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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

JACQUELINE GARCIA, individually, and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

1ST COMMERCIAL REALTY GROUP, INC., a  
California corporation; and DOES 1 through 10,  
inclusive,

*Defendants.*

ELECTRONICALLY FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT  
7/25/2024 12:23 PM  
By: Kristina Talley, DEPUTY

Case No.: CIVSB2226900

**FIRST AMENDED CLASS AND PAGA  
REPRESENTATIVE ACTION  
CONSOLIDATED COMPLAINT:**

1. Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, 1197, and 1197.1);
2. Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198);
3. Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512);
4. Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7);
5. Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203);
6. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
7. Failure to Indemnify Employees for Expenditures (Cal. Lab. Code § 2802);
8. Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and
9. Civil Penalties Under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698 *et seq.*).

**DEMAND FOR JURY TRIAL**

**FIRST AMENDED CLASS AND PAGA REPRESENTATIVE ACTION CONSOLIDATED  
COMPLAINT**

Plaintiff JACQUELINE GARCIA ("Plaintiff"), based upon information and belief, alleges as follows:

### **INTRODUCTION & PRELIMINARY STATEMENT**

1. Plaintiff brings this action against Defendant IST COMMERCIAL REALTY GROUP, INC., and DOES 1 through 10 (hereinafter collectively referred to as "Defendants") for California Labor Code violations and unfair business practices stemming from Defendant's failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, failure to indemnify employees for expenditures, and failure to produce requested employment records.

2. Plaintiff brings the First through Eighth Causes of Action individually and as a class action on behalf of herself and certain current and former employees of Defendant (hereinafter collectively referred to as the "Class" or "Class Members," and defined more fully below). The Class consists of Plaintiff and all other persons who have been employed by Defendant in California as an hourly-paid or non-exempt employee during the statute of limitations period applicable to the claims pleaded here.

3. Plaintiff brings the Ninth Cause of Action as a representative action under the Labor Code Private Attorneys Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA") to recover civil penalties that are owed to Plaintiff, the State of California, and past and present non-exempt employees employed by Defendant in the State of California during the statute of limitations period for their PAGA claim (herein after referred to as the "Aggrieved Employees").

4. Defendant owns/owned and operates/operated an industry, business, and establishment within the State of California, including San Bernardino County. As such, and based upon all the facts and circumstances incident to Defendant's business in California, Defendant is subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

5. Despite these requirements, throughout the statutory period, Defendant maintained a systematic, company-wide pattern and practice of:

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FIRST AMENDED CLASS AND PAGA REPRESENTATIVE ACTION CONSOLIDATED  
COMPLAINT

- (a) Failing to pay employees for all hours worked, including all minimum, straight time, and overtime in compliance with the California Labor Code and IWC Wage Orders;
- (b) Failing to provide employees with timely and duty-free meal periods in compliance with the California Labor Code and IWC Wage Orders, failing to maintain accurate records of all meal periods taken or missed, and failing to pay an additional hour's pay for each workday a meal period violation occurred;
- (c) Failed to authorize and permit employees, or some of them, to take timely and duty-free rest periods in compliance with the California Labor Code and IWC Wage Orders, and failed to pay an additional hour's pay for each workday a rest period violation occurred;
- (d) Willfully failing to pay employees all minimum, straight time, overtime, meal period premium, and rest period premium wages due within the time period specified by California law when employment terminates;
- (e) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders;
- (f) Failing to indemnify employees for expenditures incurred in direct discharge of duties of employment; and,
- (g) Failing to timely produce requested employment records as required by the California Labor Code and IWC Wage Order;

6. On information and belief, Defendant was on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendant's violations, as alleged above, during all relevant times herein was willful and deliberate.

7. At all relevant times, Defendant was and is legally responsible for all of the unlawful conduct, policies, practices, acts and omissions, as described in each and all of the foregoing

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1 paragraphs as the employer of Plaintiff and the Class. Further, Defendant is responsible for each  
2 of the unlawful acts or omissions complained of herein under the doctrine of “respondeat superior.”

