

Lilit Tunyan (SBN: 329351)
ltunyan@tunyanlaw.com
Artur Tunyan (SBN: 349174)
atunyan@tunyanlaw.com
TUNYAN LAW, APC
1336 Rossmoyne Avenue
Glendale, California 91207
Telephone: (323) 410-5050

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Case #23CV413573
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Attorneys for Plaintiff MARKEL ROCKE as an individual
and on behalf of all employees similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MARKEL ROCKE, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

PINK CHICKU LLC, a Limited Liability
Company; and DOES 1 through 50, inclusive,

Defendants.

Case No. 23CV413573

**Amended as a matter of right, pursuant to
Labor Code Section 2699.3(a)(2)(c)**

FIRST AMENDED COMPLAINT

1. Violation of Labor Code §§ 204, 221, 222, 223, 510, 1194, 1198 (Failure to Pay All Wages and Sick Pay);
2. Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods);
3. Violation of Labor Code § 226.7 (Failure to Provide Rest Periods);
4. Violation of Labor Code § 226, (Failure to Keep Accurate Itemized Wage Statements);
5. Violation of Labor Code §§ 201-203, 227.3 (Failure to Pay Wages Upon Termination of Employment and Accrued Vacation Upon Termination of Employment);
6. Violation of Labor Code § 2802 (Failure to Reimburse for Necessary Expenditures);
7. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices); and
8. Violation of the Private Attorneys General Act, Labor Code sections 2698, et seq

DEMAND FOR JURY TRIAL

1 Plaintiff MARKEL ROCKE (hereinafter referred to as “Plaintiff”) on behalf of herself and
2 all others similarly situated, and as representative of the State of California and the Labor and
3 Workforce Development Agency (“LWDA”), based upon facts that either have evidentiary
4 support or are likely to have evidentiary support after a reasonable opportunity for further
5 investigation and discovery, complains and alleges as follows:

6 **INTRODUCTION**

7 1. This is a class action brought on behalf of Plaintiff and the class she seeks to
8 represent (“Class” or “Class Members”). Class Members consist of all non-exempt, hourly-paid
9 employees currently and/or formerly employed by PINK CHICKU LLC in the State of California
10 during the Class Period. The term “Class Period” is defined as four (4) years prior to the filing
11 of this Complaint through the date final judgment is entered. Plaintiff reserves the right to amend
12 this Complaint to reflect a different “Class Period” or “Class” as further discovery is conducted.

13 2. Plaintiff, individually and on behalf of the class she seeks to represent, seeks relief
14 against PINK CHICKU LLC (“Defendant”) for Defendant’s failure to pay all wages due in
15 violation of Labor Code Sections 204, 510 and 1194, including minimum, regular and overtime
16 wages and unlawful deductions in violation of Labor Code Sections 221, 222, 223; failure to
17 provide meal periods or compensation in lieu thereof pursuant to Labor Code Sections 226.7 and
18 512, the applicable Industrial Welfare Commission Wage Orders, and Code of Regulations, Title
19 8, Section 11000 et seq.; failure to provide rest periods or compensation in lieu thereof pursuant
20 to Labor Code Sections 226.7 and 512, the applicable Industrial Welfare Commission Wage
21 Orders, and Code of Regulations, Title 8, Section 11000 et seq.; failure to provide accurate
22 itemized wage statements upon payment of wages pursuant to Labor Code Sections 226,
23 subdivision (a), 1174, and 1175; failure to reimburse for necessary expenditures pursuant to Labor
24 Code Section 2802; and failure to pay wages of terminated or resigned employees pursuant to
25 Labor Code Sections 201, 202, 203 and failure to pay all accrued vacation wages at termination
26 pursuant to Labor Code Section 227.3.

1 3. Plaintiff seeks equitable remedies in the form of declaratory relief and injunctive
2 relief, and relief under Business and Professions Code Section 17200 et seq. for unfair business
3 practices.

4 4. At all relevant times herein, Defendant has consistently maintained and enforced
5 against Plaintiff and Class the following unlawful practices and policies:

6 (a) willfully refusing to pay Plaintiff and Class for all hours worked, including
7 minimum, regular and overtime and making unlawful deductions;

8 (b) willfully refusing to permit Plaintiff and Class from taking meal periods or
9 compensation in lieu thereof;

10 (c) willfully refusing to permit Plaintiff and Class from taking rest periods or
11 compensation in lieu thereof;

12 (d) willfully refusing to maintain accurate records and to furnish to Plaintiff and
13 Class accurate itemized wage statements upon payment of wages;

14 (e) willfully refusing to compensate Plaintiff and certain members of the Class
15 wages and accrued vacation due and owing at the time of Plaintiff and Class
16 Members' employment with Defendant ended; and

17 (f) willfully refusing to reimburse Plaintiff and Class for necessary
18 expenditures.

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

23 6. At all relevant times, Defendant was and is legally responsible for all of the
24 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
25 foregoing paragraphs as the employer of Plaintiff and Class. Further, Defendant is responsible
26 for each of the unlawful acts or omissions complained of herein under the doctrine of
27 "respondeat superior".
28

1 7. Plaintiff further brings this action as a representative of the State of California
2 and the Labor and Workforce Development Agency (“LWDA”) to recover civil penalties
3 pursuant to the Private Attorneys General Act (“PAGA”), Labor Code sections 2698, *et seq.*,
4 for violations of numerous Labor Code provisions, including, but not limited to, sections 201-
5 203, 204, 221, 222, 223, 226, 226.7, 227.3, 510, 512, 1174, 1194, 1198, and 2802, as well as
6 violations of the applicable Wage Order.

