

Emil Davtyan, Esq. (#299363)
Gregg Lander, Esq. (#194018)
Vanessa Ruggles, Esq. (#254031)
DAVTYAN LAW FIRM
1635 Pontius Avenue, Floor 2
Los Angeles, CA 90025-3361
Tel.: (424) 320-6420 / Fax: (424) 320-6454
Email: Emil@davtyanlaw.com
Email: Gregg@davtyanlaw.com
Email: Vanessa@davtyanlaw.com

Attorneys for Plaintiff TRACY DENISE DAVIS,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

TRACY DENISE DAVIS, on behalf of herself
and all others similarly situated,

Plaintiffs,

v.

INSIGHT PSYCHOLOGY AND ADDICTION,
INC. d/b/a "Nsight Psychology & Addiction,"
and/or "Nsight Mental Health & Wellness," a
California corporation; and DOES 1 to 10,
inclusive,

Defendants.

CLASS ACTION

Case No. 30-2023-01319920-CU-OE-CXC

FIRST AMENDED COMPLAINT FOR:

1. **FAILURE TO PAY ALL WAGES;**
2. **FAILURE TO PAY ALL WAGES
DUE TO ILLEGAL ROUNDING;**
3. **FAILURE TO PROVIDE ALL MEAL
PERIODS;**
4. **FAILURE TO AUTHORIZE AND
PERMIT ALL PAID REST PERIODS;**
5. **FAILURE TO PROVIDE LEGALLY-
COMPLIANT REST PERIODS;**
6. **FAILURE TO FULLY REIMBURSE
WORK EXPENSES;**
7. **DERIVATIVE FAILURE TO
TIMELY FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS;**
8. **INDEPENDENT FAILURE TO
TIMELY FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS;**
9. **DERIVATIVE VIOLATIONS OF
LABOR CODE §§ 201-202;**
10. **INDEPENDENT VIOLATIONS OF
LABOR CODE §§ 201-202;**
11. **PENALTIES UNDER LABOR CODE
§ 2699; AND**
12. **UNFAIR BUSINESS PRACTICES**

DEMAND FOR JURY TRIAL

Action filed: April 18, 2023

Trial date: None set

///

1 Plaintiff TRACY DENISE DAVIS, an individual on behalf of herself and all others
2 similarly situated (collectively referred to as “Plaintiffs”), hereby files this First Amended
3 Complaint against Defendant INSIGHT PSYCHOLOGY AND ADDICTION, INC. d/b/a “Nsight
4 Psychology & Addiction,” and/or “Nsight Mental Health & Wellness,” and DOES 1 to 10
5 (collectively referred to as “Defendants”). Plaintiffs are informed and believe, and on the basis of
6 that information and belief, allege as follows:

7 **I.**

8 **INTRODUCTION**

9 1. This is a civil action seeking recovery for Defendants’ violations of the California
10 Labor Code, California Business and Professions Code, the applicable Wage Orders issued by
11 the California Industrial Welfare Commission (the “IWC Wage Orders”) and related common law
12 principles.

13 2. Plaintiffs’ action seeks monetary damages, including full restitution from
14 Defendants as a result of Defendants’ unlawful, fraudulent and/or unfair business practices.

15 3. The acts complained of herein occurred, occur and will occur, at least in part,
16 within the time period from four years preceding the filing of the original Complaint herein, up
17 to and through the time of trial for this matter although this should not automatically be
18 considered the statute of limitations for any cause of action herein.

19 **RELEVANT JOB TITLES**

20 4. For introductory and general information only (and not to be considered a
21 proposed class definition), the relevant job titles held by the California citizens in this action are
22 Defendants’ hourly-paid, non-exempt employees who were subjected to Defendants’ policies and
23 practices as described herein. Any differences in job activities between the different individuals
24 in these positions were and are legally insignificant to the issues presented by this action.

25 **SUMMARY OF CLAIMS**

26 5. With regard to Defendants’ hourly-paid, non-exempt employees, Defendants
27 have:

28 ///

- a. Failed to pay straight time, minimum, and/or overtime wages for all hours worked;
- b. Failed to pay all wages due to illegal time rounding;
- c. Failed to provide all legally-requisite meal periods;
- d. Failed to authorize and permit all paid legally-requisite rest periods;
- e. Failed to provide legally-compliant rest periods;
- f. Failed to reimburse for all work-related expenses;
- g. Derivatively failed to timely furnish accurate itemized wage statements;
- h. Independently failed to timely furnish accurate itemized wage statements;
- i. Derivatively violated Labor Code §§ 201-202;
- j. Independently violated Labor Code §§ 201-202; and
- k. Incurred penalties under Labor Code §§ 2698, et seq.; and
- l. Conducted unfair business practices.

II.

PARTIES

PLAINTIFF TRACY DENISE DAVIS

6. Plaintiff TRACY DENISE DAVIS is an individual over the age of 18 and is now and/or at all times mentioned in this Complaint was a citizen of the State of California.

7. Plaintiff TRACY DENISE DAVIS worked for Defendants as a hourly-paid, non-exempt employee from approximately May 10, 2021 to June 15, 2022, in Defendants' California location in Newport Beach, California, which is in Orange County, California.

8. Plaintiff TRACY DENISE DAVIS seeks recovery herein from Defendants because with regard to Plaintiff TRACY DENISE DAVIS, while acting for Defendants in her capacity as an hourly-paid, non-exempt employee, Defendants have:

- a. Failed to pay straight time, minimum, and/or overtime wages for all hours worked;
- b. Failed to pay all wages due to illegal time rounding;
- c. Failed to provide all legally-requisite meal periods;

- d. Failed to authorize and permit all paid legally-requisite rest periods;
- e. Failed to provide legally-compliant rest periods;
- f. Failed to reimburse for all work-related expenses;
- g. Derivatively failed to timely furnish accurate itemized wage statements;
- h. Independently failed to timely furnish accurate itemized wage statements;
- i. Derivatively violated Labor Code §§ 201-202;
- j. Independently violated Labor Code §§ 201-202; and
- k. Incurred penalties under Labor Code §§ 2698, et seq.; and
- l. Conducted unfair business practices.

DEFENDANT INSIGHT PSYCHOLOGY AND ADDICTION, INC.

9. Defendant INSIGHT PSYCHOLOGY AND ADDICTION, INC. d/b/a “Nsight Psychology & Addiction,” and/or “Nsight Mental Health & Wellness” is now and/or at all times mentioned in this Complaint was a California corporation and the owner and operator of an industry, business and/or facility(/ies) licensed to do business and actually doing business in the State of California.

DOES 1 TO 10, INCLUSIVE

10. DOES 1 to 10, inclusive, are now and/or at all times mentioned in this Complaint were licensed to do business and/or actually doing business in California.

11. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to 10, inclusive and for that reason, DOES 1 to 10 are sued under such fictitious names under California Code of Civil Procedure § 474.

12. Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

ALL DEFENDANTS

13. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings, and circumstances alleged in this Complaint.

14. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful

practices, wrongs, complaints, injuries, and/or damages alleged in this Complaint.

15. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants, and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude, and/or employment.

16. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership, and common enterprise, and were acting within the course and scope and in pursuance of said joint venture, partnership, and common enterprise.

17. Defendants, and each of them, at all times mentioned in this Complaint concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries, and/or damages alleged in this Complaint.

18. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

19. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

III.

JURISDICTION AND VENUE

20. The California Superior Court has jurisdiction in this matter due to Defendants' aforementioned violations of California statutory law and/or related common law principles.

21. The California Superior Court also has jurisdiction in this matter because both the individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

22. The California Superior Court also has jurisdiction in this matter because during their employment with Defendants, Plaintiff TRACY DENISE DAVIS and the members of the

putative Classes herein were all California citizens and Defendant INSIGHT PSYCHOLOGY AND ADDICTION, INC. d/b/a “Nsight Psychology & Addiction,” and/or “Nsight Mental Health & Wellness,” is a California corporation. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law.

23. Venue is proper in Orange County under Code of Civil Procedure § 395(a) and Code of Civil Procedure § 395.5 in that liability arose there because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts business, and/or has an agent therein.

IV.

CLASS ACTION ALLEGATIONS

24. Code of Civil Procedure § 382 provides in pertinent part: “[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.” Plaintiffs bring this suit as a class action under Code of Civil Procedure § 382.

25. The putative classes Plaintiffs will seek to certify are currently composed of and defined as follows:

- a. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding the payment of straight time, minimum and/or overtime wages as specifically described herein (hereinafter, the “Wage Class”);
- b. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period to whom were Defendants applied a time rounding policy and practice as specifically describes herein (hereinafter, the “Rounding Class”);
- c. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding meal periods as specifically

described herein (hereinafter, the “Meal Period Class”);

- d. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding paid rest periods as specifically described herein (hereinafter, the “Rest Period Class”);
- e. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding providing legally-compliant rest periods as specifically described herein (hereinafter, the “On Premise Rest Period Class”);
- f. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding business expense reimbursement as specifically described herein (hereinafter, the “Reimbursements Class”);
- g. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were derivatively subjected to Defendants’ policies and practices regarding itemized wage statements as specifically described herein (hereinafter, the “Derivative Wage Statement Class”);
- h. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were independently subjected to Defendants’ policies and practices regarding itemized wage statements as specifically described herein (hereinafter, the “Independent Wage Statement Class”);
- i. All formerly-employed California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were derivatively subjected to Defendants’ policies and practices regarding Labor Code § 203 and the payment of final wages as specifically described herein

(hereinafter, the “Derivative LC 203 Class”);

j. All formerly-employed California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were independently subjected to Defendants’ policies and practices regarding Labor Code § 203 and the payment of final wages as specifically described herein (hereinafter, the “Independently LC 203 Class”);

k. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period regarding whom Defendants have engaged in unlawful, unfair and/or fraudulent business acts or practices prohibited by Business & Professions Code §§ 17200, et seq. as specifically described herein (hereinafter, the “17200 Class”).