3 **THE PARTIES**

4 **A. Plaintiff**

5 8. Plaintiff JACQUELINE GARCIA is a resident of Fontana, California who worked  
6 for Defendant in San Bernardino County, California as an hourly-paid, non-exempt employee from  
7 approximately December 2021 to approximately September 2022.

8 9. Plaintiff reserves the right to seek leave to amend this complaint to add new  
9 Plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*  
10 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

11 **B. Defendants**

12 10. Plaintiff is informed and believes, and based upon that information and belief  
13 alleges, that Defendant 1ST COMMERCIAL REALTY GROUP, INC. is, and at all times herein  
14 mentioned, was:

- 15 (a) A business entity conducting business in numerous counties throughout the  
16 State of California, including Los Angeles County; and,  
17 (b) The former employer of Plaintiff, and the current and/or former employer of  
18 the putative Class because Defendant 1ST COMMERCIAL REALTY  
19 GROUP, INC. suffered and permitted Plaintiff and the Class to work, and/or  
20 controlled their wages, hours, or working conditions.

21 11. Plaintiff does not know the true names or capacities of the persons or entities sued  
22 herein as Does 1-10, inclusive, and therefore sue said Defendants by such fictitious names. Each  
23 of the Doe Defendants was in some manner legally responsible for the damages suffered by  
24 Plaintiff and the Class as alleged herein. Plaintiff will amend this complaint to set forth the true  
25 names and capacities of these Defendants when they have been ascertained, together with  
26 appropriate charging allegations, as may be necessary.

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1           12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and  
2 each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or  
3 injured a significant number of the Plaintiff and the Class in the State of California.

4           13. Plaintiff is informed and believes and thereon alleges that at all relevant times each  
5 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the  
6 other employees described in the class definitions below, and exercised control over their wages,  
7 hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all  
8 relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director,  
9 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or  
10 predecessor in interest of some or all of the other Defendants, and was engaged with some or all  
11 of the other Defendants in a joint enterprise for profit, and bore such other relationships to some  
12 or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged  
13 below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant  
14 to and within the scope of the relationships alleged above, that each Defendant knew or should  
15 have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the  
16 conduct of all other Defendants.

17                           **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

18           14. Plaintiff worked for Defendant in San Bernardino County, California as an hourly-  
19 paid, non-exempt employee from approximately December 2021 to approximately September  
20 2022. During Plaintiff's employment for Defendant, Defendant paid Plaintiff an hourly wage and  
21 classified her as non-exempt from overtime. Defendant typically scheduled Plaintiff to work at  
22 least five days in a workweek and at least eight hours per day, but Plaintiff also worked more than  
23 eight hours in a workday and more than forty (40) hours in a workweek.

24           15. Throughout Plaintiff's employment, Defendant failed to pay for all hours worked  
25 (including minimum, straight time, and overtime wages), failed to provide Plaintiff with legally  
26 compliant meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to timely  
27 pay all final wages to Plaintiff when Defendant terminated her employment, failed to furnish  
28 accurate wage statements to Plaintiff, failed to indemnify Plaintiff for expenditures, and failed to

1 produce requested employment records. As discussed below, Plaintiff's experience working for  
2 Defendant was typical and illustrative.

3 16. Throughout the statutory period, Defendant maintained a pattern and practice of not  
4 paying Plaintiff and the Class for all hours worked, including minimum, straight time, and overtime  
5 wages. Defendant would routinely manufacture time keeping records to falsely show that Plaintiff  
6 and the Class took meal periods when in fact they worked "off-the-clock," uncompensated. The  
7 effect is that Plaintiff and the Class routinely worked through meal periods "off-the-clock," and  
8 continued to work after they had clocked out for the workday. Defendant frequently paid Plaintiff  
9 and the Class less than all their work time. Much of this unpaid work should have been paid at the  
10 overtime rate. In failing to pay for all hours worked, Defendant also failed to maintain accurate  
11 records of the hours Plaintiff and the Class worked.

