

1 William L. Marder, Cal Bar No. 170131
POLARIS LAW GROUP
2 501 San Benito Street, Suite 200
Hollister, California 95023
3 Telephone: 831.531.4214
Facsimile: 831.634.0333
4

5 Dennis S. Hyun (State Bar No. 224240)
HYUN LEGAL, APC
515 S. Figueroa St., Suite 1250
6 Los Angeles, CA 90071
(213) 488-6555
7 (213) 488-6554 facsimile

8 Attorneys for Plaintiff and the Class

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SACRAMENTO

11 BRITTANI COSGAYA, as an individual
and on behalf of all others similarly
12 situated,

13 Plaintiffs,

14 v.

15 HDOS ACQUISITION, LLC, a limited
liability company; and DOES 1 through 50,
16 inclusive,

17 Defendants.
18
19
20
21
22
23
24
25

CASE NO.

CLASS ACTION COMPLAINT FOR:

**(1) VIOLATION OF CAL. LABOR CODE §§
201-203, 233, AND 246;**

**(2) VIOLATION OF CAL. LABOR CODE §§
201-203, 510, 558, 1194, AND 1197.1;**

**(3) VIOLATION OF CAL. LABOR CODE §§
201-203, 226.7 AND 512;**

**(4) VIOLATION OF CAL. LABOR CODE §§
201-203 AND 226.7;**

**(5) VIOLATION OF CAL. LABOR CODE §
2802;**

**(6) VIOLATION OF CAL. LABOR CODE §
226(a);**

**(7) VIOLATION OF CAL. LABOR CODE §
2698, *ET SEQ.*; AND**

**(8) UNFAIR OR UNLAWFUL BUSINESS
PRACTICES**

DEMAND EXCEEDS \$25,000.00

26 Plaintiff Brittani Cosgaya ("Plaintiff") hereby submits this Class Action Complaint
27 ("Complaint") against Defendant HDOS Acquisition, LLC (the "Company" or "Defendant") and
28

DOES 1-50 (hereinafter collectively referred to as “Defendants”), as an individual and on behalf of the Class of all other similarly situated current and former employees of Defendants for penalties and/or damages for violations of the California Labor Code, including without limitation, failure to pay sick pay, minimum and overtime wages, provide meal and rest periods, reimburse business expenses, and provide employees with accurate itemized wage statements as follows:

INTRODUCTION

1. This class action is within the Court’s jurisdiction under California Labor Code §§ 201-203, 226, 226.7, 233, 246, 510, 512, 558, 1194, 1197.1, 2698, *et seq.*, and 2802, and the California Industrial Welfare Commission’s (“IWC”) Wage Orders.

2. This Complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code against employees of Defendants.

3. Plaintiff is informed and believes, and based thereon alleges, that Defendants jointly and severally have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees by failing to provide accurate itemized wage statements identifying all required information.

4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have engaged in, among other things a system of willful violations of the California Labor Code and applicable IWC Wage Orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

JURISDICTION AND VENUE

5. The Court has jurisdiction over the violations of the California Labor Code §§ 201-203, 226, 226.7, 233, 246, 510, 512, 558, 1194, 1197.1, 2698, *et seq.*, and 2802. As alleged below, Plaintiff has met all of the jurisdictional requirements to proceed under the Private Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.*

6. Venue is proper in Sacramento County because Defendants maintain business locations in this County and Plaintiff performed work for Defendants in this County.

PARTIES

7. On or about January 1, 2022, Plaintiff was hired to work for Defendant as a non-exempt, or hourly employee at Defendant's location at the Arden Mall in Sacramento, California. Plaintiff's employment ended on or about October 16, 2022.

8. Defendant operates restaurants with locations in the State of California, Sacramento County.

9. Plaintiff was and is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by California Labor Code §§ 201-203, 226, 226.7, 233, 246, 510, 512, 558, 1194, 1197.1, 2698, *et seq.*, and 2802, and the applicable IWC Wage Orders.

10. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants and DOES 1 through 50 are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

11. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code §§ 201-203, 226, 226.7, 233, 246, 510, 512, 558, 1194, 1197.1, 2698, *et seq.*, and 2802 and the IWC Wage Orders.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious Defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

14. Plaintiff is informed and believes, and based thereon alleges, that at all times

1 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
2 joint venturer of, or working in concert with each of the other co- Defendants and was acting
3 within the course and scope of such agency, employment, joint venture, or concerted activity. To
4 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
5 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
6 Defendants.

7 15. At all times herein mentioned, Defendants, and each of them, were members of,
8 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
9 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

10 16. At all times herein mentioned, the acts and omissions of various Defendants, and
11 each of them, concurred and contributed to the various acts and omissions of each and all of the
12 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
13 herein mentioned, Defendants, and each of them, ratified each and every act or omission
14 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
15 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
16 the damages as herein alleged.

17 CLASS ACTION ALLEGATIONS

18 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
19 California Code of Civil Procedure § 382, of the following class and subclasses:

- 20 a. All current and former non-exempt employees who have worked for
21 Defendant in California at any time from April 11, 2019, through the
22 present (the "Class");
- 23 b. All current and former non-exempt employees who have worked for
24 Defendant in California at any time from April 11, 2019, through the
25 present and was paid overtime and earned non-discretionary remuneration,
26 including without limitation, bonuses and meal allowances, covering the
27 same pay period (the "Regular Rate Sub-Class");
- 28 c. All current and former non-exempt California employees who were paid
sick pay in the same workweek in which they earned any non-discretionary

1 remuneration, including without limitation, bonuses and meal allowances,
2 from Defendant at any time from April 11, 2019, through the present (the
3 “Sick Pay Sub-Class”);

4 d. All current and former California non-exempt employees of Defendants
5 who were paid any meal period premium payments and earned non-
6 discretionary remuneration, including without limitation, bonuses and meal
7 allowances, covering the same period that meal period premiums were
8 paid, at any time from April 11, 2019, through the present (the “Meal
9 Period Premium Sub-Class”); and

10 e. All current and former California non-exempt employees of Defendants
11 who were paid any rest period premium payments and earned non-
12 discretionary remuneration, including without limitation, bonuses and meal
13 allowances, covering the same period that rest period premiums were paid,
14 at any time from April 11, 2019, through the present (the “Rest Period
15 Premium Sub-Class”).

16 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
17 that joinder of all members would be impractical, if not impossible. The identity of the members
18 of the Class is readily ascertainable by review of the Company’s records, including payroll
19 records. Plaintiff is informed and believes, and based thereon alleges, that the Company failed to:
20 (a) pay overtime and sick pay wages at the correct, higher regular rate of pay; (b) provide off-duty
21 meal and rest periods and/or pay premium wages for meal and rest period violations in
22 compliance with Labor Code §§ 226.7 and 512; (c) reimburse business expenses in violation of
23 Labor Code § 2802; (d) pay minimum and overtime wages in violation of Labor Code §§ 201-
24 203, 510, 1194, and 1197.1; and (e) provide accurate itemized wage statements to employees in
violation of Labor Code § 226.

25 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
26 necessary steps to represent fairly and adequately the interests of the class defined above.
27 Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the class and the
28 named Plaintiffs. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in

1 the past and currently have a number of wage-and-hour class actions pending in California courts.

2 20. **Common Question of Law and Fact:** There are predominant common questions
3 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class
4 concerning the Company's failure to: (a) pay overtime and sick pay wages at the correct, higher
5 regular rate of pay; (b) provide off-duty meal and rest periods and/or pay premium wages for
6 meal and rest period violations in compliance with Labor Code §§ 226.7 and 512; (c) reimburse
7 business expenses in violation of Labor Code § 2802; (d) pay minimum and overtime wages in
8 violation of Labor Code §§ 201-203, 510, 1194, and 1197.1; and (e) provide accurate itemized
9 wage statements to employees in violation of Labor Code § 226.