26. The Wage Class, Rounding Class, Meal Class, Rest Class, On Premise Rest Period Class, Reimbursement Class, Derivative Wage Statement Class, Independent Wage Statement Class, Derivative LC 203 Class, Independent LC 203 Class, and 17200 Class are hereinafter collectively referred to as the “Classes.”

27. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or necessary to amend the definition of the Classes. Plaintiffs will formally define and designate a class definition at such time when Plaintiffs seek to certify the Classes alleged herein.

28. Numerosity (Code of Civil Procedure § 382):

- a. The potential quantity of members of the Classes as defined is so numerous that joinder of all members is unfeasible and impractical;
- b. The disposition of the claims of the members of the Classes through this class action will benefit both the parties and this Court;
- c. The quantity of members of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the membership of the Classes numbers greater than 100 individuals; and
- d. The quantity and identity of such membership is readily ascertainable via inspection of Defendants’ records.

1 29. Superiority (Code of Civil Procedure § 382): The nature of this action and the
2 nature of the laws available to Plaintiffs make the use of the class action format particularly
3 efficient and the appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein,
4 as follows:

- 5 a. California has a public policy that encourages the use of the class action
6 device;
- 7 b. By establishing a technique whereby the claims of many individuals can be
8 resolved at the same time, the class suit both eliminates the possibility of
9 repetitious litigation and provides small claimants with a method of obtaining
10 redress for claims which would otherwise be too small to warrant individual
11 litigation;
- 12 c. This case involves large corporate Defendants and a large number of
13 individual Class members with many relatively small claims and common
14 issues of law and fact;
- 15 d. If each individual member of the Classes was required to file an individual
16 lawsuit, the large corporate Defendants would necessarily gain an
17 unconscionable advantage because Defendants would be able to exploit and
18 overwhelm the limited resources of each individual member of the Classes
19 with Defendants' vastly superior financial and legal resources;
- 20 e. Requiring each individual member of the Classes to pursue an individual
21 remedy would also discourage the assertion of lawful claims by the members
22 of the Classes who would be disinclined to pursue an action against
23 Defendants because of an appreciable and justifiable fear of retaliation and
24 permanent damage to their lives, careers, and well-being;
- 25 f. Proof of a common business practice or factual pattern, of which the members
26 of the Classes experienced, is representative of the Classes herein and will
27 establish the right of each of the members of the Classes to recover on the
28 causes of action alleged herein;

- 1 g. Absent class treatment, the prosecution of separate actions by the individual
2 members of the Classes, even if possible, would likely create:
- 3 i) a substantial risk of each individual plaintiff presenting in separate,
4 duplicative proceedings the same or essentially similar arguments and
5 evidence, including expert testimony;
- 6 ii) a multiplicity of trials conducted at enormous expense to both the
7 judicial system and the litigants;
- 8 iii) inconsistent or varying verdicts or adjudications with respect to the
9 individual members of the Classes against Defendants;
- 10 iv) potentially incompatible standards of conduct for Defendants; and
11 v) potentially incompatible legal determinations with respect to
12 individual members of the Classes which would, as a practical matter,
13 be dispositive of the interest of the other members of the Classes who
14 are not parties to the adjudications or which would substantially
15 impair or impede the ability of the members of the Classes to protect
16 their interests.
- 17 h. The claims of the individual members of the Classes are not sufficiently large
18 to warrant vigorous individual prosecution considering all of the concomitant
19 costs and expenses attendant thereto;
- 20 i. Courts seeking to preserve efficiency and other benefits of class actions
21 routinely fashion methods to manage any individual questions; and
- 22 j. The Supreme Court of California urges trial courts, which have an obligation
23 to consider the use of innovative procedural tools to certify a manageable
24 class, to be procedurally innovative in managing class actions.

25 30. Well-defined Community of Interest: Plaintiffs also meet the established
26 standards for class certification, as follows:

- 27 a. Typicality: The claims of Plaintiff TRACY DENISE DAVIS are typical of the
28 claims of all members of the Classes she seeks to represent because all members

of the Classes sustained injuries and damages arising out of Defendants' common course of conduct in violation of law and the injuries and damages of all members of the Classes were caused by Defendants' wrongful conduct in violation of law, as alleged herein.

b. Adequacy: Plaintiff TRACY DENISE DAVIS:

- i) is an adequate representative of the Classes she seeks to represent;
- ii) will fairly protect the interests of the members of the Classes;
- iii) has no interests antagonistic to the members of the Classes; and
- iv) will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

c. Predominant Common Questions of Law or Fact: There are common questions of law and/or fact as to the members of the Classes which predominate over questions affecting only individual members of the Classes, including, without limitation:

- i) Whether Defendants paid the legal and appropriate straight time pay, minimum wage pay and/or overtime pay for all work hours to the members of the Wage Class;
- ii) Whether Defendants' time rounding policies and practices are illegal with regard to the members of the Rounding Class;
- iii) Whether Defendants failed and continue to fail to provide legally-requisite meal periods to the members of the Meal Period Class in violation of the Labor Code and Section 11 of the IWC Wage Orders;
- iv) Whether Defendants failed and continue to fail to authorize and permit paid legally-requisite rest periods to the members of the Rest Period Class in violation of the Labor Code and Section 12 of the IWC Wage Orders;
- v) Whether Defendants failed and continue to fail to provide legally-compliant rest periods to the members of the Rest Period Class in

violation of the Labor Code and Section 12 of the IWC Wage Orders;

- vi) Whether Defendants failed to fully reimburse for all work-related expenses incurred by the members of the Reimbursements Class;
- vii) Whether Defendants derivatively failed to timely furnish accurate, itemized and legal wage statements to the members of the Derivative Wage Statement Class;
- viii) Whether Defendants independently failed to timely furnish accurate, itemized and legal wage statements to the members of the Independent Wage Statement Class;
- ix) Whether Defendants are derivatively liable under Labor Code § 203 to the members of the Derivative LC 203 Class;
- x) Whether Defendants are independently liable under Labor Code § 203 to the members of the Independent LC 203 Class;
- xi) Whether Defendants' conduct constitutes unfair business practices within the meaning of Business & Professions Code §§ 17200, et seq.;
- xii) Whether the members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;
- xiii) Whether the members of the Classes are entitled to injunctive relief;
- xiv) Whether the members of the Classes are entitled to restitution; and
- xv) Whether Defendants are liable for attorneys' fees and costs.

31. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action.

///

///

///

///

///

///

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

(On Behalf of the Wage Class)

(Against All Defendants)

32. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

33. Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their work.

34. Labor Code § 510(a) states in pertinent part: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee.”

35. Labor Code § 1182.12, effective July 1, 2014, states: “Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.” Further, under Labor Code § 1182.12(b)(1)(A), for any employer who employs 26 or more employees, the minimum wage shall be as follows: “From January 1, 2017, to December 31, 2017, inclusive, - ten dollars and fifty cents (\$10.50) per hour.” Under Labor Code § 1182.12(b)(1)(B), for any employer who employs 26 or more employees, the minimum wage shall be as follows: “From January 1, 2018, to December 31, 2018, inclusive, - eleven dollars (\$11) per hour.” Under Labor Code § 1182.12(b)(1)(C), for any employer who employs 26 or more employees, the minimum wage shall be as follows: “From January 1, 2019, to December 31, 2019, inclusive, - twelve dollars (\$12) per hour.” Under Labor Code § 1182.12(b)(1)(D), for any employer who employs 26 or

1 more employees, the minimum wage shall be as follows: “From January 1, 2020, to December
2 31, 2020, inclusive, - thirteen dollars (\$13) per hour.” Under Labor Code § 1182.12(b)(1)(E), for
3 any employer who employs 26 or more employees, the minimum wage shall be as follows:
4 “From January 1, 2021, to December 31, 2021, inclusive, - fourteen dollars (\$14) per hour.”
5 Finally, under Labor Code § 1182.12(b)(1)(F), for any employer who employs 26 or more
6 employees, the minimum wage shall be as follows: “From January 1, 2022, and until adjusted by
7 subdivision (c) - fifteen dollars (\$15) per hour.”

8 36. Labor Code § 1194(a) states: “Notwithstanding any agreement to work for a
9 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
10 compensation applicable to the employee is entitled to recover in a civil action the unpaid
11 balance of the full amount of this minimum wage or overtime compensation, including interest
12 thereon, reasonable attorney’s fees, and costs of suit.”

13 37. Further, under Labor Code § 1197, payment of less than the minimum wage fixed
14 by the Labor Commission is unlawful.

15 38. Under Labor Code § 1198, it is unlawful to employ persons for longer than the
16 hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
17 Wage Order(s).