12 17. Throughout the statutory period, Defendant wrongfully failed to provide Plaintiff  
13 and the Class with legally compliant meal periods. Defendant regularly, but not always, required  
14 Plaintiff and the Class to work in excess of five consecutive hours a day without providing a 30-  
15 minute, uninterrupted, and duty-free meal period for every five hours of work, or without  
16 compensating Plaintiff and the Class for all missed meal periods that were not provided by the end  
17 of the fifth hour of work or tenth hour of work. Instead, Defendant continued to assert control over  
18 Plaintiff and the Class by requiring, pressuring, or encouraging them to perform work tasks which  
19 could not be completed without working in lieu of taking mandatory meal periods, or by denying  
20 Plaintiff and the Class permission to take a legally compliant meal period. Accordingly,  
21 Defendant's pattern and practice was not to provide meal periods to Plaintiff and the Class in  
22 compliance with California law.

23 18. Throughout the statutory period, Defendant has wrongfully failed to authorize and  
24 permit Plaintiff and the Class to take legally compliant rest periods. Defendant regularly required  
25 Plaintiff and the Class to work in excess of four consecutive hours a day without Defendant  
26 authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every  
27 four hours of work (or major fraction of four hours), or without compensating Plaintiff and the  
28 Class for rest periods that were not authorized or permitted. Instead, Defendant continued to assert

1 control over Plaintiff and the Class by requiring, pressuring, or encouraging them to perform work  
2 tasks which could not be completed without working in lieu of taking mandatory rest periods, or  
3 by denying Plaintiff and the Class permission to take a rest period. Accordingly, Defendant's  
4 pattern and practice was to not authorize and permit Plaintiff and the Class to take rest periods in  
5 compliance with California law.

6 19. Throughout the statutory period, Defendant willfully failed and refused to timely  
7 pay Plaintiff and the Class all final wages due at their termination of employment. In addition,  
8 Plaintiff's final paychecks did not include payment for all expenditures, minimum wages, straight  
9 time wages, overtime wages, meal period premium wages, and rest period premium wages owed  
10 to her by Defendant at the conclusion of his employment. On information and belief, Defendant's  
11 failure to timely pay Plaintiff's final wages when his employment terminated was not a single,  
12 isolated incident, but was instead consistent with Defendant's pattern and practice that applied to  
13 Plaintiff and the Class.

14 20. Throughout the statutory period, Defendant failed to furnish Plaintiff and the Class  
15 with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net  
16 wages earned (including correct hours worked, correct wages for meal periods that were not  
17 provided in accordance with California law, and correct wages for rest periods that were not  
18 authorized and permitted to take in accordance with California law). As a result of these violations  
19 of California Labor Code § 226(a), the Plaintiff and the Class suffered injury because, among other  
20 things:

- 21 (a) the violations led them to believe that they were not entitled to be paid  
22 minimum, straight time, overtime, meal period premium, and rest period  
23 premium wages, even though they were entitled;
- 24 (b) the violations led them to believe that they had been paid the minimum,  
25 straight time, overtime, meal period premium, and rest period premium  
26 wages, even though they had not been;

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- (c) the violations led them to believe they were not entitled to be paid minimum, straight time, overtime, meal period premium, and rest period premium wages at the correct California rate even though they were entitled;
- (d) the violations led them to believe they had been paid minimum, straight time, overtime, meal period premium, and rest period premium wages at the correct California rate even though they had not been ;
- (e) the violations hindered them from determining the amounts of minimum, straight time, overtime, meal period premium, and rest period premium wages owed to them;
- (f) in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;
- (g) by understating the wages truly due to them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;
- (h) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff and the Class were entitled, and Plaintiff and the Class were paid less than the wages and wage rates to which they were entitled.

Thus, Plaintiff and the Class are owed the amounts provided for in California Labor Code § 226(e).

21. Throughout the statutory period, Defendant has wrongfully required Plaintiff and the Class to pay expenses that they incurred in direct discharge of their duties for Defendants. Plaintiff and the Class regularly paid out-of-pocket for necessary employment-related expenses, including, without limitation, gas, mileage, and cell phone expenses.