7 **JURISDICTION AND VENUE**

8 8. Venue is proper in this judicial district and in the County of Santa Clara, California
9 because Defendant maintained its location and/or transacted business in this county, the
10 obligations and liability arise in this county, and work was performed by members of the proposed
11 class made the subject of this action in this county.

12 9. The wages, statutory penalties, monetary damages and restitution sought by
13 Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established
14 according to proof at trial. This Court has jurisdiction over this action pursuant to the California
15 Constitution, article VI, Section 10. The statutes under which this action is brought do not specify
16 any other basis for jurisdiction.

17 10. The California Superior Court has jurisdiction in the matter because the individual
18 claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional threshold for
19 Federal Court and the five million dollars (\$5,000,000.00) aggregate jurisdictional threshold for
20 Federal Court and, upon information and belief, Plaintiff and Defendant are residents of,
21 domiciled in, or otherwise subject to jurisdiction in the State of California. Further, there is no
22 federal question at issue as the issues herein are based solely on California statutes and law
23 including the Labor Code, Industrial Welfare Commission (“IWC”) Wage Orders, the Code of
24 Civil Procedure, the Rules of Court, and the Business and Professions Code.

25 **THE PARTIES**

26 **A. Plaintiff**

27
28

1 11. Plaintiff, at all relevant times herein, was Defendant's employee and was entitled
2 to compensation for all hours worked, including regular time and overtime compensation, and
3 penalties from Defendant. Plaintiff was employed by Defendant as a non-exempt, hourly paid
4 employee during the Class Period. Specifically, Plaintiff worked as a client care coordinator for
5 Defendant from July 2020 to May 16, 2022 at Defendant's facility located at 4606 Meridian
6 Avenue, Suite 203, San Jose, CA 95124. Each of the Class Members are identifiable, current
7 and/or former similarly situated persons who were employed in non-exempt hourly positions in
8 California by Defendant during the Class Period.

9 **B. Defendant**

10 12. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a
11 California Limited Liability Company. Defendant provides caregiver services. On information
12 and belief, Defendant was and/or is the employer of Plaintiff and Class during the Class Period.
13 Plaintiff also alleges that Defendant is conducting business in good standing in California.

14 13. Plaintiff is ignorant of the true names, capacities, relationships and extent of
15 participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50,
16 inclusive, but on information and belief alleges that these Defendants are legally responsible for
17 the payment of overtime compensation, rest and meal period compensation, and wages to Plaintiff
18 and Class by virtue of their unlawful practices, and therefore sues these Defendants by such
19 fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of
20 each DOE Defendants when ascertained.

21 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
22 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint
23 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant
24 are legally attributable to the other Defendant. Furthermore, Defendants in all respects acted as
25 the employer and/or joint employer of Plaintiff and Class.

26 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
27 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
28 managing agent, and/or principal of the Defendant, and in performing the actions mentioned

below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with permission and consent of the Defendant. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendant.

16. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendant sued herein was, at all times relevant hereto, the employer, owner, shareholder, principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer and/or alter-ego of the remaining Defendant, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent, and knowledge, approval and/or ratification of the other Defendant.

17. The above Defendant, managing agents, and supervisors aided, abetted, condoned, permitted, approved, authorized and/or ratified the unlawful acts described herein.

ADMINISTRATIVE PREREQUISITE

18. On April 5, 2023, prior to filing this complaint, Plaintiff gave written notice by electronically filing the notice with the Labor Workforce Development Agency ("LWDA") (LWDA Case No. LWDA- 946583-23), and by certified mail to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code Section 2699.3.

19. A true and correct copy of Plaintiff's letter sent to the LWDA dated April 5, 2023, is attached hereto as "**Exhibit A**". As of the filing of this complaint, LWDA has not responded to the written notice.

20. Under Labor Code Section 2699.3 subsection (a), a plaintiff may bring a cause of action under PAGA only after giving notice to the Labor Workforce Development Agency ("LWDA") and the employer of the Labor Code Sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice.

21. More than sixty-five (65) days have passed without notice from the LWDA. Accordingly, all administrative prerequisites to filing this action have been fulfilled.

GENERAL ALLEGATIONS

22. Plaintiff was employed as a client care coordinator for Defendant from July 2020 to May 16, 2022.

23. Labor Code Section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of his or her overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

24. Labor Code Section 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as regular paydays. Pursuant to Labor Code Section 204 (a) labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Pursuant to Labor Code Section 204 (d) the requirements of this Section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Plaintiff and Class were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during Class period, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked.

25. Further, Business and Professions Code Section 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions Code Section 17204 provides that any person who has suffered actual injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

1 26. During all, or a portion of the Class Period, Plaintiff and each member of the Class
2 was employed by Defendant in the State of California.

3 27. Plaintiff and Class Members were non-exempt employees covered under one or
4 more IWC Wage Order(s), and Labor Code Section 510, and/or other applicable Wage Orders,
5 regulations and statutes, and each Class Member was not subject to an exemption for executive,
6 administrative or professional employees, which imposed obligations on the part of Defendant to
7 pay Plaintiff and Class Members lawful overtime compensation.

8 28. Plaintiff and Class were covered by one or more IWC Wage Order(s), and Labor
9 Code Section 226.7 and other applicable Wage Orders, regulations and statutes which imposed
10 an obligation on the part of Defendant to pay Plaintiff and Class rest and meal period
11 compensation.