18 39. Under the IWC Wage Order(s), Defendants are required to pay the members of
19 the Wage Class for all hours worked, meaning the time during which an employee is subject to
20 the control of an employer, including all the time the employee is suffered or permitted to work,
21 whether or not required to do so.

22 40. Defendants, as a matter of established company policy and procedure, at each and
23 every one of the individual facilities owned and/or operated by Defendants, consistently:

- 24 a. Administered a uniform company policy and practice as to the pay policies
25 regarding the members of the Wage Class;
- 26 b. Required the members of the Wage Class to go through COVID-19 and/or
27 other health screenings before they clocked in for work and/or required the
28

1 members of the Wage Class to use their personal mobile devices for work-
2 related activities before they clocked in for work;

3 c. Scheduled to work and/or required the members of the Wage Class to work
4 without paying for all time they were under Defendants' control.

5 41. Because Defendants required the members of the Wage Class to remain under
6 Defendants' control without paying therefore, this resulted in the members of the Wage Class
7 earning less than the legal minimum wage in the State of California.

8 42. Defendants' pattern, practice and uniform administration of corporate policy
9 regarding illegal employee compensation as described herein is unlawful and creates an
10 entitlement, under Labor Code § 218, to recovery by Plaintiffs and the members of the Wage
11 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
12 appropriate rate.

13 43. Further, Defendants' pattern and practice in uniform administration of corporate
14 policy regarding Defendants' failure to pay the legal minimum wage to the members of the
15 Wage Class as described herein is unlawful and creates entitlement, under Labor Code § 1194(a),
16 to recovery by the members of the Wage Class, in a civil action, for the unpaid balance of the
17 full amount of the unpaid minimum wages owed, calculated as the difference between the
18 straight time compensation paid and the applicable minimum wage, including interest thereon.

19 44. Under Labor Code § 1194.2(a) (which provides that in any action under Labor
20 Code § 1194, an employee shall be entitled to recover liquidated damages), the members of the
21 Wage Class seek recovery of liquidated damages on the straight-time portion of uncompensated
22 hours of work (not including the overtime portion thereof) in an amount equal to the wages
23 unlawfully unpaid and interest thereon.

24 45. That calculation of individual damages for the members of the Wage Class may at
25 some point be required does not foreclose the possibility of taking common evidence on
26 questions regarding their entitlement to overtime compensation.

27 46. Under Labor Code §§ 218.6 and 1194(a) and Civil Code § 3287, the members of
28 the Wage Class seek recovery of pre-judgment interest on all amounts recovered herein.

1 47. Under Labor Code §§ 218.5 and/or 1194, the members of the Wage Class request
2 that the Court award reasonable attorneys' fees and costs incurred by them in this action.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY ALL WAGES DUE TO ILLEGAL ROUNDING**

5 **(On Behalf of the Rounding Class)**

6 **(Against All Defendants)**

7 48. Plaintiffs incorporate by reference and reallege each and every one of the
8 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
9 forth herein.

10 49. Labor Code § 204 establishes the fundamental right of all employees in the State
11 of California to be paid wages, including straight time and overtime, in a timely fashion for their
12 work.

13 50. Labor Code § 510(a) states in pertinent part: "Any work in excess of eight hours in
14 one workday and any work in excess of 40 hours in any one workweek ... shall be compensated
15 at the rate of no less than one and one-half times the regular rate of pay for any employee."

16 51. Labor Code §1182.12, effective July 1, 2014, states: "Notwithstanding any other
17 provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not
18 less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all
19 industries shall be not less than ten dollars (\$10) per hour." Further, pursuant to Labor Code
20 §1182.12(b)(1)(A), for any employer who employs 26 or more employees, the minimum wage
21 shall be as follows: "From January 1, 2017, to December 31, 2017, inclusive, - ten dollars and
22 fifty cents (\$10.50) per hour." Pursuant to Under Labor Code § 1182.12(b)(1)(B), for any
23 employer who employs 26 or more employees, the minimum wage shall be as follows: "From
24 January 1, 2018, to December 31, 2018, inclusive, - eleven dollars (\$11) per hour." Under Labor
25 Code § 1182.12(b)(1)(C), for any employer who employs 26 or more employees, the minimum
26 wage shall be as follows: "From January 1, 2019, to December 31, 2019, inclusive, - twelve
27 dollars (\$12) per hour." Under Labor Code § 1182.12(b)(1)(D), for any employer who employs
28 26 or more employees, the minimum wage shall be as follows: "From January 1, 2020, to

December 31, 2020, inclusive, - thirteen dollars (\$13) per hour.” Under Labor Code §1182.12(b)(1)(E), for any employer who employs 26 or more employees, the minimum wage shall be as follows: “From January 1, 2021, to December 31, 2021, inclusive, - fourteen dollars (\$14) per hour.” Finally, Under Labor Code § 1182.12(b)(1)(F), for any employer who employs 26 or more employees, the minimum wage shall be as follows: “From January 1, 2022, and until adjusted by subdivision (c) - fifteen dollars (\$15) per hour.”

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

53. Further, under Labor Code § 1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

54. Under Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

55. Under the IWC Wage Order(s), Defendants are required to pay the members of the Rounding Class for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

56. Defendants, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants, consistently:

- a. Administered a uniform company policy and practice as to the rounding policies regarding the members of the Rounding Class;
- b. Used a timekeeping system that could track the exact amount of time worked; and
- c. Rounded the actual time worked and recorded by the members of the Rounding Class, usually down, so that during the course of their employment,

1 the members of the Rounding Class were paid far less than they would have
2 been paid had they been paid for actual recorded time rather than “rounded”
3 time.

4 57. Because Defendants required the members of the Rounding Class to remain under
5 Defendants’ control without paying therefore, this resulted in the members of the Rounding
6 Class earning less than the legal minimum wage in the State of California.

7 58. Defendants’ pattern, practice and uniform administration of corporate policy
8 regarding illegal employee compensation as described herein is unlawful and creates an
9 entitlement, pursuant to Labor Code § 218, to recovery by Plaintiffs and the members of the
10 Rounding Class, in a civil action, of the unpaid balance of the full amount of wages owing,
11 calculated at the appropriate rate.

12 59. Further, Defendants’ pattern and practice in uniform administration of corporate
13 policy regarding Defendants’ failure to pay the legal minimum wage to the members of the
14 Rounding Class as described herein is unlawful and entitles them, under Labor Code § 1194(a),
15 to recovery of the unpaid balance of the full amount of the unpaid minimum wages owed,
16 calculated as the difference between the straight time compensation paid and the applicable
17 minimum wage (and/or the full amount of unpaid overtime compensation, which includes any
18 unpaid straight time and unpaid overtime premium for overtime hours worked), including
19 interest thereon.

20 60. Under Labor Code § 1194.2(a) (which provides that in any action under Labor
21 Code § 1194, an employee shall be entitled to recover liquidated damages), the members of the
22 Rounding Class seek recovery of liquidated damages on the straight-time portion of
23 uncompensated hours of work (not including the overtime portion thereof) in an amount equal to
24 the wages unlawfully unpaid and interest thereon.

25 61. That calculation of individual damages for the members of the Rounding Class
26 may at some point be required does not foreclose the possibility of taking common evidence on
27 questions regarding their entitlement to overtime compensation.

28 62. Under Labor Code § 218.6, Labor Code § 1194(a) and Civil Code § 3287, the

1 members of the Rounding Class seek recovery of pre-judgment interest on all amounts recovered
2 herein.

3 63. Under Labor Code § 218.5 and/or Labor Code § 1194, the members of the
4 Rounding Class request that the Court award reasonable attorneys' fees and costs incurred by
5 them in this action.

6 **THIRD CAUSE OF ACTION**
7 **FAILURE TO PROVIDE ALL MEAL PERIODS**
8 **(On Behalf of the Meal Period Class)**
9 **(Against All Defendants)**

10 64. Plaintiffs incorporate by reference and reallege each and every one of the
11 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
12 forth herein.

13 65. Labor Code § 226.7(b) provides that "An employer shall not require an employee
14 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
15 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
16 Safety and Health Standards Board, or the Division of Occupational Safety and Health."

17 66. Labor Code § 512 provides that "An employer may not employ an employee for a
18 work period of more than five hours per day without providing the employee with a meal period
19 of not less than 30 minutes, except that if the total work period per day of the employee is no
20 more than six hours, the meal period may be waived by mutual consent of both the employer and
21 employee. An employer may not employ an employee for a work period of more than 10 hours
22 per day without providing the employee with a second meal period of not less than 30 minutes,
23 except that if the total hours worked is no more than 12 hours, the second meal period may be
24 waived by mutual consent of the employer and the employee only if the first meal period was not
25 waived."

26 67. Labor Code § 516 provides that the Industrial Welfare Commission "may adopt or
27 amend working condition orders with respect to break periods, meal periods, and days of rest for
28 any workers in California consistent with the health and welfare of those workers."

1 68. Section 11(C) of the IWC Wage Orders provides “Unless the employee is relieved
2 of all duty during a 30 minute meal period, the meal period shall be considered an “on duty”
3 meal period and counted as time worked. An “on duty” meal period shall be permitted only when
4 the nature of the work prevents an employee from being relieved of all duty and when by written
5 agreement between the parties an on-the-job paid meal period is agreed to. The written
6 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

7 69. Section 11(D) of the IWC Wage Order(s) provides “If an employer fails to
8 provide an employee a meal period in accordance with the applicable provisions of this order, the
9 employer shall pay the employee 1 hour of pay at the employee’s regular rate of compensation
10 for each workday that the meal period is not provided.”