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22. Plaintiff and the Class incurred substantial expenses as a direct result of performing their job duties for Defendants, but Defendant failed to indemnify Plaintiff and the Class for these employment-related expenses.

#### **CLASS ACTION ALLEGATIONS**

23. Plaintiff brings certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

24. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

25. The proposed Class consists of and is defined as:

All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period beginning four years and 178 days before the filing of the initial complaint in this action and ending when notice to the Class is sent.<sup>1</sup>

26. At all material times, Plaintiff was a member of the Class.

27. Plaintiff undertakes this concerted activity to improve the wages and working conditions of all Class Members.

28. There is a well-defined community of interest in the litigation and the Class is readily ascertainable:

(a) Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiff at this time; however, the Class is estimated to be greater than forty (40) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-

<sup>1</sup> In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a) (California Rules of Court), whereby "statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1, 2020." 8

1 defined community of interest, and Plaintiff's claims (or defenses, if any)  
2 are typical of all Class Members' claims as demonstrated herein.

3 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect  
4 the interests of each Class Member with whom there is a shared, well-  
5 defined community of interest and typicality of claims, as demonstrated  
6 herein. Plaintiff has no conflicts with or interests antagonistic to any Class  
7 Member. Plaintiff's attorneys, the proposed class counsel, are versed in the  
8 rules governing class action discovery, certification, and settlement. Plaintiff  
9 has incurred, and throughout the duration of this action, will continue to  
10 incur costs and attorneys' fees that have been, are, and will be necessarily  
11 expended for the prosecution of this action for the substantial benefit of each  
12 class member.

13 (d) Superiority: A Class Action is superior to other available methods for the  
14 fair and efficient adjudication of the controversy, including consideration of:  
15 1) The interests of the members of the Class in individually controlling  
16 the prosecution or defense of separate actions;  
17 2) The extent and nature of any litigation concerning the controversy  
18 already commenced by or against members of the Class;  
19 3) The desirability or undesirability of concentrating the litigation of the  
20 claims in the particular forum; and,  
21 4) The difficulties likely to be encountered in the management of a class  
22 action.

23 (e) Public Policy Considerations: The public policy of the State of California is  
24 to resolve the California Labor Code claims of many employees through a  
25 class action. Indeed, current employees are often afraid to assert their rights  
26 out of fear of direct or indirect retaliation. Former employees are also fearful  
27 of bringing actions because they believe their former employers might  
28 damage their future endeavors through negative references and/or other

means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

29. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, Defendant has:

- (a) Failed to pay Class Members for all hours worked, including minimum, straight time, and overtime wages;
- (b) Failed to provide meal periods and pay meal period premium wages to Class Members;
- (c) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;
- (d) Failed to provide Class Members with timely final wages;
- (e) Failed to provide Class Members with accurate wage statements;
- (f) Failed to indemnify Class Members for expenditures; and,
- (g) Violated California Business & Professions Code §§ 17200 *et. seq.* as a result of their illegal conduct as described above.

30. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual Class Members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- (c) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;
- (d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;

1 (c) There is a community of interest in obtaining appropriate legal and equitable  
2 relief for the statutory violations, and in obtaining adequate compensation  
3 for the damages and injuries for which Defendant is responsible in an  
4 amount sufficient to adequately compensate the members of the Class for  
5 the injuries sustained;

6 (f) Without class certification, the prosecution of separate actions by individual  
7 members of the class would create a risk of:

8 1) Inconsistent or varying adjudications with respect to individual  
9 members of the Class which would establish incompatible standards  
10 of conduct for Defendants; and/or,

11 2) Adjudications with respect to the individual members which would,  
12 as a practical matter, be dispositive of the interests of other members  
13 not parties to the adjudications, or would substantially impair or  
14 impede their ability to protect their interests, including but not  
15 limited to the potential for exhausting the funds available from those  
16 parties who are, or may be, responsible Defendants; and,

17 (g) Defendant has acted or refused to act on grounds generally applicable to the  
18 Class, thereby making final injunctive relief appropriate with respect to the  
19 class as a whole.