12 29. During the Class Period, Defendant was obligated to pay Plaintiff and Class
13 Members for all hours worked. However, Defendant failed to pay Plaintiff and Class Members
14 for all hours worked at the legally mandated wage rates, including regular wages and overtime
15 wages. During the Class Period, Defendant regularly used a system of time rounding in a
16 manner that resulted, over a period of time, in failing to compensate Plaintiff and Class
17 properly for all the time they have actually worked, even though the realities of Defendant's
18 operations are such that it is possible, practical, and feasible to count and pay for work time to
19 the minute. Defendant required Plaintiff and Class to enter their scheduled shift start and end
20 time using the timekeeping application regardless the fact that actual time worked by Plaintiff
21 and Class was more than the scheduled time. Defendant also never required Plaintiff and Class
22 to record their meal periods when they were able to take them. Accordingly, Defendant
23 frequently paid Plaintiff and Class less than all their work time. Some of this unpaid work also
24 should have been paid at the overtime rate. Throughout the Class Period, Defendant paid
25 additional remuneration to Plaintiff and Class in the form of non-discretionary bonuses and
26 other COVID sick pay, but failed to include those bonuses and additional pay in the regular
27 rate of pay for purposes of calculating overtime rate of pay and sick pay. Throughout the Class
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1 Period, Defendant also maintained a policy and practice of requiring Plaintiff and Class to
2 perform work “off-the-clock”. During the Class Period Defendant regularly required Plaintiff
3 and Class to work after the scheduled shifts and during weekends to complete work-related
4 tasks and to answer the managers’ calls and other tasks. Defendant failed to compensate for
5 that time performed after clocking out from work. In maintaining a practice of not paying all
6 wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and Class
7 worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff
8 and Class worked.

9 30. During the Class Period, Defendant were obligated to pay Plaintiff and Class
10 Members overtime compensation for all hours worked in excess of eight (8) hours of work in one
11 (1) day or forty (40) hours in one (1) week and double-time compensation for hours worked in
12 excess of twelve (12) in one (1) day. However, often times Plaintiff and Class Members were
13 required to work overtime in excess of eight (8) hours per workday and in excess of forty (40)
14 hours per workweek but were not paid at the proper overtime rate of pay.

15 31. During the Class Period, Defendant was obligated to provide Plaintiff and Class
16 with a work-free meal period within the first five (5) hours of a shift when the workday was
17 longer than six (6) hours. Plaintiff and Class Members were entitled to a full, thirty (30) minute,
18 off-duty meal period when they worked in excess of six (6) hours within the first five (5) hours
19 of their shifts. Here, Defendant failed to keep a record of meal periods and failed to provide
20 Plaintiff and Class Members with legally compliant meal periods. Plaintiff and Class Members
21 were not required to clock in and out for meal periods or otherwise record meal periods.
22 Defendant regularly required Plaintiff and Class Members to work in excess of five consecutive
23 hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period
24 for every five hours of work, or without compensating Plaintiff and Class Members for meal
25 periods that were not provided by the end of the fifth hour of work or tenth hour of work.
26 Defendant did not adequately inform Plaintiff and Class Members of their right to take a meal
27 period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the
28

1 tenth hour of work. Moreover, Defendant did not have adequate written policies or practices
2 providing meal periods for Plaintiff and Class Members, nor did Defendant have adequate
3 policies or practices regarding the timing of meal periods. Defendant also failed to provide
4 second meal periods when Plaintiff and Class Members worked more than 10 hours during one
5 shift. Plaintiff and Class Members have never been authorized or taken their first, second or third
6 meal periods, and Defendant failed to keep a record of meal periods. Most importantly,
7 throughout the statutory period Plaintiff and Class have not provided duty free meal periods.
8 Plaintiff and Class were required to keep their cell phones turned on and to respond to work-
9 related calls and text messages during their meal periods. In fact, Plaintiff and Class were on call
10 during their meal periods. Accordingly, Defendant's policy and practice was to not provide meal
11 periods to Plaintiff and Class Members in compliance with California law.

12 32. Additionally, Defendant were obligated to provide Plaintiff and Class Members
13 with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each
14 day. Defendant prevented Plaintiff and Class Members from taking rest breaks throughout their
15 shifts. Plaintiff and Class Members were generally precluded from taking rest periods due to
16 Defendant's failure to maintain the rest break policy to provide relief and thereby allow Plaintiff
17 and Class Members the opportunity to take rest breaks. Moreover, Defendant did not have
18 adequate policies or practices permitting or authorizing rest periods for Plaintiff and Class, nor
19 did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant
20 did not schedule rest periods every 4 hours or a major fraction. Plaintiff and Class have missed
21 almost 100% of their first, second and third rest breaks as they have not been authorized to take
22 them. Most importantly, throughout the statutory period Plaintiff and Class have not provided
23 duty free rest periods. In those occasions when Plaintiff and Class had an opportunity to take rest
24 periods, Plaintiff and Class were required to keep their cell phones turned on and to respond to
25 work-related calls and text messages during their rest periods. Plaintiff and Class Members have
26 not been authorized and taken first, second, third or fourth rest breaks. Accordingly, Defendant's
27 policy and practice was for Plaintiff and Class Members to work through rest periods and to not
28 authorize or permit them to take any rest periods.

1 33. Further, due to the pressure from Defendant and failure to maintain an adequate
2 policy, and in violation of Labor Code and applicable IWC Wage Orders, Plaintiff was not
3 authorized and permitted to take a second rest period, on shifts exceeding six hours of work,
4 and/or third rest breaks, on shifts exceeding ten hours of work. *Brinker Restaurant Corp. v.*
5 *Superior Court*, 53 Cal.4th 1004, 1030 (2012). “Employees are entitled to 10 minutes rest for
6 shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours
7 up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.”

