Defendant NATHANIEL LLORANDO is, and at all times relevant hereto was, a
2 resident of the State of California, County of Los Angeles.

3 5. Defendants Looptify and Nathaniel Llorando were Plaintiff's employer within the
4 meaning of the *Labor Code*, and regularly employ five or more persons.

5 6. The true names and capacities, whether individual, corporate, associate, or otherwise
6 of the Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this time and
7 therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
8 Complaint to insert the true names and capacities of said Defendants when the same become known
9 to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of the fictitiously
10 named Defendants is responsible for the wrongful acts alleged herein and is therefore liable to
11 Plaintiff as alleged hereinafter.

12 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times
13 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
14 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of the
15 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in
16 part within the course and scope of said agency, employment, conspiracy, joint employment, alter
17 ego status, and/or joint venture and with the permission and consent of each of the other Defendants.

18 8. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and
19 each of them, including those Defendants named DOES 1-50, acted in concert with one another to
20 commit the wrongful acts alleged herein, and aided, abetted, incited, compelled, and/or coerced one
21 another in the wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed
22 and believes, and based thereupon alleges, that the Defendants, and each of them, including those
23 Defendants named as DOES 1-50, formed and executed a conspiracy or common plan pursuant to
24 which they would commit the unlawful acts alleged herein, with all such acts alleged herein done
25 as part of and pursuant to said conspiracy, intended to and actually causing Plaintiff harm.

26 9. Whenever and wherever reference is made in this Complaint to any act or failure to
27 act by a Defendant or co-Defendants, such allegations and references shall also be deemed to mean
28 the acts and/or failures to act by each Defendant acting individually, jointly, and severally.

1 10. Plaintiff has filed complaints under *Government Code* sections 12940 et seq., the
2 California Fair Employment and Housing Act (“FEHA”) with the California Department of Fair
3 Employment and Housing (“DFEH”) and has satisfied Plaintiff’s administrative prerequisites with
4 respect to these and all related filings.

5 **ALTER EGO, AGENCY, AND JOINT EMPLOYER**

6 11. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
7 unity of interest and ownership between Defendants and DOES 1-50 that the individuality and
8 separateness of Defendants have ceased to exist.

9 12. Plaintiff is informed and believes, and based thereon alleges, that despite the
10 formation of purported corporate existence, DOES 1-50 are, in reality, one and the same as
11 Defendants, including, but not limited to, for the following reasons:

12 a. Defendants are completely dominated and controlled by DOES 1-50, who personally
13 violated the laws set forth in this complaint, and who have hidden and currently hide behind
14 Defendants to circumvent statutes or accomplish some other wrongful or inequitable purpose.

15 b. DOES 1-50 derive actual and significant monetary benefits by and through
16 Defendants’ unlawful conduct, and by using Defendants as the funding source for their own personal
17 expenditures.

18 c. Plaintiff is informed and believes, and thereupon alleges, that Defendants and DOES
19 1-50, while really one and the same, were segregated to appear as though separate and distinct for
20 purposes of circumventing a statute or accomplishing some other wrongful or inequitable purpose.

21 d. Plaintiff is informed and believe that Defendants do not comply with all requisite
22 corporate formalities to maintain a legal and separate corporate existence.

23 e. Plaintiff is informed and believes, and based thereon alleges, that the business affairs
24 of Defendants and DOES 1-50 are, and at all times relevant hereto were, so mixed and intermingled
25 that the same cannot reasonably be segregated, and the same are in inextricable confusion.
26 Defendants are, and at all times relevant hereto were, used by DOES 1-50 as a mere shell and conduit
27 for the conduct of certain of Defendants’ affairs, and are, and were, the alter ego of DOES 1-50.
28 The recognition of the separate existence of Defendants would not promote justice, in that it would

1 permit Defendants to insulate themselves from liability to Plaintiff for violations of the Government
2 Code, Labor Code, and other statutory violations. The corporate existence of Defendants and DOES
3 1-50 should be disregarded in equity and for the ends of justice because such disregard is necessary
4 to avoid fraud and injustice to Plaintiff herein.

5 13. Accordingly, Defendants constitute the alter ego of DOES 1-50, and the fiction of
6 their separate corporate existence must be disregarded.

7 14. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
8 thereon alleges that Defendant and DOES 1-50 are Plaintiff's joint employers by virtue of a joint
9 enterprise, and that Plaintiff was an employee of Defendants and DOES 1-50. Plaintiff performed
10 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all
11 Defendants shared control of Plaintiff as an employee, either directly or indirectly, in the manner in
12 which Defendant's business was and is conducted.

13 15. Plaintiff is informed and believes and thereupon allege that Looptify, Nathaniel
14 Llorando, and DOES 1-50 were the actual employers and/or "person[s] acting on behalf of the
15 employer" within the meaning of *Labor Code* section 558.1.

16 **FACTUAL ALLEGATIONS**

17 16. Plaintiff alleges and incorporate herein by reference each and every allegation set
18 forth in all previous paragraphs of this Complaint.