20 31. Plaintiff contemplates the eventual issuance of notice to the proposed members of  
21 the Class that would set forth the subject and nature of the instant action. The Defendants' own  
22 business records may be utilized for assistance in the preparation and issuance of the contemplated  
23 notices. To the extent that any further notices may be required, Plaintiff contemplates the use of  
24 additional techniques and forms commonly used in class actions, such as published notice, e-mail  
25 notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the  
26 Class and deemed necessary and/or appropriate by the Court.

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**FIRST CAUSE OF ACTION**

**(Against All Defendants for Failure to Pay Minimum and Straight Time Wages for All Hours Worked)**

32. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

33. "Hours worked" is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

34. At all relevant times herein mentioned, Defendant knowingly failed to pay to Plaintiff and the Class compensation for all hours they worked. By their failure to pay compensation for each hour worked as alleged above, Defendants willfully violated the provisions of California Labor Code § 1194, and any additional applicable Wage Orders, which require such compensation to non-exempt employees.

35. Accordingly, Plaintiff and the Class are entitled to recover minimum and straight time wages for all non-overtime hours worked for Defendants.

36. By and through the conduct described above, Plaintiff and the Class have been deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

37. By virtue of the Defendant's unlawful failure to pay additional compensation to Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, and which will be ascertained according to proof at trial.

38. By failing to keep adequate time records required by California Labor Code § 1174(d), Defendant has made it difficult to calculate the full extent of minimum wage compensation due Plaintiff and the Class.

39. Pursuant to California Labor Code § 1194.2, Plaintiff and the Class are entitled to recover liquidated damages (double damages) for Defendant's failure to pay minimum wages.

40. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to

1 this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required  
2 by law, including minimum and straight time wages. However, during all such times, Defendant  
3 systematically failed and refused to pay Plaintiff and the Class all such wages due and failed to  
4 pay those wages twice a month.

5 41. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum and  
6 straight time wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor  
7 Code §§ 218.5, 218.6, and 1194(a).

8 **SECOND CAUSE OF ACTION**

9 **(Against All Defendants for Failure to Pay Overtime Wages)**

10 42. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs  
11 1 through 22 in this Complaint.

12 43. California Labor Code § 510 provides that employees in California shall not be  
13 employed more than eight hours in any workday or forty (40) hours in a workweek unless they  
14 receive additional compensation beyond their regular wages in amounts specified by law.

15 44. California Labor Code §§ 1194 and 1198 provide that employees in California shall  
16 not be employed more than eight hours in any workday unless they receive additional  
17 compensation beyond their regular wages in amounts specified by law. Additionally, California  
18 Labor Code § 1198 states that the employment of an employee for longer hours than those fixed  
19 by the IWC is unlawful.

20 45. At all times relevant hereto, Plaintiff and the Class, have worked more than eight  
21 hours in a workday and/or more than forty (40) hours in a workweek, as employees of Defendants.

22 46. At all times relevant hereto, Defendant failed to pay Plaintiff and the Class overtime  
23 compensation for the hours they have worked in excess of the maximum hours permissible by law  
24 as required by California Labor Code §§ 510 and 1198.

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### THIRD CAUSE OF ACTION

**(Against All Defendants for Failure to Provide Meal Periods)**

51. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

1 California Labor Code § 226.7 for an employer to require any employee to work during any meal  
2 period mandated under any Wage Order.

3 53. Despite these legal requirements, Defendant regularly failed to provide Plaintiff and  
4 the Class with both meal periods as required by California law. By their failure to permit and  
5 authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact that  
6 Defendant made it impossible or impracticable to take these uninterrupted meal periods),  
7 Defendant willfully violated the provisions of California Labor Code § 226.7 and the applicable  
8 Wage Orders.

9 54. Under California law, Plaintiff and the Class are entitled to be paid one hour of  
10 additional wages for each workday he or she was not provided with all required meal period(s),  
11 plus interest thereon.

12 **FOURTH CAUSE OF ACTION**

13 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

14 55. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs  
15 1 through 22 in this Complaint.