8 34. Furthermore, Defendant failed and/or refused to pay Plaintiff and Class Members
9 one (1) hour’s pay at the employees’ regular rate of pay as premium compensation for Defendant’s
10 failure to provide lawful thirty (30) minute, off-duty meal periods and failure to provide lawful
11 ten (10) minute rest periods within the statutory time frames.

12 35. Defendant also failed to indemnify Plaintiff and Class Members all necessary
13 expenditures incurred in direct discharge of their duties including for using their personal cell
14 phones and vehicles for work. Plaintiff and Class were required to use their personal cell phones
15 to download and use work related applications as well as to respond and make work-related calls
16 to co-workers, managers and Defendant’s customers, but failed to compensate for personal cell
17 phone usage. Plaintiff and Class were also required to work from home during 2020 and 2021 but
18 were not reimbursed for their home internet and home office. Plaintiff and Class were also
19 required to use their personal vehicles for work. While Defendant reimbursed them for the
20 mileage but used an incorrect mileage reimbursement rate of 54 cents per mile in 2021 and 2022.
21 Internal Revenue Service set 56 cents per mile for reimbursement of mileage in 2021 and 58.5
22 cents per mile in 2022 for reimbursement of mileage. Plaintiff and Class incurred these substantial
23 expenses as a direct result of performing their job duties for Defendant, and Defendant have failed
24 to indemnify Plaintiff and Class for these employment-related expenses.

25 36. Pursuant to Labor Code § 224, Labor Code §§ 221, 222 and 223 shall in no way
26 make it unlawful for an employer to withhold or divert any portion of an employee’s wages when
27 the employer is required or empowered so to do by state or federal law or when a deduction is
28 expressly authorized in writing by the employee to cover insurance premiums, hospital or medical

1 dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived
2 at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover
3 health and welfare or pension plan contributions is expressly authorized by a collective bargaining
4 or wage agreement. During the Class Period, Defendant made unlawful 401K deductions from
5 Plaintiff and Class since Plaintiff and Class have not expressly authorized these deductions and
6 the deduction does not fall under any of the categories listed in Labor Code Section 224.

7 37. Labor Code Section 227.3 requires employers to pay employees for all unused
8 vested vacation time at their final rate of pay upon termination of their employment. During the
9 Class period, Defendant maintained a policy and practice of failing to pay Plaintiff and Class
10 Members the correct amount of vacation pay owed at the termination of employment. For
11 instance, when Plaintiff's employment with Defendant terminated, she was owed vacation wages
12 at her true final wage rate on her final paycheck from Defendant even though she had accrued
13 unused vacation time. However, Defendant failed to pay Plaintiff for her accrued but unused
14 vacation. On information and belief, Defendant's failure to pay Plaintiff the correct amount of
15 vacation pay was not a single, isolated incident, but was instead part of Defendant's policy and
16 practice that applied to Class Members.

17 38. Defendant continues to employ non-exempt, hourly-paid employees within
18 California.

19 39. Plaintiff and Class Members primarily performed non-exempt work, often in
20 excess of the maximum regular rate hours set forth in the applicable IWC Wage Order(s),
21 regulations or statutes, and therefore entitled the Plaintiff and Class Members to overtime
22 compensation at the rate of one and a half times their regular rate of pay and, when applicable,
23 double time compensation as set forth by the applicable IWC Wage Order(s), regulations and/or
24 statutes.

25 40. During the Class Period, Defendant required Plaintiff and Class Members to work
26 regular hours, off the clock hours, and overtime hours without lawful compensation in violation
27 of the applicable IWC Wage Order(s), regulations and statutes, and Defendant: (1) willfully failed
28 and refused, and continue to fail and refuse to pay compensation for all hours worked, including

1 lawful regular time and overtime compensation, to Class Members; and (2) willfully failed and
2 refused, and continue to fail and refuse to pay due and owing wages promptly upon termination
3 of employment to Plaintiff and affected Class Members.

4 41. Class Members who ended their employment with Defendant during the Class
5 Period but were not paid the above due compensation for all hours worked timely upon the
6 termination of their employment as required by Labor Code Sections 201, 202, and 203 are
7 entitled to penalties as provided by Labor Code Section 203.

8 42. During the Class Period, Defendant failed to furnish Plaintiff and Class with
9 accurate, itemized wage statements showing all applicable hourly rates, and all gross and net
10 wages earned (including correct hourly minimum wage rate, correct hours worked, correct
11 wages earned for hours worked, correct overtime hours worked, correct wages for meal periods
12 that were not provided in accordance with California law, correct wages for rest periods that
13 were not authorized and permitted to take in accordance with California law). As a result of
14 these violations of California Labor Code § 226(a), Plaintiff and Class suffered injury because,
15 among other things:

- 16 (a) the violations led them to believe that they were not entitled to be paid
17 minimum wages, overtime wages, meal period premium wages, and rest
18 period premium wages to which they were entitled, even though they were
19 entitled;
20
21 (b) the violations led them to believe that they had been paid the minimum,
22 overtime, meal period premium, and rest period premium wages, even
23 though they had not been;
24
25 (c) the violations led them to believe they were not entitled to be paid overtime,
26 meal period premium, and rest period premium wages at the correct
27 California rate even though they were;
28