10 21. **Typicality:** The claims of the named Plaintiff are typical of the claims of all
11 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar
12 and typical manner as the Class Members. Defendant violated Labor Code §§ 201-204, 226, 233,
13 246, 510, 558, 1194, and 1197.1 as to Plaintiff and Class Members by failing to pay all owed
14 overtime wages, including without limitation, based on the correct, higher regular rate of pay by
15 not including all non-discretionary remuneration into the regular rate for purposes of paying
16 overtime and sick pay wages to Plaintiff and Class Members. For example, Defendant paid
17 Plaintiff and Class Members bonuses and meal allowances, which were non-discretionary.
18 Defendant, however, failed to include said remuneration into the regular rate of pay for purposes
19 of paying overtime and sick pay wages to Plaintiff and Class Members. Similarly, Defendant
20 failed to factor in said remuneration for paying meal and rest period premium wages to Plaintiff
21 and Class Members. In other words, as with sick pay and overtime, Defendant paid meal and rest
22 period premium wages at the base rate of pay. Defendant also failed to pay Plaintiff and Class
23 Members minimum and overtime wages for the time Plaintiff and Class Members worked during
24 their meal periods. Defendant also failed to reimburse Plaintiff and Class Members their business
25 expenses, including without limitation, the costs of having to use their personal cell phones in
26 connection with their work. Further, as a result, Defendant violated Labor Code § 226(a) as to
27 Plaintiff and Class Members by not accurately reflecting gross and net wages and hourly rates as
28 a result of this violation. Moreover, Defendant violated Labor Code §§ 201-203 as to Plaintiff
and Class Members whose employment has ended by not paying all owed overtime and minimum

1 wages, sick pay, and meal and rest period premium wages within the time requirements set forth
2 in these statutes. Thus, Plaintiff is a member of the Class and has suffered the alleged violations
3 of California Labor Code §§ 201-203, 226, 226.7, 233, 246, 510, 512, 558, 1194, 1197.1 and
4 2698, *et seq.*, and the applicable IWC Wage Orders.

5 22. The California Labor Code and upon which Plaintiff bases these claims is broadly
6 remedial in nature. These laws and labor standards serve an important public interest in
7 establishing minimum working conditions and standards in California. These laws and labor
8 standards protect the average working employee from exploitation by employers who may seek to
9 take advantage of superior economic and bargaining power in setting onerous terms and
10 conditions of employment.

11 23. The nature of this action and the format of laws available to Plaintiff and members
12 of the Class identified herein make the class action format a particularly efficient and appropriate
13 procedure to redress the wrongs alleged herein. If each employee were required to file an
14 individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage
15 since it would be able to exploit and overwhelm the limited resources of the individual Plaintiff
16 with Defendants' vastly superior financial and legal resources. Requiring each Class member to
17 pursue an individual remedy would also discourage the assertion of lawful claims by employees
18 who would be disinclined to file an action against their former and/or current employer for real
19 and justifiable fear of retaliation and permanent damage to their careers at subsequent
20 employment.

21 24. The prosecution of separate actions by the individual class members, even if
22 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
23 to individual Class members against the Company and which would establish potentially
24 incompatible standards of conduct for the Company, and/or (b) adjudications with respect to
25 individual Class members which would, as a practical matter, be dispositive of the interest of the
26 other Class members not parties to the adjudications or which would substantially impair or
27 impede the ability of the Class members to protect their interests. Further, the claims of the
28 individual members of the Class are not sufficiently large to warrant vigorous individual
prosecution considering all of the concomitant costs and expenses.

1 25. Such a pattern, practice and uniform administration of corporate policy regarding
2 illegal employee compensation described herein is unlawful and creates an entitlement to
3 recovery by Plaintiffs and the Class identified herein, in a civil action any and all applicable
4 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
5 of California Labor Code §§ 226 and 2698, *et seq.*, the applicable IWC Wage Orders, and Code
6 of Civil Procedure § 1021.5.

7 26. Proof of a common business practice or factual pattern, which the named Plaintiffs
8 experienced and are representative of, will establish the right of each of the members of the Class
9 to recovery on the causes of action alleged herein.