19 17. Defendants are an agency that regularly employs five or more people and specializes
20 in representing online influencers and other artists. On January 14, 2021, Defendants hired Plaintiff
21 to perform marketing, advertising, and account management for clients.

22 18. Throughout Plaintiff's employment with Defendants, Plaintiff entered into several
23 employment agreements with Defendants, most recently on January 25, 2022, (the "January
24 Agreement"). Per the terms of the January Agreement, Plaintiff was entitled to receive commission
25 on roster sales and Looptify Plus Revenue. As stated in the January Agreement, Plaintiff is entitled
26 to:

27 LOOPTIFY CO:
28

1 2% Commission on all sales of [Plaintiff]'s roster after cost and expenses.
Commission is based on the 30th of the last month of each quarter. (Landed Roster)

2 1% Commission on all sales of {Plaintiff}'s roster after cost and expenses.
3 Commission is based on the 30th of the last month of each quarter. (Company
4 Landed or Referral).

5 LOOPTIFY PLUS:

6 10% Commission on Looptify Plus Revenue (Collective on all accounts' sales from
\$0-\$250k)

7 20% Commission on Looptify Plus Revenue (Collective on all accounts' sales from
8 \$250k-\$400k)

9 30% Commission on Looptify Plus Revenue (Collective on all accounts' sales from
\$400k+)

10 Any % above 20% on all accounts landed by [sic] after January 1st, 2022

11 Commission will be paid every (2) months and must be submit [sic] invoice by the
12 1st of every (2) payout months.

13 19. Plaintiff earned an average of \$650.00 per month in commissions, or \$30.00 per day.
14 Additionally, Plaintiff earned an average hourly base rate of \$19.00 per hour. Thus, Plaintiff's
15 average regular rate of pay, pursuant to the California Labor Code, totaled \$22.75 per hour.

16 20. Throughout Plaintiff's employment with Defendants, Defendants misclassified Plaintiff
17 and other similarly situated employees as an independent contractor, when in reality, they were
18 employees subject to the California Labor Code. Furthermore, at all applicable times mentioned herein,
19 Plaintiff and other similarly situated Plaintiffs were non-exempt employees pursuant to the California
20 Labor Code, and Plaintiff's employment did not qualify for any of the exceptions from non-exempt
21 status. Plaintiff and other similarly situated Plaintiffs were not free from the control and direction of
22 the hiring entity in connection with the performance of their work. Furthermore, Plaintiff and other
23 similarly situated employees did not perform work that was outside the usual course for the hiring
24 entity's business.

25 21. Because of Defendant's misclassification of its employees as independent
26 contractors, Defendants committed numerous violations of the California Labor Code.

27 22. Throughout Plaintiff's employment with Defendants, Plaintiff and other similarly
28 situated employees regularly missed their statutorily required rest breaks and meal breaks. Plaintiff

1 herself missed at least 250 rest breaks and 94 meal breaks. Defendants owe Plaintiff meal and rest
2 break premiums at her regular rate of pay, totaling at least \$7,826.00 in unpaid meal and rest break
3 premiums.

4 23. Throughout Plaintiff's employment with Defendants, Defendants failed to
5 compensate Plaintiff and other similarly situated employees minimum wages for all hours worked.
6 Specifically, throughout Plaintiff's employment, each night, Defendants required Plaintiff to
7 perform roughly one hour of work at home, off the clock, after her regular shift had ended. Because
8 Defendants' clients were most active during the late evening, Defendant required Plaintiff to be on
9 duty and available to perform work for the clients during those late evening hours. Therefore,
10 Plaintiff ended up working on average one hour of work every day, including the weekends, for
11 which she was not compensated. In total, Defendants did not pay wages for 533.12 hours of
12 Plaintiff's work. Plaintiff earned a regular rate of pay of \$22.75 per hour, she is therefore owed a
13 total of \$10,129.28 in unpaid wages.

14 24. Throughout Plaintiff's employment with Defendants, Defendants failed to pay
15 Plaintiff and other similarly situated employees overtime wages for overtime hours worked.
16 Specifically, each night, Defendants required Plaintiff to perform, on average, one hour of work at
17 home off the clock after her regular shift had ended. On average, Defendants required Plaintiff to
18 work through 1.5 meal breaks per week (as stated above). Plaintiff ended up working a full eight-
19 hour shift on those days that she worked through her meal break. On the days when Plaintiff had
20 already worked an eight hour shift, the additional hour of work performed should have been paid at
21 an overtime rate of pay. Therefore, roughly 1.5 times per week, the hours that Plaintiff spent working
22 from home should have been paid at an overtime rate of pay. Additionally, the two weekend hours
23 per week that Defendants required Plaintiff to work from home off the clock, were in excess of forty
24 hours per week and thus should have also been paid at an overtime rate of pay. Plaintiff earned a
25 weighted average pay rate of \$22.75 per hour. She is therefore owed a total of at least 3.5 hours per
26 week of overtime differential pay, or \$2,497.04.