- 1 (d) the violations led them to believe they had been paid overtime, meal period
2 premium, and rest period premium wages at the correct California rate even
3 though they had not been;
- 4 (e) the violations hindered them from determining the amounts of overtime,
5 meal period premium, and rest period premium owed to them;
- 6 (f) in connection with their employment before and during this action, and in
7 connection with prosecuting this action, the violations caused them to have
8 to perform mathematical computations to determine the amounts of wages
9 owed to them, computations they would not have to make if the wage
10 statements contained the required accurate information;
- 11 (g) by understating the wages truly due them, the violations caused them to lose
12 entitlement and/or accrual of the full amount of Social Security, disability,
13 unemployment, and other governmental benefits;
- 14 (h) the wage statements inaccurately understated the wages, hours, and wages
15 rates to which Plaintiff and Class were entitled, and Plaintiff and Class were
16 paid less than the wages and wage rates to which they were entitled.
17

18 Thus, Plaintiff and Class are owed the amounts provided for in California Labor Code §
19 226(e), including actual damages.

20 43. Defendant knew or should have known that Plaintiff and Class members were
21 entitled to receive accurate wage statements, which would include meal break premiums, and/or
22 rest break premiums, as required by Labor Code 226.

23 44. Defendant knew or should have known that Plaintiff and Class Members were
24 entitled to timely payment of all wages earned upon termination. Plaintiff and Class Members did
25 not receive payment of all wages, including but not limited to, meal and rest break premiums, in
26 violation of the Labor Code.

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CLASS ALLEGATIONS

45. Plaintiff brings this action on behalf of himself and all other similarly situated persons as a class action pursuant to Code of Civil Procedure Section 382. The Class is composed of and defined as follows:

- (a) All persons who are employed or have been employed by Defendant in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and were not paid all wages owed, including but not limited to the legally requisite minimum wage, regular time rate, overtime rate and/or double-time rate and were subjected to unlawful deductions from wages;
- (b) All persons who are employed or have been employed by Defendant in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and have not been provided a meal period for shifts in excess of five (5) hours within the first five (5) hours such shifts, and were not provided one (1) hour's pay for each day during which a lawful meal period was not provided;
- (c) All persons who are employed or have been employed by Defendant in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and have not been provided a rest period for every four (4) hours, or major fraction thereof, worked per day, and were not provided compensation of one (1) hour's pay for each day on which such rest period(s) was not provided;
- (d) All persons who are employed or have been employed by Defendant in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and have not been reimbursed expenditures in discharge of their duties;
- (e) All persons who are employed or have been employed by Defendant in the State of California, and who, within the three (3) years of the filing of this

Complaint to the present, have worked as non-exempt employees and have been terminated or resigned, and have not been paid wages and accrued vacation pursuant to Labor Code Section 203 and are owed restitution and waiting time penalties for unpaid wages;

(f) All persons who are employed or have been employed by Defendant in the State of California, and who, within the one (1) year of the filing of this Complaint to the present have worked as non-exempt employees and were not provided an accurate payroll record or wage statement as required under Labor Code Sections 226 and 1174;

(g) All persons who are employed or have been employed by Defendant in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and were subjected to unlawful and unfair business practices within the meaning of California's Unfair Competition Law and who suffered injury, including lost money, as a result of Defendant's unlawful and unfair business practices.

46. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or necessary to amend the definition of the Class. Plaintiff will formally define and designate a class definition at such time when Plaintiff seeks to certify the Class alleged in this Complaint.

47. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure Section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

48. The Court should permit this action to be maintained as a class action pursuant to Code of Civil Procedure Section 382 because:

- (a) The questions of law and fact common to Class predominate over any question affecting only individual class members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the Class members;

- 1 (c) Class is so numerous that it is impractical to bring all members of the
2 Class before the Court;
- 3 (d) Plaintiff and Class Members will not be able to obtain effective and
4 economic legal redress unless the action is maintained as a class action;
- 5 (e) There is a community of interest in obtaining appropriate legal and
6 equitable relief for the common law and statutory violations and other
7 improprieties and in obtaining adequate compensation for the damages
8 and injuries which Defendant's actions have inflicted upon Class;
- 9 (f) There is a community of interest in ensuring that the combined assets and
10 available insurance of the Defendant are sufficient to adequately
11 compensate Class Members for the injuries sustained;
- 12 (g) Without class certification, the prosecution of separate actions by
13 individual members of the Class would create a risk of:
- 14 (1) Inconsistent or varying adjudications with respect to individual
15 members of the Class which would establish an incompatible
16 standard of conduct for Defendant; and/or
- 17 (2) Adjudications with respect to the individual members which
18 would, as a practical matter, be dispositive of the interests of other
19 members not parties to the adjudications, or would substantially
20 impair or impede their ability to protect their interests, including
21 but not limited to the potential for exhausting the funds available
22 from those parties who are, or may be, responsible Defendant; and
- 23 (h) Defendant have acted or refused to act on grounds generally applicable to
24 Class, thereby making final injunctive relief appropriate with respect to
25 Class as a whole.

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

- 28 (a) Numerosity: The members of Class (and each subclass, if any) are so

1 numerous that joinder of all members would be unfeasible and impractical.
2 The membership of the entire Class is unknown to Plaintiff at this time,
3 however, the Class is estimated to be greater than 100 individuals and the
4 identity of such membership is readily ascertainable by inspection of
5 Defendant's records.

6 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
7 interests of each Class Member with whom there is a shared, well-defined
8 community of interest, and Plaintiff's claims (or defenses, if any) are typical
9 of all Class Members' claims as demonstrated herein.