10 27. The Class is commonly entitled to a specific fund with respect to the compensation
11 illegally and unfairly retained by the Company. The Class is commonly entitled to restitution of
12 those funds being improperly withheld by the Company. This action is brought for the benefit of
13 the entire class and will result in the creation of a common fund.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF CAL. LABOR CODE §§ 201-204, 233, AND 246**

16 **(BY PLAINTIFF AND THE SICK PAY SUB-CLASS AGAINST ALL DEFENDANTS)**

17 28. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
18 though fully set for herein.

19 29. Labor Code § 233 provides that an employer must permit an employee to use
20 accrued sick leave in accordance with Labor Code § 246.5 at the employee's then current rate
21 of entitlement. Labor Code § 246 provides that an employee is entitled to sick pay wages for
22 use of accrued sick leave. An employer must calculate paid sick leave by using one of two
23 calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same
24 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
25 whether or not the employee actually works overtime in that workweek," or (ii) "Paid sick time
26 for nonexempt employees shall be calculated by dividing the employee's total wages, not
27 including overtime premium pay, by the employee's total hours worked in the full pay periods
28 of the prior 90 days of employment."

 30. As a policy and practice, Defendants unlawfully failed to pay sick pay at the

1 regular rate of pay. Plaintiff and Class Members routinely earned non-discretionary incentive
2 wages, which increased their regular rate of pay. However, when sick pay was paid, it was paid
3 at the base rate of pay for Plaintiff and Class Members, as opposed to the correct, higher regular
4 rate of pay.

5 31. Moreover, Labor Code § 204 generally provides that wages are due and payable
6 twice during each calendar month, on days designated in advance by the employer as the
7 regular paydays. Consistent with Labor Code § 204, Labor Code § 246 also provides that an
8 employer shall provide payment for sick leave taken by an employee no later than the payday
9 for the next regular payroll period after the sick leave was taken. Labor Code § 201 provides if
10 an employer discharges an employee, the wages earned and unpaid at the time of discharge are
11 due and payable immediately. Labor Code § 202 provides that an employee is entitled to
12 receive all unpaid wages no later than 72 hours after an employee quits his or her employment,
13 unless the employee has given seventy-two (72) hours previous notice of his or her intention to
14 quit, in which case the employee is entitled to his or her wages at the time of quitting. Labor
15 Code § 203 provides that if an employer willfully fails to pay wages owed in accordance with
16 Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from
17 the due date, and at the same rate until paid, but the wages shall not continue for more than
18 thirty (30) days.

19 32. Based on Defendants' failure to pay all sick pay to Plaintiff and Class Members,
20 and as a matter of policy and practice, Defendants failed to timely pay Plaintiff and Class
21 Members all due wages or timely pay all due wages upon separation of employment. On
22 information and belief, Defendants were advised by skilled lawyers and knew, or should have
23 known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. Defendants
24 thus violated Sections 201-204 by not timely paying all due wages and not timely paying all due
25 wages upon the separation of employment.

26 33. As a pattern and practice, Defendants regularly and willfully failed to pay
27 Plaintiff and other members of the Class their correct wages and accordingly owe damages,
28 restitution, and applicable penalties, including waiting time penalties.

SECOND CAUSE OF ACTION

**VIOLATION OF LABOR CODE §§ 201-204, 510, 558, 1194, AND 1197.1
(AGAINST ALL DEFENDANTS BY PLAINTIFF AND CLASS AND THE REGULAR
RATE SUB-CLASS)**

34. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set for herein.

35. Labor Code §§ 510 and 1194 require an employer to pay employees overtime at a rate of one and one-half the employee's regular rate of pay for any work in excess of eight hours in a workday or 40 hours in a workweek. Further, Labor Code §§ 1194 and 1197.1 require an employer to pay minimum wages for all hours worked less than 40 hours in a workweek and/or 8 hours in a workday.

36. During their employment with Defendants, including during pay periods wherein Plaintiff and the Class worked overtime, Plaintiff and the Class also earned non-discretionary remuneration, such as bonuses and meal allowances. Defendants, as a corporate-wide practice and policy, did not calculate and/or factor such remuneration into the regular rate of pay for purposes of calculating revised and increased overtime pay, and as such, owe Plaintiff and the Class additional overtime pay. Additionally, as alleged herein, Plaintiff and Class Members worked through their meal periods. Nevertheless, Defendant did not pay Plaintiff and Class Members applicable minimum and overtime wages for the time spent working through meal periods.