11 70. On one or more occasions, the members of the Meal Period Class worked over 5
12 hours per shift and therefore were entitled to an uninterrupted meal period of not less than 30
13 minutes prior to exceeding 5 hours of employment.

14 71. Further, on one or more occasions, some members of the Meal Period Class
15 worked over 10 hours per shift and therefore were entitled to an uninterrupted second meal
16 period of not less than 30 minutes prior to exceeding 10 hours of employment.

17 72. The members of the Meal Period Class did not validly or legally waive their meal
18 periods, by mutual consent with Defendants or otherwise.

19 73. The members of the Meal Period Class did not enter into any written agreement
20 with Defendants agreeing to an on-the-job paid meal period.

21 74. As a matter of Defendants’ established company policy, Defendants failed to
22 always comply with the meal period requirements established by Labor Code §§ 226.7, 512, and
23 516, and Section 11 of the IWC Wage Order(s) by failing to always provide the members of the
24 Meal Period Class with a first and in some cases a second legally compliant meal period.

25 75. Under Section 11(D) of the IWC Wage Order(s) and Labor Code § 226.7(c)
26 which states “If an employer fails to provide an employee a meal or rest or recovery period in
27 accordance with a state law, including, but not limited to, an applicable statute or applicable
28 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and

1 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
2 pay the employee one additional hour of pay at the employee's regular rate of compensation for
3 each workday that the meal or rest or recovery period is not provided.,” the members of the Meal
4 Period Class are entitled to damages in an amount equal to one (1) additional hour of pay at each
5 employee’s regular rate of compensation for each work day that the meal period was not
6 provided, in a sum to be proven at trial.

7 76. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Meal
8 Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS**

11 **(On Behalf of the Rest Period Class)**

12 **(Against All Defendants)**

13 77. Plaintiffs incorporate by reference and reallege each and every one of the
14 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
15 forth herein.

16 78. Labor Code § 226.7(b) provides “An employer shall not require an employee to
17 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
18 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
19 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

20 79. Labor Code § 516 provides that the Industrial Welfare Commission “may adopt or
21 amend working condition orders with respect to break periods, meal periods, and days of rest for
22 any workers in California consistent with the health and welfare of those workers.”

23 80. Section 12(A) of the IWC Wage Order(s) states: “Every employer shall authorize
24 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
25 of each work period. The authorized rest period time shall be based on the total hours worked
26 daily at the rate of 10 minutes net rest time per 4 hours or major fraction thereof. However, a rest
27 period need not be authorized for employees whose total daily work time is less than 3 ½ hours.

28 ///

1 Authorized rest period time shall be counted as hours worked for which there shall be no
2 deduction from wages.”

3 81. Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to provide
4 an employee a rest period in accordance with the applicable provisions of this order, the
5 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
6 compensation for each workday that the rest period is not provided.”

7 82. The members of the Rest Period Class sometimes worked over 4 hours per shift.
8 Further, the members of the Rest Period Class sometimes worked over 6 hours per shift, and in
9 some cases over 10 hours per shift.

10 83. The members of the Rest Period Class were entitled to a rest period of not less
11 than 10 minutes for every 4 hours of work, or major fraction thereof.

12 84. As a matter of Defendants’ established company policy, Defendants failed to
13 always authorize and permit all required rest periods established by Labor Code §§ 226.7 and
14 516, and Section 12 of the IWC Wage Order(s).

15 85. Under Section 12 of the IWC Wage Order(s) and Labor Code § 226.7(b) which
16 states “If an employer fails to provide an employee a meal or rest or recovery period in
17 accordance with a state law, including, but not limited to, an applicable statute or applicable
18 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
19 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
20 pay the employee one additional hour of pay at the employee’s regular rate of compensation for
21 each workday that the meal or rest or recovery period is not provided,” the members of the Rest
22 Period Class are entitled to damages in an amount equal to one (1) additional hour of pay at each
23 employee’s regular rate of compensation for each work day that one or more rest periods were
24 not so provided.

25 86. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Rest
26 Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE LEGALLY-COMPLIANT REST PERIODS**

3 **(On Behalf of the On Premise Rest Period Class)**

4 **(Against All Defendants)**

5 87. Plaintiffs incorporate by reference and reallege each and every one of the
6 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
7 forth herein.

8 88. Labor Code § 226.7(b) provides that “An employer shall not require an employee
9 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
10 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
11 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

12 89. Labor Code § 516 provides that the Industrial Welfare Commission “may adopt or
13 amend working condition orders with respect to break periods, meal periods, and days of rest for
14 any workers in California consistent with the health and welfare of those workers.”

15 90. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269, the
16 California Supreme Court held that “during rest periods employers must relieve employees of all
17 duties and relinquish control over how employees spend their time.” The court further held that a
18 policy that “tethered by time and policy to particular locations” is inconsistent with the required
19 relinquishment of control. (*Ibid.*) The court noted that employees must be free to “[take
20 a] brief walk,” or “take care of other personal matters ...like pumping breast milk ...or
21 completing a phone call to arrange child care.” (*Id.* at p. 270.)

22 91. Section 12(A) of the IWC Wage Order states: “Every employer shall authorize
23 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
24 of each work period. The authorized rest period time shall be based on the total hours worked
25 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
26 However, a rest period need not be authorized for employees whose total daily work time is less
27 than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
28 worked for which there shall be no deduction from wages.”

1 92. Section 12(B) of the IWC Wage Order states: “If an employer fails to provide an
2 employee a rest period in accordance with the applicable provisions of this order, the employer
3 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for
4 each workday that the rest period is not provided.”

5 93. The members of the On Premise Rest Period Class sometimes worked over four
6 hours per shift. Further, the members of the On Premise Rest Period Class sometimes worked
7 over six hours per shift, and in some cases over ten hours per shift.

8 94. The members of the On Premise Rest Period Class were entitled to a rest period
9 of not less than ten minutes prior to exceeding four hours of employment.

10 95. Defendants’ rest period policy required members of the On Premise Rest Period
11 Class to remain on premise during their rest periods.

12 96. As such, the members of the On Premise Rest Period Class were discouraged
13 from taking legally-compliant breaks in violation of *Brinker Restaurant Corp. v. Superior Court*
14 (2012) 53 Cal.4th 1004, 1040, which held, “The wage orders and governing statute do not
15 countenance an employer’s exerting coercion against the taking of, creating incentives to forgo,
16 or otherwise encouraging the skipping of legally protected breaks.”

17 97. As a matter of Defendants’ established company policy, Defendants failed to
18 provide legally compliant rest periods established by Labor Code §§ 226.7 and 516 and Section
19 12 of the IWC Wage Order, because Defendants exerted coercion against the taking of legally
20 protected breaks by using Defendants’ rest period policy to prevent the members of the On
21 Premise Rest Period Class from taking rest periods in areas other than designated break rooms
22 and to forbid members of the On Premise Rest Period Class from leaving Defendants’ facilities.

23 98. Defendants’ policies and practices, separately and in combination, violated the
24 Labor Code and the IWC Wage Order by failing to relinquish control during rest periods,
25 including but not limited to prohibiting the members of the On Premise Rest Period Class by
26 expressly discouraging leaving Defendants’ premises for rest periods and forbidding rest periods
27 outside of Defendants’ designated areas.

28 99. These policies violate *Brinker’s* prohibition on “otherwise encouraging the

1 skipping of legally protected breaks.”

2 100. The California State of California Department of Industrial Relations, regarding
3 an employer’s obligation to provide off premise rest periods, even states on its website
4 (https://www.dir.ca.gov/dlse/faq_restperiods.htm):

5 **Can my employer require that I stay on the work premises during**
6 **my rest period?**

7 No, your employer cannot impose any restraints not inherent in the rest
8 period requirement itself. In *Augustus v. ABM Security Services, Inc.*,
9 (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the
10 rest period requirement “obligates employers to permit-and authorizes
11 employees to take-off-duty rest periods. That is, during rest periods
12 employers must relieve employees of all duties and relinquish control
13 over how employees spend their time.” (citation omitted) As a
14 practical matter, however, if an employee is provided a ten minute rest
15 period, the employee can only travel five minutes from a work post
16 before heading back to return in time.

17 101. Defendants’ policies and practices requiring and encouraging the members of the
18 On Premise Rest Period Class to seek management approval to leave Defendants’ premises
19 during a rest period violates the Labor Code and the IWC Wage Order, as these employees are
20 permitted by law to leave Defendants’ premises notwithstanding any such approval or
21 disapproval from Defendants’ management. California law does not allow an employee to be
22 required or “encouraged” to seek approval from management to leave the premises during a rest
23 period, when by law they are permitted to do so notwithstanding any such management approval
24 or disapproval.

25 102. Under Section 12 of the IWC Wage Order and Labor Code § 226.7(b) which
26 states “if an employer fails to provide an employee a meal or rest period in accordance with an
27 applicable order of the Industrial Welfare Commission, the employer shall pay the employee one
28 additional hour of pay at the employee’s regular rate of compensation for each work day that the

1 meal or rest period is not provided,” the members of the On Premise Rest Period Class are
2 entitled to damages in an amount equal to one additional hour of pay at each employee’s regular
3 rate of compensation for each work day that the rest period was not so provided.