10 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
11 the interests of each Class Member with whom there is a shared, well-
12 defined community of interest and typicality of claims, as demonstrated
13 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
14 Member. Plaintiff's attorneys, the proposed class counsel, are versed in the
15 rules governing class action discovery, certification, and settlement.
16 Plaintiff has incurred, and throughout the duration of this action, will
17 continue to incur costs and attorneys' fees that have been, are, and will be
18 necessarily expended for the prosecution of this action for the substantial
19 benefit of each class member.
20

21 (d) Superiority: A Class Action is superior to other available methods for the
22 fair and efficient adjudication of the controversy, including consideration of:

- 23 1. The interests of the members of the Class in individually
24 controlling the prosecution or defense of separate actions;
- 25 2. The extent and nature of any litigation concerning the
26 controversy already commenced by or against members of the
27 Class;
28

1 3. The desirability or undesirability of concentrating the
2 litigation of the claims in the particular forum; and

3 4. The difficulties likely to be encountered in the management of
4 a class action.

5 (e) Public Policy Considerations: The public policy of the State of California is
6 to resolve the California Labor Code claims of many employees through a
7 class action. Indeed, current employees are often afraid to assert their rights
8 out of fear of direct or indirect retaliation. Former employees are also
9 fearful of bringing actions because they believe their former employers
10 might damage their future endeavors through negative references and/or
11 other means. Class actions provide the class members who are not named in
12 the complaint with a type of anonymity that allows for the vindication of
13 their rights at the same time as their privacy is protected.
14

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

22 **FIRST CAUSE OF ACTION**

23 **Failure to Pay All Wages for All Hours Worked and Unlawful Deductions**

24 **(Against Defendant, DOES 1 through 50, and each of them)**

25 51. Plaintiff and Class Members re-allege and incorporate by reference all preceding
26 paragraphs of this complaint as though fully set forth herein.

27 52. Labor Code Section 510, subdivision (a) states in pertinent part: "Any work in
28 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek...

1 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for
2 any employee.”

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

8 54. Further, pursuant to Labor Code Section 1197, payment of less than the minimum
9 wage fixed by the Labor Commission is unlawful.

10 55. Pursuant to Labor Code Section 1198, it is unlawful to employ persons for longer
11 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
12 IWC Wage Order(s).

13 56. Pursuant to the IWC Wage Order(s), Defendant is required to pay Plaintiff and
14 Class Members for all hours worked, meaning the time during which an employee is subject to
15 the control of an employer, including all the time the employee is suffered or permitted to work,
16 whether or not required to do so.

17 57. During the Class Period, Defendant was obligated to pay Plaintiff and Class
18 Members for all hours worked. However, Defendant failed to pay Plaintiff and Class Members
19 for all hours worked at the legally mandated wage rates, including minimum wages and overtime
20 wages. During the Class Period, Defendant regularly used a system of time rounding in a manner
21 that resulted, over a period of time, in failing to compensate Plaintiff and Class properly for all
22 the time they have actually worked, even though the realities of Defendant's operations are such
23 that it is possible, practical, and feasible to count and pay for work time to the minute. Defendant
24 required Plaintiff and Class to enter their scheduled shift start and end time using the
25 timekeeping application regardless the fact that actual time worked by Plaintiff and Class was
26 more than the scheduled time. Defendant also never required Plaintiff and Class to record their
27 meal periods when they were able to take them. Accordingly, Defendant frequently paid Plaintiff
28 and Class less than all their work time. Some of this unpaid work also should have been paid at

1 the overtime rate. Throughout the Class Period, Defendant paid additional remuneration to
2 Plaintiff and Class in the form of non-discretionary bonuses and other COVID sick pay, but
3 failed to include those bonuses and additional pay in the regular rate of pay for purposes of
4 calculating overtime rate of pay and sick pay. Throughout the Class Period, Defendant also
5 maintained a policy and practice of requiring Plaintiff and Class to perform work “off-the-
6 clock”. During the statutory period Defendant regularly required Plaintiff and Class to work
7 after the scheduled shifts and during weekends to complete work-related tasks and to answer the
8 managers’ calls and other tasks. Defendant failed to compensate for that time performed after
9 clocking out from work. In maintaining a practice of not paying all wages owed, Defendant
10 failed to maintain accurate records of the hours Plaintiff and Class worked. In doing so,
11 Defendant also failed to maintain accurate records of the hours Plaintiff and Class worked.

12 58. Pursuant to Labor Code § 224, Labor Code §§ 221, 222 and 223 shall in no way
13 make it unlawful for an employer to withhold or divert any portion of an employee’s wages
14 when the employer is required or empowered so to do by state or federal law or when a
15 deduction is expressly authorized in writing by the employee to cover insurance premiums,
16 hospital or medical dues, or other deductions not amounting to a rebate or deduction from the
17 standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or
18 when a deduction to cover health and welfare or pension plan contributions is expressly
19 authorized by a collective bargaining or wage agreement. During the Class Period, Defendant
20 made unlawful 401K deductions from Plaintiff and Class since Plaintiff and Class have not
21 expressly authorized these deductions and the deduction does not fall under any of the categories
22 listed in Labor Code Section 224.

23 59. Plaintiff and Class Members were required to work overtime in excess of eight (8)
24 hours per workday and in excess of forty (40) hours per workweek, but were not paid at the proper
25 overtime rate of pay.