37. Plaintiff is informed and believes and based thereon alleges that Defendants' willful failure to provide Plaintiff and Class Members the wages due and owing them upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Class Members who have separated from employment are entitled to compensation pursuant to Labor Code § 203.

38. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 510, 558, 1194 and 1197.1.

THIRD CAUSE OF ACTION
VIOLATION OF CAL. LABOR CODE §§ 201-203, 226.7 AND 512
(AGAINST ALL DEFENDANTS BY PLAINTIFF AND THE MEAL PERIOD SUB-CLASS)

39. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set for herein.

40. At all relevant times, Defendants failed in their affirmative obligation to ensure that Plaintiff, and other class members, had the opportunity to take and were provided with off-duty meal periods in accordance with the mandates of the California Labor Code and the applicable IWC Wage Order. Plaintiff and Class Members were suffered and permitted to work through legally required meal breaks and were denied the opportunity to take their full 30-minute off-duty meal breaks. As such, Defendants are responsible for paying premium compensation for missed meal periods pursuant to Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order. Specifically, Labor Code § 226.7(c) provides that “the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday the meal or rest or recovery period is not provided.” Defendants, as a matter of corporate policy and procedure, regularly failed to pay the meal period premium at the correct rate of pay. Plaintiff and Class Members earned non-discretionary incentive pay, including without limitation, bonuses and meal allowances, which was not factored into the regular rate of pay for purposes of paying meal period premium pay. Instead, during pay periods in which Plaintiff and Class Members earned non-discretionary remuneration, Defendants improperly paid the meal premium pay at the base rate of pay.

41. Plaintiff is informed and believe and based thereon alleges that Defendants willfully failed to include all remuneration, including non-discretionary remuneration, in the regular rate of pay for purposes of calculating meal period premium pay, as required by Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order. Plaintiff further alleges that Plaintiff and similarly situated employees are owed wages for the meal period violations set forth above.

42. Plaintiff is informed and believes, and based thereon allege, that Defendants’

1 willful failure to provide all meal period premium pay and/or wages due and owing them upon
2 separation from employment results in a continued payment of wages up to thirty (30) days from
3 the time the wages were due. Therefore, Plaintiff and other members of the Class who have
4 separated from employment are entitled to compensation pursuant to Labor Code § 203.

5 43. Such a pattern, practice and uniform administration of corporate policy as
6 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class
7 Members identified herein, in a civil action, for the unpaid balance of the unpaid premium
8 compensation pursuant to Labor Code §§ 201, 202, 203, 226.7 and 512, and the applicable IWC
9 Wage Order, including interest thereon, penalties, and costs of suit.

10 **FOURTH CAUSE OF ACTION**

11 **VIOLATION OF CAL. LABOR CODE §§ 201-203 AND 226.7**

12 **(AGAINST ALL DEFENDANTS BY PLAINTIFF AND THE REST PERIOD SUB- 13 CLASS)**

14 44. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
15 though fully set for herein.

16 45. At all relevant times, Defendants failed in their affirmative obligation to ensure
17 that Plaintiff, and other class members, were authorized and permitted to take rest periods in
18 accordance with the mandates of the California Labor Code and the applicable IWC Wage Order.
19 Plaintiff and Class Members were suffered and permitted to work through legally required rest
20 breaks and were denied the opportunity to take their full 10-minute off-duty rest breaks for every
21 3.5 hours worked. As such, Defendants are responsible for paying premium compensation for
22 missed rest periods pursuant to Labor Code §§ 226.7 and 512 and the applicable IWC Wage
23 Order. Specifically, Labor Code § 226.7(c) provides that “the employer shall pay the employee
24 one additional hour of pay at the employee’s regular rate of compensation for each workday the
25 meal or rest or recovery period is not provided.” Defendants, as a matter of corporate policy and
26 procedure, regularly failed to pay the rest period premium at the correct rate of pay. Plaintiff and
27 Class Members earned non-discretionary incentive pay, including without limitation, bonuses and
28 meal allowances, which was not factored into the regular rate of pay for purposes of paying rest
period premium pay. Instead, during pay periods in which Plaintiff and Class Members earned

1 non-discretionary remuneration, Defendants improperly paid the rest premium pay at the base rate
2 of pay.