16 56. Defendant is required by California law to authorize and permit breaks of ten  
17 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than  
18 two hours). California Labor Code § 512, the applicable Wage Orders require that the employer  
19 permit and authorize all employees to take paid rest periods of ten minutes each for each 4-hour  
20 period worked. Thus, for example, if an employee's work time is six hours and ten minutes, the  
21 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself  
22 a violation of California's rest break laws. It is a violation of California Labor Code § 226.7 for an  
23 employer to require any employee to work during any rest period mandated under any Wage Order.

24 57. Despite these legal requirements, Defendant failed to authorize Plaintiff and the  
25 Class to take rest breaks, regardless of whether employees worked more than four hours in a  
26 workday. By their failure to permit and authorize Plaintiff and the Class to take rest periods as  
27 alleged above (or due to the fact that Defendant made it impossible or impracticable to take these  
28

uninterrupted rest periods), Defendant willfully violated the provisions of California Labor Code § 226.7 and the applicable Wage Orders.

58. Under California law, Plaintiff and the Class are entitled to be paid one hour of premium wages rate for each workday he or she was not provided with all required rest break(s), plus interest thereon.

### **FIFTH CAUSE OF ACTION**

#### **(Against All Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time Penalties)**

59. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

60. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

61. Within the applicable statute of limitations, the employment of many other members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continue to fail to pay terminated Class Members, without abatement, all wages required to be paid by California Labor Code §§ 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ.

62. Defendant's failure to pay those Class members who are no longer employed by Defendant their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ, is in violation of California Labor Code §§ 201 and 202.

63. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as

1 a penalty wage from the due date, and at the same rate until paid or until an action is commenced;  
2 but the wages shall not continue for more than thirty (30) days.

3 64. The Class is entitled to recover from Defendant their additionally accruing wages  
4 for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum  
5 pursuant to California Labor Code § 203.

6 65. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, the Class is also  
7 entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this  
8 action.

9 **SIXTH CAUSE OF ACTION**

10 **(Against All Defendants for Failure to Provide and Maintain Accurate and**  
11 **Compliant Wage Records)**

12 66. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs  
13 1 through 22 in this Complaint.

14 67. At all material times set forth herein, California Labor Code § 226(a) provides that  
15 every employer shall furnish each of his or her employees an accurate itemized wage statement in  
16 writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours  
17 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate  
18 if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made  
19 on written orders of the employee may be aggregated and shown as one item, (5) net wages earned,  
20 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee  
21 and the last four digits of his or her social security number or an employee identification number  
22 other than a social security number, (8) the name and address of the legal entity that is the  
23 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding  
24 number of hours worked at each hourly rate by the employee.

25 68. Defendant has intentionally and willfully failed to provide employees with complete  
26 and accurate wage statements. The deficiencies include, among other things, the failure to correctly  
27 identify the gross wages earned by Plaintiff and the Class, the failure to list the true "total hours  
28 worked by the employee," and the failure to list the true net wages earned.

69. As a result of Defendant's violation of California Labor Code § 226(a), Plaintiff and the Class have suffered injury and damage to their statutorily protected rights.

70. Specifically, Plaintiff and the members of the Class have been injured by Defendant's intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a).

71. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information following Defendant's refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

72. Plaintiff and the Class are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with California Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

73. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of attorney's fees and costs to ensure compliance with this section, pursuant to California Labor Code § 226(h).

#### **SEVENTH CAUSE OF ACTION**

##### **(Against All Defendants for Failure to Indemnify Employees for Expenditures)**

74. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

75. As set forth above, Plaintiff and the Class were required to incur substantial necessary expenditures and losses in direct consequence of the discharge of their duties or of their obedience to directions of Defendants.

76. Defendants violated California Labor Code § 2802, by failing to pay and indemnify Plaintiff and the Class, or some of them, for necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of Defendants.

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### EIGHTH CAUSE OF ACTION

(Against All Defendants for Violation of California Business & Professions Code §§ 17200,  
et seq.)

79. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

80. Defendants, and each of them, are “persons” as defined under California Business & Professions Code § 17201.

81. Defendant's conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

82. Defendant's activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, *et seq.*

83. A violation of California Business & Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, *et seq.*

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**Failure to Pay Minimum and Straight Time Wages**

84. Defendant's failure to pay minimum and straight time wages, and other benefits in violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

**Failure to Pay Overtime Wages**

85. Defendant's failure to pay overtime compensation and other benefits in violation of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

**Failure to Provide Meal Periods**

86. Defendant's failure to provide meal periods in accordance with California Labor Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

**Failure to Authorize and Permit Rest Periods**

87. Defendant's failure to authorize and permit rest periods in accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

**Failure to Indemnify Business Expenses**

88. Defendant's failure to reimburse expenses incurred in accordance with California Labor Code § 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

89. By and through their unfair, unlawful and/or fraudulent business practices described herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

90. Plaintiff and the Class Members suffered monetary injury as a direct result of Defendant's wrongful conduct.

91. Plaintiff, individually, and on behalf of members of the putative Class, is entitled to, and does, seek such relief as may be necessary to disgorge money and/or property which the

1 Defendant has wrongfully acquired, or of which Plaintiff and the Class have been deprived, by  
2 means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and  
3 the Class are not obligated to establish individual knowledge of the wrongful practices of  
4 Defendants in order to recover restitution.

5 92. Plaintiff, individually, and on behalf of members of the putative class, is further  
6 entitled to and does seek a declaration that the above-described business practices are unfair,  
7 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,  
8 from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices  
9 in the future.

10 93. Plaintiff, individually, and on behalf of members of the putative class, has no plain,  
11 speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered  
12 as a consequence of the Defendant's unfair, unlawful and/or fraudulent business practices. As a  
13 result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff,  
14 individually, and on behalf of members of the putative Class, has suffered and will continue to  
15 suffer irreparable harm unless the Defendants, and each of them, are restrained from continuing to  
16 engage in said unfair, unlawful and/or fraudulent business practices.

17 94. Plaintiff also alleges that if Defendant is not enjoined from the conduct set forth  
18 herein above, they will continue to avoid paying the appropriate taxes, insurance and other  
19 withholdings.

20 95. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff and  
21 putative Class Members is entitled to restitution of the wages withheld and retained by Defendants  
22 during a period that commences four years and 178 days prior to the filing of this complaint; a  
23 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Class  
24 Members; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and  
25 other applicable laws; and an award of costs.

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**NINTH CAUSE OF ACTION**

**(By Plaintiff Against All Defendants for Civil Penalties Under the Private Attorneys  
General Act of 2004, Cal. Lab. Code § 2698, et seq.)**

96. Plaintiff incorporates by reference and re-allege as if fully stated herein paragraphs 1 through 22 in this Complaint.

97. At all times herein mentioned, Defendant was subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

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

99. Plaintiff gave written notice by online filing pursuant to California Labor Code § 2699.3 to the Labor and Workforce Development Agency and by certified mail to Defendant of the specific provisions of the Labor Code that Defendant purportedly violated against Plaintiff and current and former aggrieved employees, including the facts and theories to support the violations. Plaintiff also paid the filing fee. Plaintiffs’ PAGA case number is LWDA-CM-933812-23 (Jacqueline Garcia v. 1st Commercial Realty Group, Inc.). The Labor and Workforce Development Agency has not indicated that it intends to investigate Defendant’s Labor Code violations discussed in the notice. Plaintiff hereby commences a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

100. Based on the conduct described in this Complaint, Plaintiff is entitled to an award of civil penalties on behalf of Plaintiff, the State of California, and similarly situated Aggrieved Employees of Defendant. The exact amount of the applicable penalties, in all, is an amount to be

FIRST AMENDED CLASS AND PAGA REPRESENTATIVE ACTION CONSOLIDATED  
COMPLAINT

1 shown according to proof at trial. These penalties are in addition to all other remedies permitted  
2 by law.