26 60. Labor Code Section 204 requires employers to pay employees all earned wages
27 two times per month on days designated in advance by the employer as regular paydays.
28 Pursuant to Labor Code Section 204 (a) labor performed between the 1st and 15th days,

1 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the
2 month during which the labor was performed, and labor performed between the 16th and the last
3 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
4 following month. Pursuant to Labor Code Section 204 (d) the requirements of this Section shall
5 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
6 the wages are paid not more than seven calendar days following the close of the payroll period.
7 Plaintiff and Class were also entitled to be paid twice a month at their regular rates, including all
8 meal period premium wages owed, rest period premium wages owed, and wages owed for hours
9 worked. However, during Class period, Defendant systematically failed and refused to pay the
10 employees all wages due, and failed to pay those wages twice a month, in that employees were
11 not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods
12 not authorized and permitted by Defendant, and all wages for all hours worked.

13 61. Defendant's pattern, practice and uniform administration of corporate policy
14 regarding illegal employee compensation as described herein is unlawful and creates an
15 entitlement, pursuant to Labor Code Section 218, to recovery by Plaintiff and the members of the
16 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
17 appropriate rate.

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

23 63. That calculation of individual damages for Class Members may at some point be
24 required does not foreclose the possibility of taking common evidence on questions regarding
25 their entitlement to overtime compensation. *Collins v. Rocha* (1972) 7 Cal.3d 232; *Hypolite v.*
26 *Carleson* (1975) 52 Cal.App.3d 566; *Employment Development Dept. v. Superior Court* (1981)
27 30 Cal.3d 256).

64. Pursuant to Labor Code Sections 218.6 and 1194(a) and Civil Code Section 3287, Class Members seek recovery of pre-judgment interest on all amounts recovered herein.

65. Pursuant to Labor Code Sections 218.5 and/or 1194, Class Members request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

SECOND CAUSE OF ACTION

Failure to Provide Meal Periods or Compensation in Lieu Thereof

(Against Defendant, DOES 1 through 50, and each of them)

66. Plaintiff and Class Members re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

67. Labor Code Sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes within the fifth (5th) hour of work, or employ any person for a work period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30) minutes.

68. Labor Code Section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this Section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this Section.

69. Defendant failed to schedule Plaintiff and Class Members in a manner as to reasonably ensure that Plaintiff and Class Members could take such meal periods within the statutory timeframe. As a result, Plaintiff and Class were often forced to forego their meal periods, work during their meal periods and/or take meal periods after the fifth (5th) hour of their shifts. In so doing, Defendant has intentionally and improperly denied meal periods to Plaintiff and Class Members in violation of Labor Code Sections 226.7 and 512, and other regulations and statutes.

70. At all times relevant hereto, Plaintiff and Class have worked more than five (5) hours in a workday.

71. At all times relevant hereto, Defendant failed to schedule Plaintiff and Class

Members in a manner so as to reasonably provide work-free meal periods in accordance with Labor Code Sections 226.7 and 512 and failed to record meal periods. Defendant also failed to keep a record of meal periods.

72. By virtue of Defendant's failure to schedule Plaintiff and Class Members in such a way as to provide a timely and/or work free meal period to Plaintiff and Class Members, Plaintiff and Class Members have suffered, and will continue to suffer, damages in an amount which is presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

73. Plaintiff, individually and on behalf of Class Members, requests recovery of meal period compensation pursuant to Labor Code Section 226.7 for the four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties against Defendant in a sum as provided by the Labor Code and/or other statutes.

THIRD CAUSE OF ACTION

Failure to Provide Rest Periods or Compensation in Lieu Thereof

(Against Defendant, DOES 1 through 50, and each of them)

74. Plaintiff and Class Members re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

75. The IWC Wage Orders and Labor Code Section 226.7 provides that employers must authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours or major fraction thereof.

76. Labor Code Section 226.7, subdivision (b) provides that if an employer fails to provide an employee rest period in accordance with this Section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

77. During the Class Period, Defendant did not provide Plaintiff and Class Members with a ten-minute rest period for every four (4) work hours or major fraction thereof. Therefore, Plaintiff and Class Members were not provided lawful rest periods.

78. Defendant failed and/or refused to implement a policy by which Plaintiff and Class

Members could receive rest periods and/or work free rest periods. By and through its actions, Defendant intentionally and improperly denied rest periods to Plaintiff and Class Members in violation of Labor Code Sections 226.7 and 512.

79. At all times relevant hereto, Plaintiff and Class have worked more than four (4) hours in a workday.

80. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff and Class Members, Plaintiff and Class Members have suffered, and will continue to suffer, damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

81. Plaintiff, individually and on behalf of employees similarly situated, requests recovery of rest period compensation pursuant to Labor Code Section 226.7 for the four (4) years prior to filing this Complaint, as well as the assessment of any statutory penalties against Defendant, and each of them, in a sum as provided by the Labor Code and/or any other statute.

FOURTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements

(Against Defendant, DOES 1 through 50, and each of them)

82. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

83. Labor Code Section 1174, subdivision (d) requires an employer to keep at a central location in California, or at the plant or establishment at which the employee is employed, payroll records showing the hours worked daily by, and the wages paid to, each employee.

84. Labor Code Section 226, subdivision (a) requires an employer to provide 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 wage statement in writing showing

(1) gross wages earned, (2) total hours worked by the employee . . . , (4) all deductions . . . , (5) net wages, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four

1 digits of his or her social security number or an employee identification
2 number other than a social security number, (8) the name and address of the
3 legal entity that is the employer . . . , and (9) all applicable hourly rates in
4 effect during the pay period and corresponding number of hours worked at
5 each hourly rate by the employee

6 85. Moreover, the IWC Wage Orders require that every employer shall keep accurate
7 information with respect to each employee, including time records showing when each employee
8 begins and ends each work period, when each employee takes a meal period, the total daily hours
9 worked by each employee and the total hours worked in each payroll period, and applicable rates
10 of pay.