3 46. Plaintiff is informed and believe and based thereon alleges that Defendants
4 willfully failed to include all remuneration, including non-discretionary remuneration, in the
5 regular rate of pay for purposes of calculating rest period premium pay, as required by Labor
6 Code § 226.7, and the applicable IWC Wage Order. Plaintiff further alleges that Plaintiff and
7 similarly situated employees are owed wages for the rest period violations set forth above.

8 47. Plaintiff is informed and believes, and based thereon allege, that Defendants'
9 willful failure to provide all rest period premium pay and/or wages due and owing them upon
10 separation from employment results in a continued payment of wages up to thirty (30) days from
11 the time the wages were due. Therefore, Plaintiff and other members of the Class who have
12 separated from employment are entitled to compensation pursuant to Labor Code § 203.

13 48. Such a pattern, practice and uniform administration of corporate policy as
14 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class
15 Members identified herein, in a civil action, for the unpaid balance of the unpaid premium
16 compensation pursuant to Labor Code §§ 201, 202, 203, 226.7 and 512, and the applicable IWC
17 Wage Order, including interest thereon, penalties, and costs of suit.

18 **FIFTH CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE § 2802**

20 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

21 49. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
22 though fully set for herein.

23 50. This cause of action is brought pursuant to Labor Code § 2802, which provides
24 that employees are entitled to be indemnified for expenses and losses in discharging the duties of
25 their employers.

26 51. At all relevant times, Defendant regularly failed to reimburse and indemnify
27 Plaintiff and the Class members for business expenses incurred in the discharge of their duties.
28 Specifically, Defendant failed to pay Plaintiff and Class Members for their costs for using their
personal cell phones for work purposes.

52. Defendant had a uniform corporate pattern and practice and procedure regarding the above practices in violation of Labor Code § 2802.

53. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 2802.

SIXTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226(a)

**(AGAINST ALL DEFENDANTS BY PLAINTIFF AND THE CLASS AND ALL SUB-
CLASSES)**

54. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set for herein.

55. The Company failed in its affirmative obligation to provide accurate itemized wage statements in violation of Labor Code § 226(a). Plaintiff was not provided accurate itemized wage statements required by Labor Code § 226(a). Specifically, Defendant violated Labor Code § 226(a) as to Plaintiff and Class Members by not accurately reflecting gross and net wages and hourly rates as a result of Defendant's regular rate violations alleged herein with respect to overtime, sick pay and meal and rest period premium wages, as well as for the off-the-clock unpaid minimum and overtime wages as a result of working through meal periods.

56. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

SEVENTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

(AGAINST ALL DEFENDANTS BY PLAINTIFF AS PROXY FOR STATE OF

1 **CALIFORNIA)**

2 57. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
3 though fully set for herein.

4 58. Plaintiff seeks penalties on behalf of the State of California for violations of Labor
5 Code §§ 201-204, 226, 226.7, 233, 246, 510, 512, 558, 1194, 1197.1 committed against all
6 similarly aggrieved non-exempt employees who were paid any wages at any time from February
7 23, 2022, through the present.

8 59. On or about February 23, 2023, Plaintiff sent notice to Defendant via certified
9 mail, return receipt requested, and online to the Labor Workforce Development Agency (the
10 "LWDA") of the violations of Labor Code §§ 201-204, 226, 226.7, 233, 246, 510, 512, 558,
11 1194, and 1197.1.

12 60. As of the date of the filing of this Complaint, the LWDA has not notified Plaintiffs
13 whether it intends to investigate the claims. Therefore, Plaintiff may seek applicable penalties
14 under the PAGA.