27 25. Throughout Plaintiff's employment with Defendants, Defendants did not reimburse
28 Plaintiff and all similarly situated employees for all necessary expenditures or losses they incurred,

1 including the use of Plaintiff's and other employees personal cell phones and laptops for work-
2 related activities.

3 26. Employer breached its most recent employment agreement with Plaintiff, the January
4 Agreement. The January Agreement states that "either party may terminate this Agreement at any
5 time upon 30 business days' written notice." The January Agreement goes on to state:

6 Should either party default in the performance of the Agreement or materially
7 breach any of its obligations under this Agreement, . . . the non-breaching party
8 may terminate this Agreement immediately if the breaching party fails to cure the
breach within 5 *business days* after having received written notice by the non-
breaching party of the breach or default. [emphasis added]

9 27. On or around March 29, 2022, Defendants terminated Plaintiff without prior notice,
10 breaching the January Agreement. Defendants did not provide a reason for the termination and did
11 not give Plaintiff 30-days' notice. Further, even assuming Plaintiff somehow was in material breach
12 of the January Agreement, Defendants failed to give Plaintiff five-days' notice to cure any alleged
13 breach. Thus, Defendants breached the January Agreement when they terminated Plaintiff with no
14 warning.

15 28. Defendants' breach of the January Agreement damaged Plaintiff, and Defendants
16 owe Plaintiff what she would have been paid under the remainder of the January Agreement as
17 damages to make her whole. Defendants terminated Plaintiff on March 29, 2022, with
18 approximately 40 weeks of work left under the January Agreement. Thus, based on an average
19 weekly rate of pay of \$1,009.75, Defendants owe Plaintiff approximately \$40,390.00 in expectation
20 damages under the January Agreement.

21 29. Additionally, Defendants failed to pay Plaintiff all commissions owed upon
22 termination. Plaintiff kept track of her commissions via invoices that she regularly submitted to
23 Defendants. Plaintiff's invoices reflect that Defendants owe her at least \$3,000.00 in unpaid
24 commissions. Employer has refused and continues to unlawfully refuse to pay Plaintiff all owed
25 commissions.

26 **FIRST CAUSE OF ACTION**

27 **Failure to Provide Required Meal Periods**

1 [Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Orders]

2 (By Plaintiff, in her individual capacity, against All Defendants)

3 30. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
4 Complaint as though fully set forth herein.

5 31. As part of Defendants' illegal payroll policies and practices to deprive Plaintiff all
6 wages earned and due, Defendants failed to provide Plaintiff with a 30-minute meal period free of
7 all duties on all of the days on which Plaintiff worked more than five hours.

8 32. Defendants further violated California Labor Code Section 226.7 and IWC Wage
9 Orders by failing to compensate Plaintiff one additional hour of compensation at Plaintiff's regular
10 rate of pay for each meal period that was not provided.

11 33. Defendants further violated California Labor Code Sections 226.7, 510, 1194, 1197,
12 and IWC Wage Orders by failing to compensate Plaintiff for all hours worked during his meal
13 periods.

14 34. As a proximate result of the aforementioned violations, Plaintiff has been damaged
15 in an amount according to proof at trial, and seek all wages earned and due, interest, penalties,
16 expenses, and costs of suit. Plaintiff is informed and believes and thereon alleges that Defendants
17 owe at least \$2,138.50 in unpaid wages and premium pay due to missed meal periods, plus interest,
18 expenses, and costs of suit.

19 **SECOND CAUSE OF ACTION**

20 **Failure to Provide Required Rest Periods**

21 [Cal. Lab. Code §§ 226.7, 512; IWC Wage Orders]

22 (By Plaintiff, in her individual capacity, against All Defendants)

23 35. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
24 Complaint as though fully set forth herein.

25 36. At all times relevant herein, as part of Defendants' illegal payroll policies and
26 practices to deprive their non-exempt employees all wages earned and due, Defendants failed to
27 provide rest periods to Plaintiff as required under California Labor Code Sections 226.7 and 512,
28

1 and IWC Wage Orders. Defendants did not provide Plaintiff a second, third, or fourth rest period
2 for each additional four (4) hours worked, or major fraction thereof.

3 37. Defendants further violated California Labor Code Section 226.7 and IWC Wage
4 Orders by failing to pay Plaintiff one additional hour of compensation at each employee's regular
5 rate of pay for each rest period that was not provided.

6 38. As a proximate result of the aforementioned violations, Plaintiff has been damaged
7 in an amount according to proof at trial, and seeks all wages earned and due, interest, penalties,
8 expenses, and costs of suit. Plaintiff is informed and believes and thereon alleges that Defendants
9 owe at least \$5,687.50 in unpaid wages and premium pay due to missed rest periods, plus interest,
10 expenses, and costs of suit.

11 **THIRD CAUSE OF ACTION**

12 **Failure to Pay Minimum Wages**

13 [Cal. Lab. Code §§ 1194, 1197; IWC Wage Orders]

14 (By Plaintiff, in her individual capacity, against All Defendants)

15 39. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
16 Complaint as though fully set forth herein.