4 103. Under Labor Code § 218.6 and Civil Code § 3287, the members of the On
5 Premise Rest Period Class seek recovery of pre-judgment interest on all amounts recovered
6 herein.

7 **SIXTH CAUSE OF ACTION**
8 **FAILURE TO FULLY REIMBURSE WORK EXPENSES**
9 **(On Behalf of the Reimbursements Class)**
10 **(Against All Defendants)**

11 104. Plaintiffs incorporate by reference and reallege each and every one of the
12 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
13 forth herein.

14 105. Under Labor Code § 2802(a), “an employer shall indemnify his or her employee
15 for all necessary expenditures or losses incurred by the employee in direct consequence of the
16 discharge of his or her duties, or of his or her obedience to the directions of the employer.”

17 106. Labor Code § 2804 states in pertinent part: “Any contract or agreement, express
18 or implied, made by any employee to waive the benefits of this article or any part thereof is null
19 and void, and this article shall not deprive any employee or his personal representative of any
20 right or remedy to which he is entitled under the laws of this State.”

21 107. As a matter of Defendants’ established company policy, the members of the
22 Reimbursements Class were and are required by Defendants to personally incur necessary
23 expenditures in direct consequence of the discharge of their duties, including but not limited to
24 personal mobile devices for work-related activities.

25 108. Defendants are legally required to reimburse the members of the Reimbursements
26 Class for all necessary expenditures.

27 109. As a proximate result of the aforementioned violations of Labor Code § 2802(a),
28 the members of the Reimbursements Class are entitled to recovery from Defendants of the

unpaid balance for all necessary expenditures, including but not limited to the aforementioned expenditures.

110. As a proximate result of the aforementioned violations of Labor Code §450(a) and §2802(a), the members of the Reimbursements Class have been damaged in an amount according to proof at the time of trial.

111. Under Labor Code § 2802(b), the members of the Reimbursements Class request that the Court award interest at the same rate as judgments in civil actions, accruing from the date on which each member of the Reimbursements Class incurred the necessary expenditure or loss.

112. Under Labor Code § 2802(c), the members of the Reimbursements Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

SEVENTH CAUSE OF ACTION

DERIVATIVE FAILURE TO TIMELY

FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(On Behalf of the Derivative Wage Statement Class)

113. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

114. Labor Code § 226(a) states in pertinent part: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period and the corresponding number of hours worked at each hourly rate by the employee....".

///

1 115. Further, the IWC Wage Orders § 7(A) states in pertinent part: “(A) Every
2 employer shall keep accurate information with respect to each employee including the following:
3 (3) Time records showing when the employee begins and ends each work period. Meal periods,
4 split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked
5 in the payroll period and applicable rates of pay....”

6 116. Therefore, under Labor Code § 226(a) and the IWC Wage Orders § 7(A),
7 California employers are required to maintain accurate records pertaining to the total hours
8 worked for Defendants by the members of the Derivative Wage Statement Class, including but
9 not limited to, beginning and ending of each work period, meal period and split shift interval, the
10 total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

11 117. As a pattern and practice, in violation of Labor Code § 226(a) and the IWC Wage
12 Orders § 7(A), Defendants did not and still do not furnish each of the members of the Derivative
13 Wage Statement Class with an accurate itemized statement in writing showing (1) gross wages
14 earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or
15 (5) all applicable hourly rates in effect during each respective pay period and the corresponding
16 number of hours worked at each hourly rate by each respective individual.

17 118. As set forth herein in prior causes of action, Defendants allegedly failed to pay the
18 members of the Derivative Wage Statement Class all wages due and owing.

19 119. As a derivative result of this failure to pay wages and as a pattern and practice in
20 violation of Labor Code § 226(a) and the IWC Wage Orders § 7(A), Defendants did not and do
21 not maintain accurate records pertaining to the total hours worked for Defendants by the
22 members of the Derivative Wage Statement Class, including but not limited to, beginning and
23 ending of each work period, meal period interval, total daily hours worked, total hours worked
24 per pay period, and the applicable rates of pay.

25 120. As of January 1, 2013, SB 1255 amended Labor Code § 226 to clarify that an
26 employee suffers injury if the employer fails to provide accurate and complete information as
27 required by any one or more items listed in Labor Code § 226(a)(1)-(9) and the employee cannot
28 ///

promptly and easily ascertain requisite information without reference to other documents or information.

121. Here, the members of Derivative Wage Statement Class suffered injury because, due to Defendants' failure to pay all wages due and owing, Defendants derivatively failed to provide accurate and complete information as required by one or more items listed in Labor Code § 226(a)(1)-(9).

122. In addition, the members of the Derivative Wage Statement Class have suffered injury as a result of Defendants' failure to maintain accurate records for the members of the Derivative Wage Statement Class in that the members of the Derivative Wage Statement Class were not timely provided written accurate itemized statements showing all requisite information, including but not limited to total hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and the IWC Wage Orders § 7(A), such that the members of the Derivative Wage Statement Class were misled by Defendants as to the correct information regarding various items, including but not limited to total hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

123. The actual injuries suffered by the members of the Derivative Wage Statement Class as a result of Defendants' knowing and intentional failure to maintain accurate records for the members of the Derivative Wage Statement Class include but are not limited to:

- a. Confusion over whether they received all wages owed them by Defendants;
- b. The difficulty and expense of attempting to reconstruct time and pay records;
- c. Being forced to engage in mathematical computations to analyze whether Defendants' wages in fact compensated for all hours worked;
- d. The inability to accurately calculate wage rates complicated by the fact that wage statement information required by Labor Code § 226 is missing;
- e. That such practice prevents the members of the Derivative Wage Statement Class from being able to effectively challenge information on their wage

1 statements; and/or

2 f. The difficulty and expense of filing and maintaining this lawsuit, and the
3 discovery required to collect and analyze the very information that California
4 law requires.

5 125. Under Labor Code § 226(e), the members of the Derivative Wage Statement
6 Class are entitled to \$50.00 per employee for the initial pay period in which a violation
7 hereunder occurs and \$100.00 per employee for each violation in a subsequent pay period, not
8 exceeding an aggregate penalty of \$4,000.00.

9 126. Under Labor Code § 226(g), the currently-employed members of the Derivative
10 Wage Statement Class are entitled to injunctive relief to ensure Defendants' compliance with
11 Labor Code § 226.

12 127. Under Labor Code § 226(e) and/or § 226(g), the members of the Derivative Wage
13 Statement Class are also entitled to an award of costs and reasonable attorneys' fees.

14 **EIGHTH CAUSE OF ACTION**

15 **INDEPENDENT FAILURE TO TIMELY**

16 **FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

17 **(On Behalf of the Independent Wage Statement Class)**

18 **(Against All Defendants)**

19 128. Plaintiffs incorporate by reference and reallege each and every one of the
20 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
21 forth herein.

22 129. Labor Code § 226(a) states in pertinent part: ““Every employer shall,
23 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
24 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
25 separately when wages are paid by personal check or cash, an accurate itemized statement in
26 writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all
27 deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee
28 is paid... (8) the name and address of the legal entity that is the employer, and (9) all applicable

1 hourly rates in effect during each the pay period and the corresponding number of hours worked
2 at each hourly rate by the employee...”.

3 130. As a pattern and practice, in violation of Labor Code § 226(a), Defendants did not
4 and still do not furnish each of the members of the Independent Wage Statement Class with an
5 accurate itemized statement in writing showing all applicable hourly rates in effect during the
6 pay period.

7 131. As of January 1, 2013, SB 1255 amended Labor Code § 226 to clarify that an
8 employee suffers injury if the employer fails to provide accurate and complete information as
9 required by any one or more items listed in Labor Code § 226(a)(1)-(9) and the employee cannot
10 promptly and easily ascertain requisite information without reference to other documents or
11 information.

12 132. Here, the members of Independent Wage Statement Class suffered injury because
13 Defendants failed to provide accurate and complete information as required by one or more items
14 listed in Labor Code § 226(a)(1)-(9) and the Independent Wage Statement Class members could
15 not and cannot promptly and easily ascertain requisite information without reference to other
16 documents or information.

17 133. In addition, the members of the Independent Wage Statement Class have suffered
18 injury as a result of Defendants’ failure to maintain accurate records for the members of the
19 Independent Wage Statement Class in that the members of the Independent Wage Statement
20 Class were not timely provided written accurate itemized statements showing all requisite
21 information, including but not limited to all applicable hourly rates in effect during the pay
22 period, in violation of Labor Code § 226, such that the members of the Independent Wage
23 Statement Class were misled by Defendants as to the correct information regarding various
24 items, including but not limited to all applicable hourly rates in effect during the pay period.

25 134. The actual injuries suffered by the members of the Independent Wage Statement
26 Class as a result of Defendants’ knowing and intentional failure to maintain accurate records for
27 the members of the Independent Wage Statement Class include but are not limited to:

28 ///

1 a. That such practice prevents the members of the Independent Wage Statement
2 Class from being able to effectively challenge information on their wage
3 statements; and/or

4 b. The difficulty and expense of filing and maintaining this lawsuit, and the
5 discovery required to collect and analyze the very information that California
6 law requires.