15 61. Such a pattern, practice and uniform administration of corporate policy as
16 described herein is unlawful and creates an entitlement to recovery by the Plaintiff on behalf of
17 the State of California, in a civil action, for penalties pursuant to the PAGA, Labor Code §§ 226.3
18 and 2699(a), including interest thereon, attorneys' fees, and costs of suit according to the mandate
19 of PAGA for Defendant's violations of Labor Code § 201-204, 226, 226.7, 233, 246, 510, 512,
20 558, and 1194, 1197.1, as well as attorneys' fees and costs.

21 **EIGHTH CAUSE OF ACTION**

22 **UNFAIR OR UNLAWFUL BUSINESS PRACTICES**

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

24 62. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
25 though fully set for herein.

26 63. Defendant has engaged and continue to engage in unfair and unlawful business
27 practices in California by practicing, employing and utilizing the employment practices outlined
28 above, include, to wit, by failing to pay all minimum and overtime wages for all hours worked,
pay sick pay, overtime and meal and rest period premium wages at the regular rate of pay,

1 reimburse business expenses, and engaging in Unfair Business Practices in violation of the UCL,
2 all in violation of the California Labor Code and applicable IWC Wage Orders.

3 64. Defendant's utilization of such unfair and unlawful business practices constitutes
4 unfair, unlawful competition and provides an unfair advantage over Defendant's competitors.

5 65. Plaintiff seeks as an individual and on behalf of other members of the Class
6 similarly situated, full restitution of monies, as necessary and according to proof, to restore any
7 and all monies withheld, acquired and/or converted by the Defendants by means of the unfair
8 practices complained of herein. Plaintiff also seeks injunctive relief to enjoin the unfair business
9 practices alleged herein.

10 66. Plaintiff is informed and believes, and based thereon alleges, that at all times
11 herein mentioned Defendant has engaged in unlawful, deceptive and unfair business practices, as
12 proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth
13 herein above thereby depriving Plaintiff and other members of the Class the minimum working
14 condition standards and conditions due to them under the California laws and the applicable IWC
15 Wage Orders as specifically described therein.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf
18 this suit is brought against Defendants, jointly and severally, as follows:

- 19 1. For an order certifying the proposed Class;
- 20 2. For an order appointing Plaintiff as the representative of the Class as described
21 herein;
- 22 3. For an order appointing counsel for Plaintiff as Class counsel;
- 23 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
24 California Labor Code §§ 201-203, 218, 218.5, 218.6, 226, 233, 246, 248.5, and for costs and
25 attorneys' fees;
- 26 5. Upon the Second Cause of Action, for damages and/or penalties according to proof
27 pursuant to Labor Code §§ 201-203, 218.5, 226, 510, 1194, and 1197.1, and for costs and
28 attorneys' fees;
6. Upon the Third Cause of Action, for damages and/or penalties according to proof

1 pursuant to Labor Code §§ 201-203, 226.7, and 512, and for costs;

2 7. Upon the Fourth Cause of Action, for damages and/or penalties according to proof
3 pursuant to Labor Code §§ 201-203, and 226.7, and for costs;

4 8. Upon the Fifth Cause of Action, for damages, costs and attorneys' fees pursuant to
5 Labor Code § 2802;

6 9. Upon the Sixth Cause of Action, for penalties and/or damages and costs and
7 attorneys' fees pursuant to Labor Code § 226;

8 10. Upon the Seventh Cause of Action, for civil penalties pursuant to Labor Code §§
9 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

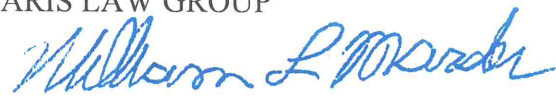
10 11. Upon the Eighth Cause of Action, for restitution of all funds unlawfully acquired
11 by Defendants by any acts or practices declared to be in violation of the UCL, including interest
12 thereon, and for costs;

13 12. On all causes of action, for attorneys' fees and costs as provided by California
14 Labor Code §§ 218.5, 226, 1194, and 2699, and Code of Civil Procedure § 1021.5; and

15 13. For such other and further relief as the Court may deem just and proper.

16 DATED: April 11, 2023

POLARIS LAW GROUP

17 By: 
18

William L. Marder

Attorneys for PLAINTIFF and the CLASS
19
20
21
22
23
24
25
26
27
28