17 40. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders, payment
18 to an employee of less than the applicable minimum wage for all hours worked in a payroll period
19 is unlawful.

20 41. Defendants failed to pay Plaintiff minimum wages for all hours worked by, among
21 other things: requiring, permitting or suffering Plaintiff to work off the clock; requiring, permitting
22 or suffering Plaintiff to work through meal and rest breaks; illegally and inaccurately recording time
23 in which Plaintiff worked; failing to properly maintain Plaintiff's records; failing to provide accurate
24 itemized wage statements to Plaintiff for each pay period; and other methods to be discovered.

25 42. Defendants' conduct described herein violates California Labor Code §§ 1194, 1197,
26 and IWC Wage Orders.

27 43. As a proximate result of the aforementioned violations, Plaintiff has been damaged
28 and seeks all wages earned and due, interest, penalties, liquidated damages, expenses, and costs of

1 suit. Plaintiff is informed and believes and thereon alleges that Defendants owe at least \$10,129.28
2 in damages for violating California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other
3 applicable provisions under the Labor Code and IWC Wage Orders.

4 **FOURTH CAUSE OF ACTION**

5 **Failure to Pay Overtime Wages**

6 [Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Orders]

7 (By Plaintiff, in her individual capacity, against All Defendants)

8 44. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
9 Complaint as though fully set forth herein.

10 45. Pursuant to California Labor Code §§ 510, 1194, 1198 and IWC Wage Orders,
11 Defendants are required to compensate Plaintiff for all overtime, which is calculated at one and one-
12 half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day
13 and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive
14 workday, with double time for all hours worked in excess of twelve (12) hours in any workday and
15 for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any
16 workweek.

17 46. Plaintiff is entitled to the protections of California Labor Code §§ 510, 1194, 1198,
18 and IWC Wage Orders. Defendants failed to compensate Plaintiff for all overtime hours worked as
19 required under the foregoing provisions of the California Labor Code and IWC Wage Order.

20 47. In violation of California law, Defendants knowingly and willfully refused to
21 perform their obligations to compensate Plaintiff for all wages earned and all hours worked. As a
22 proximate result, Plaintiff has suffered, and continues to suffer, substantial losses related to the use
23 and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in
24 seeking to compel Defendants to fully perform their obligations under state law.

25 48. Defendants' conduct described herein violates California Labor Code §§ 510, 1194,
26 1198 and IWC Wage Orders. Therefore, pursuant to California Labor Code §§ 200, 203, 226,
27 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and IWC Wage
28 Orders, Plaintiff is entitled to recover the unpaid balance of wages owed to Plaintiff by Defendants,

1 plus interest, penalties, attorney's fees, expenses, and costs. Plaintiff is informed and believes and
2 thereon alleges that Defendants owe Plaintiff no less than \$2,497.04 in unpaid overtime wages.

3 **FIFTH CAUSE OF ACTION**

4 **Failure to Pay Timely Wages During Employment**

5 [Cal. Lab. Code § 204]

6 (By Plaintiff, in her individual capacity, against All Defendants)

7 49. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
8 Complaint as though fully set forth herein.

9 50. Pursuant to California Labor Code Section 204, for all labor performed between the
10 1st and 15th days of any calendar month, Defendants are required to pay their nonexempt employees
11 between the 16th and 26th day of the month during which the labor was performed. California Labor
12 Code Section 204 also provides that for all labor performed between the 16th and 26th days of any
13 calendar month, Defendants are required to pay their nonexempt employees between the 1st and
14 15th day of the following calendar month. In addition, California Labor Code Section 204 provides
15 that all wages earned for labor in excess of the normal work period shall be paid no later than the
16 payday of the next regular payroll period.

17 51. Defendants knowingly and willfully failed to pay Plaintiff all the wages earned when
18 due as required by California Labor Code Section 204.

19 52. Pursuant to California Labor Code Section 210, failure to pay the wages of each
20 employee as provided in California Labor Code Section 204 will subject Defendants to a statutory
21 penalty of: (1) one hundred dollars (\$100) for each failure to pay each employee for each initial
22 violation; and (2) two hundred dollars (\$200) for each failure to pay each employee, plus twenty-
23 five percent (25%) of the amount unlawfully withheld, for each subsequent willful violation.

24 53. Defendants' conduct described herein violates California Labor Code Section 204.
25 As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount
26 according to proof at trial. Pursuant to California Labor Code Sections 200, 210, 226, 558, 1194,
27 1197.1, 2699, and other applicable provisions under the Labor Code and IWC Wage Orders,
28

1 Plaintiff is entitled to recover the unpaid balance of penalties owed to him by Defendants, totaling
2 at least \$2,900.00, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

3 **SIXTH CAUSE OF ACTION**

4 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

5 [Cal. Lab. Code §§ 201, 202, 203]

6 (By Plaintiff, in her individual capacity, against All Defendants)

7 54. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
8 Complaint as though fully set forth herein.