7 135. Under Labor Code § 226(e), the members of the Independent Wage Statement
8 Class are entitled to \$50.00 per employee for the initial pay period in which a violation
9 hereunder occurs and \$100.00 per employee for each violation in a subsequent pay period, not
10 exceeding an aggregate penalty of \$4,000.00.

11 136. Under Labor Code § 226(g), the currently-employed members of the Independent
12 Wage Statement Class are entitled to injunctive relief to ensure Defendants' compliance with
13 Labor Code § 226.

14 137. Under Labor Code § 226(e) and/or § 226(g), the members of the Independent
15 Wage Statement Class are also entitled to an award of costs and reasonable attorneys' fees.

16 **NINTH CAUSE OF ACTION**

17 **DERIVATIVE VIOLATIONS OF LABOR CODE §§ 201-202**

18 **(On Behalf of the Derivative LC 203 Class)**

19 **(Against All Defendants)**

20 138. Plaintiffs incorporate by reference and reallege each and every one of the
21 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
22 forth herein.

23 139. Labor Code § 203 provides that if an employer willfully fails to pay, without
24 abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an
25 employee who is discharged or who quits, the wages of the employee shall continue at the same
26 rate, for up to thirty days from the due date thereof, until paid or until an action therefore is
27 commenced.

28 140. The members of the Derivative LC 203 Class are no longer employed by

1 Defendants as they were either discharged from or quit Defendants' employ.

2 141. Defendants had a consistent and uniform policy, practice and procedure of
3 willfully failing to pay the earned wages of Defendants' former employees, as set forth above,
4 according to amendment or proof.

5 142. As set forth above, Defendants willfully failed to pay the members of the
6 Derivative LC 203 Class their entire wages due and owing at the time of their termination or
7 within seventy-two hours of their resignation, and failed to pay those sums for up to thirty days
8 thereafter.

9 143. Defendants' willful failure to pay wages to the members of the Derivative LC 203
10 Class violates Labor Code § 203 because Defendants knew or should have known wages were
11 due to the members of the Derivative LC 203 Class, as set forth above, but Defendants failed to
12 pay them.

13 144. Thus, the members of the Derivative LC 203 Class are entitled to recovery under
14 Labor Code § 203.

15 **TENTH CAUSE OF ACTION**

16 **INDEPENDENT VIOLATIONS OF LABOR CODE §§ 201-202**

17 **(On Behalf of the Independent LC 203 Class)**

18 **(Against All Defendants)**

19 145. Plaintiffs incorporate by reference and reallege each and every one of the
20 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
21 forth herein.

22 146. Labor Code § 201(a) states in pertinent part: "If an employer discharges an
23 employee, the wages earned and unpaid at the time of discharge are due and payable
24 immediately."

25 147. Labor Code § 202(a) states in pertinent part: "If an employee not having a written
26 contract for a definite period quits his or her employment, his or her wages shall become due and
27 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous
28 notice of his or her intention to quit, in which case the employee is entitled to his or her wages at

1 the time of quitting. Notwithstanding any other provision of law, an employee who quits without
2 providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests
3 and designates a mailing address. The date of the mailing shall constitute the date of payment for
4 purposes of the requirement to provide payment within 72 hours of the notice of quitting.”

5 148. Labor Code § 203 provides that if an employer willfully fails to timely pay,
6 without abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an
7 employee who is discharged or who quits, the wages of the employee shall continue at the same
8 rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is
9 commenced.

10 149. The members of the Independent LC 203 Class are no longer employed by
11 Defendants as they were either discharged from or quit Defendants’ employ.

12 150. Defendants had a consistent and uniform policy, practice and procedure of
13 willfully failing to timely pay the earned wages of Defendants’ former employees, according to
14 amendment or proof.

15 151. For example, on May 22, 2022, Plaintiff TRACY DENISE DAVIS resigned in
16 writing in advance with her final day being June 15, 2022. Because she gave Defendants 72
17 hours prior notice of her intention to resign, her final wages were due at the time of resignation.
18 However, Plaintiff TRACY DENISE DAVIS was not paid her final wages until June 17, 2022,
19 and did not receive the requisite waiting time penalty pay.

20 152. Defendants willfully failed to pay the members of the Independent LC 203 Class
21 all wages due and owing at the time of their separation with adequate notice or within seventy-
22 two hours of their resignation.

23 153. Defendants’ willful failure to timely pay final wages to the members of the
24 Independent LC 203 Class violates Labor Code §201-202 because Defendants knew or should
25 have known final wages were due to the members of the Independent LC 203 Class by a date
26 certain, but Defendants failed to pay them on a timely basis on or before that deadline.

27 154. Thus, the members of the Independent LC 203 Class are entitled to recovery
28 pursuant to Labor Code § 203.

ELEVENTH CAUSE OF ACTION
PENALTIES UNDER LABOR CODE § 2699
(On Behalf of the Aggrieved Employees)
(Against All Defendants)

155. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

156. Under Labor Code § 2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, board agencies or employees, such civil penalties 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) and Labor Code § 2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those for which a civil penalty is specifically provided), the aggrieved employees seek recovery of all applicable civil penalties, as follows:

- a. As applicable, for civil penalties under Labor Code § 2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of \$100 for each aggrieved employee per pay period for the initial violation; and \$200 for each aggrieved employee per pay period for each subsequent violation;
- b. As applicable, civil penalties under Labor Code § 558 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for violations of Labor Code §§ 500-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid, and \$100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid;

///

- 1 c. As applicable, for civil penalties under Labor Code § 1197.1 (in addition to
2 and entirely independent and apart from any other penalty provided in the
3 Labor Code), for violations of Labor Code §§ 1194 and 1197, in the amount
4 of \$100 for each underpaid aggrieved employee for each pay period the
5 aggrieved employee was intentionally underpaid, and \$250 for each
6 subsequent violation for each underpaid aggrieved employees regardless of
7 whether the initial violation was intentionally committed;
- 8 d. As applicable, for civil penalties under Labor Code § 210 (in addition to and
9 entirely independent and apart from any other penalty provided in the Labor
10 Code), for each employee who is/was not paid wages in accordance with
11 Labor Code §§ 204 and 204b in the amount of a civil penalty of \$100 for each
12 aggrieved employee per pay period for each initial violation, and \$200 for
13 each aggrieved employee per pay period for each subsequent violation;
- 14 e. As applicable, for civil penalties under Labor Code § 226.3 (in addition to and
15 entirely independent and apart from any other penalty provided in the Labor
16 Code), for each violation of Labor Code § 226(a), in the amount of \$250 for
17 each aggrieved employee per pay period for each violation and \$1,000 for
18 each aggrieved employee per pay period for each subsequent violation; and
- 19 f. As applicable, for any and all additional civil penalties and sums as provided
20 by the Labor Code and/or other relevant statutes.

21 157. In addition, Plaintiff seeks and is entitled to 75% of all penalties obtained under
22 Labor Code § 2699 to be allocated to the LWDA, for education of employers and employees
23 about their rights and responsibilities under the Labor Code, and 25% to Plaintiff and all other
24 similarly situated aggrieved employees.

25 158. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs under
26 Labor Code §§ 2699(g)(1) and any other applicable statute.

27 159. Labor Code § 2699.3(a) states in pertinent part: "A civil action by an aggrieved
28 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision

1 listed in Section 2699.5 shall commence only after the following requirements have been met:

2 (1) (A) The aggrieved employee or representative shall give written notice by online filing with
3 the Labor and Workforce Development Agency and by certified mail to the employer of the
4 specific provisions of this code alleged to have been violated, including the facts and theories to
5 support the alleged violation.”

6 160. Labor Code § 2699.3(c)(1) states in pertinent part: “A civil action by an aggrieved
7 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
8 other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall
9 commence only after the following requirements have been met: (1) (A) The aggrieved
10 employee or representative shall give written notice by online filing with the Labor and
11 Workforce Development Agency and by certified mail to the employer of the specific provisions
12 of this code alleged to have been violated, including the facts and theories to support the alleged
13 violation.”

14 161. Here, Plaintiffs’ civil action alleges violations of provisions listed in Labor Code
15 § 2699.5 and violations of provisions other than those listed in Labor Code § 2699.5. As such,
16 Labor Code § 2699.3(a) and § 2699.3(c) apply to this action.

17 162. On April 18, 2023, Plaintiffs complied with Labor Code § 2699.3(a) and Labor
18 Code § 2699.3(c) in that Plaintiffs gave written notice by online filing with the LWDA and by
19 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
20 violated, including the facts and theories to support the alleged violations. Attached hereto as
21 Exhibit 1 is Plaintiffs’ LWDA letter.

22 163. Labor Code § 2699.3(a) further states in pertinent part: “(2)(A) The agency shall
23 notify the employer and the aggrieved employee or representative by certified mail that it does
24 not intend to investigate the alleged violation within 60 calendar days of the postmark date of the
25 notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided
26 within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the
27 aggrieved employee may commence a civil action pursuant to Section 2699.”

28 ///

1 164. As of June 23, 2023 (65 calendar days after Plaintiffs' April 18, 2023, LWDA
2 letter was filed online), Plaintiffs had not received any notification that the LWDA intended to
3 investigate the alleged violations. As such, Plaintiffs have complied with Labor Code § 2699.3(a)
4 and have been given authorization therefrom to commence a civil action which includes a cause
5 of action under Labor Code § 2699.