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

6 **PRAYER FOR RELIEF**

7 Plaintiff, individually, and on behalf of all others similarly situated only with respect to the  
8 class claims, prays for relief and judgment against Defendant, jointly and severally, as follows:

9 **Class Certification**

- 10 1. That this action be certified as a class action with respect to the First, Second, Third,  
11 Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action;  
12 2. That Plaintiff be appointed as the representative of the Class; and,  
13 3. That counsel for Plaintiff be appointed as Class Counsel.

14 **As to the First Cause of Action**

- 15 4. That the Court declare, adjudge, and decree that Defendant violated California Labor  
16 Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum  
17 and straight time wages due;  
18 5. For unpaid wages as may be appropriate;  
19 6. For pre-judgment interest on any unpaid compensation commencing from the date  
20 such amounts were due;  
21 7. For liquidated damages;  
22 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to  
23 California Labor Code § 1194(a); and,  
24 9. For such other and further relief as the Court may deem equitable and appropriate.

25 **As to the Second Cause of Action**

- 26 10. That the Court declare, adjudge, and decree that Defendant violated California  
27 Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all  
28 overtime wages due;

11. For unpaid wages at overtime wage rates as may be appropriate;

12. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,

14. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

15. That the Court declare, adjudge, and decree that Defendant violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

16. For unpaid meal period premium wages as may be appropriate;

17. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and,

19. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

20. That the Court declare, adjudge, and decree that Defendant violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

21. For unpaid rest period premium wages as may be appropriate;

22. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and,

24. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

25. That the Court declare, adjudge and decree that Defendant violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment;

26. For statutory wage penalties pursuant to California Labor Code § 203 for former employees who have left Defendants' employ;

27. For pre-judgment interest on any unpaid wages from the date such amounts were due;

28. For reasonable attorneys' fees and for costs of suit incurred herein; and,

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

30. That the Court declare, adjudge, and decree that Defendant violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual damages, according to proof;

32. For statutory penalties pursuant to California Labor Code § 226(c);

33. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(h);

34. For reasonable attorneys' fees and for costs of suit incurred herein; and,

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

36. That the Court declare, adjudge, and decree that Defendant violated California Labor Code § 2802 by willfully failing to indemnify employees for expenditures;

37. For unpaid wages or unreimbursed business expenses as may be appropriate;

38. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

39. For reasonable attorneys' fees and for costs of suit incurred herein; and,

40. For such other and further relief as the Court may deem equitable and appropriate.

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As to the Eighth Cause of Action

41. That the Court declare, adjudge, and decree that Defendant violated California Business & Professions Code §§ 17200, *et seq.* by failing to pay for all hours worked (minimum, straight time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, and failing to indemnify employees for expenditures;

42. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment interest from the day such amounts were due and payable;

43. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendant and determined to have been wrongfully acquired by Defendant as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

44. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

45. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

46. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

47. That the Court declare, adjudge, and decree that Defendant violated the California Labor Code by failing to pay for all hours worked (minimum, straight time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, failing to pay all earned wages twice per month, failing to maintain accurate records of hours worked and meal periods, failing to timely pay final wages, failing to furnish accurate wage statements, and failing to indemnify for expenditures;

48. An award of civil penalties on behalf of Plaintiff, individually, and on behalf of the State of California, and all similarly aggrieved employees pursuant to PAGA;

49. Pre-judgment and post-judgment interest at the maximum rate allowed;

50. Attorneys' fees and costs reasonably incurred;

51. Injunctive and declaratory relief to the extent allowed by PAGA; and,

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As to all Causes of Action

52. For any additional relief that the Court deems just and proper.

July 25, 2024

Dated: ~~July 3, 2024~~

Respectfully submitted,

**WILSHIRE LAW FIRM**

By: \_\_\_\_\_

  
John G. Yslas  
Diego Aviles  
Harry Erganyan  
Mariam Nazaretyan

Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury as to all causes of action triable by jury.

July 25, 2024

Dated: ~~July 3, 2024~~

**WILSHIRE LAW FIRM**

By: \_\_\_\_\_

  
John G. Yslas  
Diego Aviles  
Harry Erganyan  
Mariam Nazaretyan

Attorneys for Plaintiff