9 55. Pursuant to California Labor Code Sections 201, 202, and 203, Defendants are
10 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
11 Code Section 201 mandates that if an employer discharges an employee, the employee's wages
12 accrued and unpaid at the time of discharge are due and payable immediately.

13 56. Furthermore, pursuant to California Labor Code Section 202, Defendants are
14 required to pay all accrued wages due to an employee no later than 72 hours after the employee quits
15 his or her employment, unless the employee provided 72 hours previous notice of his or her intention
16 to quit, in which case the employee is entitled to his or wages at the time of quitting.

17 57. California Labor Code Section 203 provides that if an employer willfully fails to pay,
18 in accordance with California Labor Code Sections 201 and 202, any wages of an employee who is
19 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
20 compensation to the employee at the same rate for up to 30 workdays.

21 58. Defendants have willfully failed to pay accrued wages, premium pay for missed meal
22 and rest periods and other compensation to Plaintiff in accordance with California Labor Code
23 Sections 201 and 202.

24 59. As a result, Plaintiff is entitled to all available statutory penalties, including the
25 waiting time penalties provided in California Labor Code Section 203, together with interest
26 thereon, attorney's fees and costs as well as other available remedies.

27 60. As a proximate result of Defendants' unlawful actions and omissions and subject to
28 Plaintiff's average daily rate of pay of \$182.00 (includes average commissions), Plaintiff has been

1 deprived of no less than \$5,460.00, and Plaintiff is entitled to recovery of such amounts, plus interest
2 thereon, and attorneys' fees and costs, pursuant to California Labor Code Sections 1194 and 2699.

3 **SEVENTH CAUSE OF ACTION**

4 **Failure to Maintain Required Records**

5 [Cal. Lab. Code §§ 226, 1174; IWC Wage Orders]

6 (By Plaintiff, in her individual capacity, against All Defendants)

7 61. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
8 Complaint as though fully set forth herein.

9 62. As part of Defendants' illegal payroll policies and practices to deprive Plaintiff of all
10 wages earned and due, Defendants knowingly and intentionally failed to maintain records as
11 required under California Labor Code Sections 226, 1174, and IWC Wage Orders, including but not
12 limited to the following records: total daily hours worked by each employee; applicable rates of pay;
13 all deductions; meal period pay; rest period pay; time records showing when each employee begins
14 and ends each work period; and accurate itemized statements.

15 63. Plaintiff suffered injury due to Defendants' failure, as Plaintiff cannot easily
16 determine from the records required to be maintained by Defendants, the proper amount of wages
17 owed to Plaintiff.

18 64. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff has
19 been damaged and is entitled to all available statutory penalties, including but not limited to
20 penalties pursuant to California Labor Code Sections 226 (e) in the maximum amount of \$4,000,
21 and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those
22 provided in Section 226 (e), as well as other available remedies.

23 **EIGHTH CAUSE OF ACTION**

24 **Failure to Furnish Accurate, Itemized Wage Statements**

25 [Cal. Lab. Code §§ 226; IWC Wage Orders]

26 (By Plaintiff, in her individual capacity, against All Defendants)

27 65. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
28 Complaint as though fully set forth herein.

66. Defendants routinely failed to provide Plaintiff with timely, accurate, and itemized wage statements in writing showing each employee's gross wages earned—including missed meal and rest period pay, total hours worked, all deductions made, net wages earned, the name and address of the legal entity or entities employing Plaintiff, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code Section 226 and IWC Wage Orders.

67. Defendants knowingly and intentionally failed to provide Plaintiff with timely, accurate, and itemized wage statements in accordance with California Labor Code Section 226 (a).

68. Plaintiff suffered injury due to Defendants' failure, as Plaintiff cannot easily determine from the wage statements issued by Defendants the proper amount of wages owed to Plaintiff.

69. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff has been damaged and is entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code Sections 226 (e) in the maximum amount of \$4,000, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in Section 226 (e), as well as other available remedies.

NINTH CAUSE OF ACTION

Failure to Reimburse Necessary Expenditures

[Cal. Lab. Code § 2802]

(By Plaintiff, in her individual capacity, against All Defendants)

70. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

71. Labor Code Section 2802 requires employers to indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

72. Defendants did not reimburse Plaintiff for all necessary expenditures or losses incurred by Plaintiff during Plaintiff's employment; specifically, Defendants failed to reimburse Plaintiff for the required use of her personal cell phone and laptop for business purposes.

73. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff has been deprived of compensation in the amount of at least \$120.00 per month for her personal cell phone in addition to a lump sum amount of \$2,000.00 for the use of her personal laptop, totaling \$3,881.60 and is entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs.

TENTH CAUSE OF ACTION

Failure to Permit Inspection of Personnel Records

[Labor Code §§ 1198.5, 226, and 432]

(By Plaintiff, in her individual capacity, against All Defendants)

74. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

75. Defendants failed to comply with Plaintiff's statutory request for documents as specified above.

76. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff has been damaged and is entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 1198.5 and 1174.5, totaling \$750.00 and an award of costs, expenses, and reasonable attorney's fees, as well as other available remedies.