6 165. Further, as of May 22, 2023 (33 calendar days after Plaintiffs' April 18, 2023,
7 LWDA letter was mailed to Defendants via certified mail), Plaintiffs have not received from
8 Defendants written notice by certified mail that the alleged violations have been cured, including
9 a description of actions taken. As such, Plaintiffs have complied with Labor Code § 2699.3(c)
10 and have been given authorization therefrom to commence a civil action which includes a cause
11 of action under Labor Code § 2699.

12 **TWELFTH CAUSE OF ACTION**

13 **UNFAIR BUSINESS PRACTICES**

14 **(On Behalf of the 17200 Class)**

15 **(Against All Defendants)**

16 166. Plaintiffs incorporate by reference and reallege each and every one of the
17 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
18 forth herein.

19 167. Business & Professions Code § 17200 provides, in pertinent part, "[U]nfair
20 competition shall mean and include any unlawful, unfair or fraudulent business act."

21 168. Business & Professions Code § 17205 provides that unless otherwise expressly
22 provided, the remedies or penalties provided for unfair competition "are cumulative to each other
23 and to the remedies or penalties available under all other laws of this state."

24 169. Business & Professions Code § 17204 provides that an action for any relief from
25 unfair competition may be prosecuted by any person who has suffered injury in fact and has lost
26 money or property as a result of such unfair competition.

27 170. Defendants have engaged in unlawful, unfair and fraudulent business acts or
28 practices prohibited by Business & Professions Code § 17200, including those set forth in the

preceding and foregoing paragraphs of the complaint, thereby depriving the members of the 17200 Class of the minimum working standards and conditions due to them under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

171. Defendants have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices outlined in the preceding paragraphs, specifically, by requiring employees to perform the labor services complained of herein without the requisite compensation.

172. Defendants' use of such practices constitutes an unfair business practice, unfair competition and provides an unfair advantage over Defendants' competitors.

173. Plaintiffs have suffered injury in fact and have lost money or property as a result of such unfair competition.

174. Plaintiffs seek full restitution from Defendants, as necessary and according to proof, to restore any and all monies withheld, acquired, and/or converted by Defendants by means of the unfair practices complained of herein.

175. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will continue to practice, employ, and utilize the employment practices outlined in the preceding paragraphs.

176. Therefore, Plaintiffs request that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

177. Plaintiffs, on behalf of themselves and all others similarly situated, seek the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendants.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

a. That the Court issue an Order certifying the Classes herein, appointing all named Plaintiffs as representative of all others similarly situated, and appointing all law firms representing all named Plaintiffs as counsel for the members of the Classes;

As to the First Cause of Action for Failure to Pay All Wages:

b. For recovery of the unpaid balance of the full amount of the straight time compensation due and owing, according to proof;

c. For liquidated damages on the straight-time portion of uncompensated hours of work (not including the overtime portion thereof), as authorized by Labor Code § 1194.2(a);

d. For recovery of the unpaid balance of the full amount of overtime compensation due and owing, calculated at the appropriate rate and according to proof;

e. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194(a) and Civil Code § 3287;

f. For an award of reasonable attorneys' fees and costs under Labor Code §§ 218.5 and/or 1194(a);

As to the Second Cause of Action for Failure to Pay All Wages Due To Illegal Rounding:

g. For recovery of the unpaid balance of the full amount of the straight time compensation due and owing, according to proof;

h. For liquidated damages on the straight-time portion of uncompensated hours of work (not including the overtime portion thereof), as authorized by Labor Code §1194.2(a);

i. For recovery of the unpaid balance of the full amount of overtime compensation due and owing, calculated at the appropriate rate and according to proof;

j. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code §1194(a) and CC §3287;

k. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5 and/or Labor Code §1194(a);

As to the Third Cause of Action for Failure to Provide Meal Periods:

l. For 1 hour of pay at the regular rate of compensation for each member of the Meal Period Class for each workday that a meal period was not provided;

m. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code § 3287;

///

1 As to the Fourth Cause of Action for Failure to Authorize and Permit Paid Rest Periods:

2 n. For 1 hour of pay at the regular rate of compensation for each member of the Rest
3 Period Class for each workday that a rest period was not provided;

4 o. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code §
5 3287;

6 As to the Fifth Cause of Action for Failure to Provide Legally-Compliant Rest Periods:

7 p. For one hour of pay at the regular rate of compensation for each member of the
8 On Premise Rest Period Class for each workday that a legally-compliant rest period was not
9 provided;

10 q. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code §
11 3287;

12 As to the Sixth Cause of Action for Unpaid Reimbursements for Work Expenses:

13 r. For recovery of the unpaid balance for all necessary expenditures and losses
14 incurred in direct consequence of the discharge of Defendants' duties;

15 s. For interest thereon at the same rate as judgments in civil actions, accruing from
16 the date on which each member of the Reimbursements Class incurred the necessary expenditure
17 or loss, under Labor Code § 2802(b);

18 t. or reasonable attorneys' fees and costs under Labor Code § 2802(c);

19 As to the Seventh Cause of Action for Derivative Failure to Timely Furnish Accurate Itemized
20 Wage Statements:

21 u. For recovery as authorized by Labor Code § 226(e);

22 v. For an award of costs and reasonable attorneys' fees under Labor Code § 226(e)
23 and/or § 226(g);

24 As to the Eighth Cause of Action for Independent Failure to Timely Furnish Accurate Itemized
25 Wage Statements:

26 w. For recovery as authorized by Labor Code § 226(e);

27 x. For an award of costs and reasonable attorneys' fees under Labor Code § 226(e)
28 and/or § 226(g);

1 As to the Ninth Cause of Action for Derivative Violations of Labor Code §§ 201-202:

- 2 y. For recovery as authorized by Labor Code § 203;

3 As to the Tenth Cause of Action for Independent Violations of Labor Code §§ 201-202:

- 4 z. For recovery as authorized by Labor Code § 203;

5 As to the Eleventh Cause of Action for Penalties Under Labor Code § 2699:

6 aa. As applicable, for civil penalties under Labor Code § 2699(f), in addition to and
7 entirely independent and apart from other penalties in the Labor Code and for Labor Code
8 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee
9 per pay period for each violation, and \$200 for each aggrieved employee per pay period for each
10 subsequent violation;

11 bb. As applicable, for civil penalties under Labor Code § 558, in addition to and
12 entirely independent and apart from other penalties in the Labor Code, as follows:

13 i. For any initial violation, fifty dollars (\$50) for each aggrieved underpaid
14 employee for each pay period for which the employee was underpaid; and

15 ii. For each subsequent violation, one hundred dollars (\$100) for each aggrieved
16 underpaid employee for each pay period for which the employee was
17 underpaid;

18 cc. As applicable, for civil penalties under Labor Code § 1197.1, in addition to and
19 entirely independent and apart from other penalties in the Labor Code, as follows:

20 i. For any initial violation that is intentionally committed, \$100 for each
21 aggrieved underpaid employee for each pay period for which the employee
22 was underpaid; and

23 ii. For each subsequent violation, regardless of whether the initial violation is
24 intentionally committed, \$250 for each aggrieved underpaid employee for
25 each pay period for which the employee was underpaid;

26 dd. As applicable, for civil penalties under Labor Code § 210, in addition to and
27 entirely independent and apart from other penalties in the Labor Code, in the amount of \$100 for
28 each aggrieved employee per pay period for each violation, and \$200 for each aggrieved

employee per pay period for each subsequent violation;

ee. As applicable, for civil penalties under Labor Code § 226.3, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

ff. As applicable, for reasonable attorneys' fees and costs incurred under Labor Code § 2699(g)(1) and any other applicable statute; and

ii. For such relief as this Court may deem just and proper;

As to the Twelfth Cause of Action for Unfair Business Practices:

jj. For an accounting, under administration of Plaintiffs and/or the receiver and subject to Court review, to determine the amount to be returned by Defendants, and the amounts to be refunded to members of the Classes who are owed monies by Defendants;

kk. For an Order requiring Defendants to identify each of the members of the Classes by name, home address, home telephone number and, if available, email address;

ll. For an Order requiring Defendants to make full restitution and payment pursuant to California law;

mm. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from engaging in the acts complained of herein;

nn. For the creation of an administrative process wherein each injured member of the Classes may submit a claim in order to receive his/her money;

oo. For all other appropriate injunctive, declaratory and equitable relief;

pp. For interest to the extent permitted by law;

qq. For an award of attorneys' fees and costs incurred in the investigation, filing and prosecution of this action pursuant to CCP §1021.5, B&PC §17200, et seq., Labor Code §1194 and/or any other applicable provision of law;

As to All Causes of Action:

rr. For such relief as this Court may deem just and proper, including reasonable attorneys' fees and costs incurred.

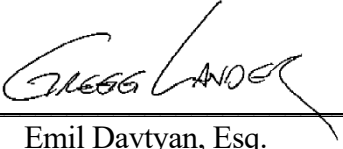
VII.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

Dated: June 23, 2023

DAVTYAN LAW FIRM

By: 

Emil Davtyan, Esq.

Gregg Lander, Esq.

Vanessa M. Ruggles, Esq.