ELEVENTH CAUSE OF ACTION

Breach of Contract

(By Plaintiff, in her individual capacity, against All Defendants)

77. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

78. Plaintiff signed an employment agreement with Defendants on January 25, 2022, (the “January Agreement”).

79. Employer breached the January Agreement. The January Agreement states that “either party may terminate this Agreement at any time upon 30 business days’ written notice.” The January Agreement goes on to state:

1 Should either party default in the performance of the Agreement or materially
2 breach any of its obligations under this Agreement, . . . the non-breaching party
3 may terminate this Agreement immediately if the breaching party fails to cure the
breach within 5 *business days* after having received written notice by the non-
breaching party o the breach or default. [emphasis added]

4 80. On or around March 29, 2022, Defendants terminated Plaintiff without prior notice,
5 breaching the January Agreement. Defendants did not give a reason for the termination and did not
6 give Plaintiff 30-days' notice. Further, even assuming Plaintiff somehow was in material breach of
7 the January Agreement, Defendants failed to give Plaintiff 5-days' notice to cure any alleged breach.
8 Thus, Defendants breached the January Agreement when they terminated Plaintiff with no warning.

9 81. Defendants' breach of the January Agreement damaged Plaintiff, and Defendants
10 owe Plaintiff what she would have been paid under the remainder of the January Agreement as
11 damages to make her whole. Defendants terminated Plaintiff on March 29, 2022, with
12 approximately 40 weeks of work left to perform under the January Agreement. Thus, assuming an
13 average weekly rate of pay of \$1,009.75, Defendants owe Plaintiff approximately \$40,390.00 in
14 expectation damages under the January Agreement.

15 82. Additionally, Defendants failed to pay Plaintiff all commissions owed, pursuant to
16 the January Agreement, upon termination. As stated in the January Agreement, Plaintiff is entitled
17 to:

18 LOOPTIFY CO:

19 2% Commission on all sales of [Plaintiff]'s roster after cost and expenses.
20 Commission is based on the 30th of the last month of each quarter. (Landed Roster)

21 1% Commission on all sales of {Plaintiff}'s roster after cost and expenses.
22 Commission is based on the 30th of the last month of each quarter. (Company
Landed or Referral).

23 LOOPTIFY PLUS:

24 10% Commission on Looptify Plus Revenue (Collective on all accounts' sales from
25 \$0-\$250k)

26 20% Commission on Looptify Plus Revenue (Collective on all accounts' sales from
\$250k-\$400k)

27 30% Commission on Looptify Plus Revenue (Collective on all accounts' sales from
28 \$400k+)

1 Any % above 20% on all accounts landed by [sic] after January 1st, 2022

2 Commission will be paid every (2) months and must be submit [sic] invoice by the
3 1st of every (2) payout months.

4 83. Plaintiff kept track of her commissions via invoices that she regularly submitted to
5 Defendants. Plaintiff's invoices reflect that Defendants owe her at least \$3,000.00 in unpaid
6 commissions. Employer continues to unlawfully refuse to pay Plaintiff all owed commissions.

7 84. Plaintiff has performed all of the obligations required of her under the terms of the
8 agreement or has been excused from the same due to Defendants' breach.

9 85. Plaintiff is entitled to all amounts due under the terms of the agreement.
10 As a legal and proximate cause of Defendants' breach, Plaintiff has been damaged in an amount
11 totaling approximately \$43,390.00, with interest thereon.

12 **TWELFTH CAUSE OF ACTION**

13 **Representative Action for Civil Penalties Under Attorneys General Act**

14 [Cal. Lab. Code § 2699, *et seq.*]

15 (By Plaintiff, individually, and on behalf of all other aggrieved employees, against All Defendants)

16 86. Plaintiff incorporates herein by specific reference, as though fully set forth, the
17 allegations in all preceding paragraphs.

18 87. California Labor Code § 2699(a) provides: Notwithstanding any other provision of the
19 law, any provision of this code the provides for a civil penalty to be assessed and collected by the LWDA
20 or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this
21 code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
22 behalf of himself or herself and other current or former employees.

23 88. Plaintiff is an "aggrieved employee," as defined by California Labor Code § 2699(c),
24 because she was employed by Defendants and was among the many employees against whom violations
25 of law were committed.

26 89. Defendants committed the following violations of the California Labor Code against
27 Plaintiff and against other current or former employees while they were employed by Defendants:
28

- 1 a. Defendants violated California Labor Code §§ 226.7 and 558 by failing to provide to
2 Plaintiffs, and other current and former aggrieved employees of Defendants, all meal and
3 rest periods.
- 4 b. Defendants violated California Labor Code §§ 1194, 1197 by failing to provide to
5 Plaintiffs, and other current and former aggrieved employees of Defendants,
6 minimum wages for all hours worked.
- 7 c. Defendants violated 8 Cal. Code Regs. § 11140(3) and California Labor Code §§ 510,
8 558 and 1198 by failing to pay Plaintiff, and other current and former aggrieved
9 employees of Defendants, all overtime wages due for all overtime hours worked.
- 10 d. Defendants violated California Labor Code §§ 226(a) by failing to provide Plaintiff, and
11 other current and former aggrieved employees of Defendants, with accurate written
12 itemized statements for each payment of wages.
- 13 e. Defendants violated California Labor Code §§ 226(a) and 1174 by failing to maintain
14 accurate records of the hours worked and rates of compensation paid to Plaintiff, and
15 other current and former aggrieved employees.
- 16 f. Defendants violated California Labor Code §§ 204 and 210 by failing to pay Plaintiff,
17 and other current and former aggrieved employees of Defendants, all wages earned
18 during employment when due.
- 19 g. Defendants violated California Labor Code § 2802 by failing to indemnify Plaintiff, and
20 other current and former aggrieved employees of Defendants, for all necessary business
21 expenditures or losses incurred by Plaintiff and other current and former aggrieved
22 employees.

23 90. Plaintiff has met and/or will meet all of the requirements set forth in California Labor
24 Code § 2699.3 necessary to maintain a civil action against Defendants for violations of, and/or recovery
25 under, the above identified provisions of the California Labor Code.

26 91. Plaintiff brings this claim as a representative action on behalf of herself and other
27 aggrieved employees, allegation violations of the California Labor Code sections cited in the preceding
28 paragraph.

92. Pursuant to PAGA, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties, as provided by statute, for which Defendants are liable as a result of their violations, as follows:

- a. Penalties pursuant to California Labor Code § 2699(f), in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation: for violations of California Labor Code §§ 226 and/or 2802;
- b. Penalties pursuant to California Labor Code § 558(a), in the amount of fifty dollars (\$50) for each underpaid aggrieved employee for each pay period and one hundred dollars (\$100) for each underpaid aggrieved employee for each pay period for each subsequent violation: for violations of California Labor Code §§ 226.7, 510, 558 and 1198;
- c. Penalties pursuant to California Labor Code § 210(a) in the amount of one hundred dollars (\$100) for each failure to pay each aggrieved employee and two hundred dollars (\$200) for each subsequent violation, or any willful or intentional violation: for violations of California Labor Code § 204;
- d. Penalties pursuant to California Labor Code § 226.3 in the amount of two hundred fifty dollars (\$250) per aggrieved employee per violation and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation: for violations of California Labor Code § 226; and
- e. Penalties pursuant to California Labor Code § 11745 in the amount of five hundred dollars (\$500) per violation: for violations of California Labor Code § 1174.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants, and each of them, in an amount according to proof, as follows:

First Cause of Action

1. For meal period premiums for 94 missed meal periods at the hourly rate of \$22.75, for a total of \$2,138.50 pursuant to Labor Code § 226.7(c);
2. For pre-judgment interest on the meal period premium amount of \$2,138.50 from the bi-weekly pay date when each meal period premium was due through the date of judgment.

3. For costs of suit, attorneys' fees, and expert witness fees pursuant the Labor Code, Government Code, Code of Civil Procedure § 1021.5, and/or any other basis;
4. For post-judgment interest; and
5. For all such other and further relief that the court may deem just and proper.

Second Cause of Action

1. For rest period premiums for 250 missed rest periods at the hourly rate of \$22.75, for a total of \$5,687.50 pursuant to Labor Code § 226.7(c);
2. For pre-judgment interest on the rest period premium amount of \$2,307.60 from the bi-weekly pay date when each rest period premium was due through the date of judgment.
3. For costs of suit, attorneys' fees, and expert witness fees pursuant the Labor Code, Government Code, Code of Civil Procedure § 1021.5, and/or any other basis;
4. For post-judgment interest; and
5. For all such other and further relief that the court may deem just and proper.

Third Cause of Action

1. For unpaid minimum wages in the amount of \$10,129.28;
2. For liquidated damages pursuant to Labor Code § 1194.2. in the amount of \$10,129.28;
3. For pre-judgment interest on the amount of \$20,258.56 from the bi-weekly pay date when each minimum wage payment was due through the date of judgment.
4. For costs of suit, attorneys' fees, and expert witness fees pursuant the Labor Code, Government Code, Code of Civil Procedure § 1021.5, and/or any other basis;
5. For post-judgment interest; and
6. For all such other and further relief that the court may deem just and proper.

Fourth Cause of Action

1. For unpaid overtime wages in the amount of \$2,497.04
2. For pre-judgment interest on the amount of \$2,497.04 from the bi-weekly pay date when each minimum wage payment was due through the date of judgment.
3. For costs of suit, attorneys' fees, and expert witness fees pursuant the Labor Code, Government Code, Code of Civil Procedure § 1021.5, and/or any other basis;

4. For post-judgment interest; and
5. For all such other and further relief that the court may deem just and proper.

Fifth Cause of Action

6. For statutory penalties in the amount of \$100 for each of the 29 pay periods that Plaintiff was underpaid, for a total of \$2,900.00.
7. For pre-judgment interest on the total amount of \$2,900 through the date of judgment, calculated as \$100 due for each weekly pay day from October 16, 2020 to January 8, 2021;
8. For costs of suit, attorneys' fees, and expert witness fees pursuant the Labor Code, Government Code, Code of Civil Procedure § 1021.5, and/or any other basis;
9. For post-judgment interest; and
10. For all such other and further relief that the court may deem just and proper.