Attorneys for Plaintiffs

EXHIBIT 1



April 18, 2023

Submitted at <https://www.dir.ca.gov> with \$75 filing fee

PAGA Administrator
California Labor and Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: INSIGHT PSYCHOLOGY AND ADDICTION, INC. d/b/a “Nsight Psychology & Addiction” and/or “Nsight Mental Health & Wellness” (the “Employer”)

NOTICE OF LABOR CODE VIOLATIONS UNDER LABOR CODE § 2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency and the Employer

From: TRACY DAVIS (the “Employee”), who was subjected to the wage and hour practices set forth below

The Employee, by way of the above-named counsel, submits this Notice, under and in compliance with the requirements of California Labor Code § 2699.3(a)/(c), and alleges the facts and theories to support the alleged violations as follows:

During the applicable time period, each Employer employed the Employee and all other similarly situated aggrieved employees as hourly-paid, non-exempt employees, and utilized consistent policies and procedures regarding the Employee and all such other similarly situated aggrieved employees, as follows:

First, the Employee and all other similarly situated aggrieved employees performed work for the Employer while clocked out, including but not limited to weekly COVID tests, and using their personal mobile devices off the clock for work-required communications including but not limited to with supervisors. As such, the Employer failed to pay all straight time, minimum, and overtime wages due for the time the Employee and all other similarly situated aggrieved employees were subject, as stated, to the Employer’s control, in violation of Labor Code §§ 510, 1194, 1197, and 1198 and the applicable Industrial Wage Order and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Second, the Employer utilized a time rounding policy that ignored employees’ actual time punches and instead rounded their time. This policy (combined with the fact that employees often arrived early and/or worked late) resulted in a disproportionate negative impact on employees that does not average out over a period of time and as such, is not used in such a manner that it will not result over a period of time in failure to compensate for all time actually worked. As such, the Employer violated Labor Code §§ 204, 510, 1194, 1197, 1198 and the applicable Industrial Wage Order and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Third, the Employer utilized an overtime policy that failed to pay the appropriate overtime pay rate for all overtime hours worked in a workday by the Employee and all other similarly situated aggrieved employees. Here, the Employer did not include in the overtime pay rate all non-discretionary pay. As such, the Employer violated Labor Code §§ 510, 1194, 1197, 1198 and the applicable Industrial Wage Order and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Fourth, the Employer failed to timely provide all legally compliant meal breaks (including second meal breaks) to the Employee and all other similarly situated aggrieved employees because Employer failed to relinquish all control and also because meal breaks were late, short, missed, or interrupted. The Employee and all other similarly situated aggrieved employees routinely worked over five hours but did not always get lawful full thirty-minute uninterrupted meal breaks within the first five hours of their shift. Further, they sometimes worked over ten and/or twelve hours but were not timely provided a legally compliant second meal break. The Employer did not always pay a meal period penalty for these violations. As such, the Employer violated Labor Code §§ 226.7, 512 and 516 and the applicable Industrial Wage Order ¶ 11 and owes penalties under Labor Code §§ 2699(f) and/or 558.

Fifth, the Employer failed to always authorize and permit paid rest breaks to the Employee and all other similarly situated aggrieved employees. The Employee and all other similarly situated aggrieved employees did not always get full ten-minute uninterrupted rest breaks within the first four hours of their shift or major fraction thereof, and each subsequent four hours worked thereafter or major fraction thereof. As such, the Employee and all other similarly situated aggrieved employees were not always authorized and permitted legally compliant rest breaks. The Employer did not pay a rest period penalty for any of these violations. As such, the Employer violated Labor Code §§ 226.7 and 516 and the applicable Industrial Wage Order ¶ 12(A)/(B) and owes rest period wages and penalties under Labor Code §§ 2699(f) and/or 558.

Sixth, the Employer failed to provide legally compliant paid rest breaks to the Employee and all other similarly situated aggrieved employees. Here, the Employer did not relinquish all control of the Employee and all other similarly situated aggrieved employees during rest breaks. Therefore, the Employee and all other similarly situated aggrieved employees did not always get full ten-minute uninterrupted legally compliant paid rest breaks within the first four hours of their shifts or major fraction thereof, and each subsequent four hours worked thereafter or major fraction thereof. As such, the Employee and all other similarly situated aggrieved employees were not always provided legally compliant rest breaks. (*Augustus v ABM Security Services, Inc.* (2016) 2 Cal 5th 257.) Because the Employer did not pay a rest period penalty for these violations, the Employer violated Labor Code §§ 226.7 and 516 and the applicable Industrial Wage Order ¶ 12(A)/(B) and owes rest period wages and penalties under Labor Code §§ 2699(f) and/or 558.

Seventh, the Employee and all other similarly situated aggrieved employees incurred mobile device-related expenses while performing reasonable and necessary work-related duties, including but not limited to using the devices for electronic clocking in and out for shifts and meal breaks. However, the Employer failed to reimburse for these mobile device-related expenses. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.) As such, the Employer violated Labor Code §§ 450 and 2802 by failing to reimburse the Employee and all other similarly situated aggrieved employees for all mobile device-related expenses reasonably incurred in the course of their required work duties and owes penalties under Labor Code § 2699(f).

Eighth, regarding wage statements, under Labor Code § 226 and the applicable Industrial Wage Order, the Employer is required to include certain information on a paystub. Here, because the Employer allegedly failed to pay all wages as set forth above, improper paystubs were issued by the Employer to the Employee and all other similarly situated aggrieved employees, and the Employee alleges that the Employer has derivatively violated Labor Code § 226 and owes penalties under Labor Code §§ 2699(f) and/or 226.3.

Ninth, also regarding wage statements, and in addition to the alleged derivative violations of Labor Code § 226 above, under Labor Code § 226(a) and the applicable Industrial Wage Order, the Employer is required to include certain information on an employee's wage statement. Here, the Employer issued improper wage statements to the Employee and all other similarly situated aggrieved employees because the Employer's wage statements did not always contain all requisite information, including but not limited to all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. As such, the Employer independently violated Labor Code § 226, and owes penalties under Labor Code §§ 2699(f) and/or 226.3.

Tenth, regarding waiting time penalties, under Labor Code § 203, the Employee and all other similarly situated aggrieved employees are entitled to thirty days of wages at their regular rate of pay for the Employer's failure to pay all wages due upon separation of employment. Here, because the Employer failed to pay all wages as set forth above, the Employee alleges that the Employer has derivatively violated Labor Code §§ 201-203 and owes penalties under Labor Code §§ 2699(f) and/or 203.

Eleventh, also regarding waiting time penalties, and in addition to the derivative violations of Labor Code § 203 alleged above, the Employer did not pay the Employee and other separated similarly situated aggrieved employees all final wages due and owing in a timely manner. For example, on May 22, 2022, the Employee resigned in writing in advance with her final day being June 15, 2022. Because she gave the Employer 72 hours prior notice of her intention to resign, her final wages were due at the time of resignation. However, the Employee was not paid her final wages until June 17, 2022, and did not receive the requisite waiting time penalty pay. Therefore, as an independent violation of Labor Code §§ 201-203, the Employer owes penalties under Labor Code §§ 2699(f) and/or 201-203.

Under Labor Code § 2699.3(a)(2)(A), please advise within 65 calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.

Further, under Labor Code § 2699.3(c)(2)(A), the Employer may cure the alleged violations within 33 calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

In addition, this letter clearly sets forth the Employee's grievances and proposed remedies, under the Labor Code, PAGA and otherwise, as set forth above. The Employee would like to engage in reasonable efforts to settle this dispute before filing a civil action against the Employer. The Employee gives the Employer the opportunity, prior to the expiration of the deadline for the LWDA to investigate, to meet the Employee's demands and settle this dispute.

We understand that if we do not receive a response within 65 calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employee may immediately thereafter commence a civil action against the Employer under Labor Code § 2699.

PAGA Administrator
Re: Insight Psychology And Addiction, Inc.
April 18, 2023
Page 4

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gregg Lander". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Emil Davtyan
Gregg Lander
Vanessa M. Ruggles

Cc: (via Certified Mail)
Insight Psychology And Addiction, Inc.
d/b/a "Nsight Psychology & Addiction"
and/or "Nsight Mental Health & Wellness"
4000 Birch Street, Suite #112A
Newport Beach, CA 92660

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am over the age of 18 years and not a party to this action. My business address is 1635 Pontius Avenue, Second Floor, Los Angeles, CA 90025-3361, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I caused to be served the following attached document/s:

FIRST AMENDED COMPLAINT

on the interested parties in this action, addressed as follows:

Attorneys for Defendant
Insight Psychology and Addiction, Inc.:

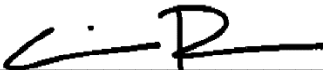
Sat Sang Khalsa, Esq.
GORDON REES SCULLY MANSUKHANI
275 Battery Street, Suite 2000
San Francisco, CA 94111
Tel.: (415) 986-5900/ Fax: (415) 986-8054
Email: SKhalsa@grsm.com

using the following service method:

 X **VIA MAIL:** I caused the document(s) to be served to be deposited at: 1635 Pontius Avenue, Second Floor, Los Angeles, California, which is a mailbox or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person(s) on whom the document(s) is/are to be served, at the office address as last given by that/those person(s), otherwise at that/those person(s)' place(s) of residence. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing stated herein.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on **June 23, 2023** at Los Angeles, California.



Cindy Riyas