Sixth Cause of Action

1. For statutory waiting time penalties in the amount of \$5,460.00 pursuant to Labor Code § 203;
2. For pre-judgment interest on the total amount of \$5,460.00 through the date of judgment, calculated as \$182.00 due for each day for 30 days from the date of Plaintiff's last paycheck;
3. For costs of suit, attorneys' fees, and expert witness fees pursuant the Labor Code, Government Code, Code of Civil Procedure § 1021.5, and/or any other basis;
4. For post-judgment interest; and
5. For all such other and further relief that the court may deem just and proper.

Seventh Cause of Action

1. For statutory penalties in the amount of \$2,850.00 pursuant to Labor Code § 226(e);
2. For Plaintiff's actual damages pursuant to Labor Code § 226(e) in the amount of the \$4,000 statutory maximum;
3. For pre-judgment interest on statutory penalties and Plaintiff's actual damages;

- 1 4. For costs of suit, attorneys' fees, and expert witness fees pursuant the Labor Code,
- 2 Government Code, Code of Civil Procedure § 1021.5, and/or any other basis;
- 3 5. For post-judgment interest; and
- 4 6. For all such other and further relief that the court may deem just and proper.

5 **Eighth Cause of Action**

- 6 1. For statutory penalties in the amount of \$2,850.00 pursuant to Labor Code § 226(e);
- 7 2. For Plaintiff's actual damages pursuant to Labor Code § 226(e) in the amount of the
- 8 \$4,000 statutory maximum;
- 9 3. For pre-judgment interest on statutory penalties and Plaintiff's actual damages;
- 10 4. For costs of suit, attorneys' fees, and expert witness fees pursuant the Labor Code,
- 11 Government Code, Code of Civil Procedure § 1021.5, and/or any other basis;
- 12 5. For post-judgment interest; and
- 13 6. For all such other and further relief that the court may deem just and proper.

14 **Ninth Cause of Action**

- 15 1. For compensatory damages in the amount of \$3,881.60;
- 16 2. For pre-judgment interest;
- 17 3. For costs of suit, attorneys' fees, and expert witness fees pursuant the Labor Code,
- 18 Government Code, Code of Civil Procedure § 1021.5, and/or any other basis;
- 19 4. For post-judgment interest; and
- 20 5. For all such other and further relief that the court may deem just and proper.

21 **Tenth Cause of Action**

- 22 1. For statutory penalties in the amount of \$750.00 pursuant to Labor Code § 1198.5(k);
- 23 2. For pre-judgment interest from the date of Defendants' failure to permit inspection
- 24 through the date of judgment;
- 25 3. For costs of suit, attorneys' fees, and expert witness fees pursuant the Labor Code,
- 26 Government Code, Code of Civil Procedure § 1021.5, and/or any other basis;
- 27 4. For post-judgment interest; and
- 28 5. For all such other and further relief that the court may deem just and proper.

1 **Eleventh Cause of Action**

- 2 1. For expectation damages in the amount of \$43,390.00;
- 3 2. For pre-judgment interest from the date of breach (termination);
- 4 3. For post-judgment interest; and
- 5 4. For all such other and further relief that the court may deem just and proper.

6 **Twelfth Cause of Action**

- 7 1. That the Court declare, adjudge, and decree that this action is a proper representative action
- 8 pursuant to California Labor Code section 2699;
- 9 2. That the Court make an award to Plaintiff and other aggrieved employees of civil penalties
- 10 for violations of the Labor Code, pursuant to Labor Code §§ 210, 226.3, 558, 2699, and
- 11 11745;
- 12 3. For costs of suit, attorneys' fees, and expert witness fees pursuant to the California Labor
- 13 Code §§ 218.4, 226.7, 226(g), 1194, 1198.5, 2699(g)(1), California Code of Civil Procedure
- 14 § 1021.5, and/or any other relevant provision under California law that provides for
- 15 attorneys' fees;

16 DATED: April 3, 2023

Respectfully Submitted,

18 ELKIN | GAMBOA LLP

20 By: 

21 Michael Elkin

Attorneys for Plaintiff ELIZABETH

22 MANUYLOVA

24 **DEMAND FOR TRIAL BY JURY**

25 Plaintiff hereby demands a jury trial of all causes of action and claims with respect to

26 which Plaintiff has a right to jury trial.

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Respectfully Submitted,

DATED: April 3, 2023

ELKIN | GAMBOA LLP



By: _____

Michael Elkin

Attorneys for Plaintiff ELIZABETH
MANUYLOVA