11 86. Plaintiff is informed and believes that Defendant willfully and intentionally failed
12 to make and/or keep records which accurately reflect the hours worked by Plaintiff and Class.
13 Specifically, Plaintiff believes that Defendant's records do not accurately reflect when Plaintiff
14 and Class worked during their meal and rest periods and/or took untimely meal periods or worked
15 for hours not paid. Defendant also failed to include a correct minimum wage hourly rate which
16 is a blatant violation of the Labor Code and failed to record Plaintiff's and Class Members' meal
17 periods.

18 87. Labor Code Section 226, subdivision (e) provides that if an employer knowingly
19 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
20 the total hours worked by the employee and the applicable hourly overtime rates, causing the
21 employee injury, then the employee is entitled to recover the greater of all actual damages or
22 fifty dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each
23 subsequent violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes
24 that Defendant willfully failed to make or keep accurate records for Plaintiff and Class.

25 88. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll
26 records, as described above, violated Labor Code Section 1174, subdivision (d) and Section 226,
27 subdivision (a), and the applicable IWC Wage Order(s). Pursuant to Labor Code Section 2699,
28 subdivision (f)(2), Plaintiff and Class are entitled to penalties of \$100.00 and for the initial

violation and \$200.00 for each subsequent violation for every pay period during which these records and information were not kept by Defendant.

89. Plaintiff is informed and believes that Defendant's failure to keep and maintain accurate records and information, as described above, was willful, and Plaintiff and Class are entitled to statutory penalties pursuant to Labor Code Section 1174.5.

FIFTH CAUSE OF ACTION

Failure to Pay Wages and Accrued Vacation upon Termination of Employment

(Against Defendant, DOES 1 through 50, and each of them)

90. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

91. Plaintiff's employment with Defendant ended on or about April 9, 2022. However, Plaintiff received his last paychecks via direct deposit on April 22, 2022 and May 6, 2022. Plaintiff and certain Class who ended their employment with Defendant during the Class Period, were entitled to be promptly paid for all hours worked, including lawful regular time compensation, overtime compensation, double-time compensation, and other premiums, as required by Labor Code Sections 201 through 203. Plaintiff is also entitled to meal period and rest period premium pay in accordance with Labor Code Sections 226 and 226.7.

92. Labor Code Section 227.3 requires employers to pay employees for all unused vested vacation time at their final rate of pay upon termination of their employment. During the Class period, Defendant maintained a policy and practice of failing to pay Plaintiff and Class the correct amount of vacation pay owed at the termination of employment. For instance, when Plaintiff's employment with Defendant terminated, she was owed vacation wages at her true final wage rate on her final paycheck from Defendant even though she had accrued unused vacation time. On information and belief, Defendant's failure to pay Plaintiff the correct amount of vacation pay was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to Class Members.

93. Plaintiff and Class were not compensated for their unlawful and/or missed meal periods and/or rest periods, and were not paid proper regular time compensation, overtime

1 compensation or double-time compensation in accordance with law as a result of Defendant's
2 illegal rounding practice.

3 94. To date, Plaintiff and Class Members who ended their employment with
4 Defendant during the Class Period have not been compensated for all hours worked.

5 95. Plaintiff and the affected Class Members seek the payment of penalties pursuant
6 to Labor Code Section 203, according to proof.

7 96. Plaintiff is also entitled to attorneys' fees and costs, pursuant to Labor Code
8 Section 1194, and prejudgment interest.

9 **SIXTH CAUSE OF ACTION**

10 **Failure to Reimburse for Necessary Business Expenditures**

11 **(Against Defendant, DOES 1 through 50, and each of them)**

12 97. Plaintiff and Class re-allege and incorporate by reference all the above paragraphs
13 of this complaint as if fully alleged herein.

14 98. California Labor Code §2802, states "An employer shall indemnify his or her
15 employee for all necessary expenditures or losses incurred by the employee in direct consequence
16 of the discharge of his or her duties."

17 99. Plaintiff and Class were not reimbursed by Defendant for necessary expenditures
18 as a direct consequence of the discharge of their duties. Plaintiff and Class incurred expenses as a
19 direct result of performing their job duties for Defendant, and Defendant has failed to indemnify
20 Plaintiff and Class for these employment-related expenses. Plaintiff and Class were required to
21 use their personal cell phones to download and use work related applications as well as to
22 respond and make work-related calls to co-workers, managers and Defendant's customers, but
23 failed to compensate for personal cell phone usage. Plaintiff and Class were also required to
24 work from home during 2020 and 2021 but were not reimbursed for their home internet and
25 home office. Plaintiff and Class were also required to use their personal vehicles for work. While
26 Defendant reimbursed them for the mileage but used an incorrect mileage reimbursement rate of
27 54 cents per mile in 2021 and 2022. Internal Revenue Service set 56 cents per mile for
28 reimbursement of mileage in 2021 and 58.5 cents per mile in 2022 for reimbursement of

1 mileage. Plaintiff and Class incurred these substantial expenses as a direct result of performing
2 their job duties for Defendant, and Defendant have failed to indemnify Plaintiff and Class for
3 these employment-related expenses.

4 100. Defendant knowingly, willingly and intentionally attempted to offset the cost of
5 doing business on the Plaintiff and Class.

6 101. Defendant had a corporate practice and policy of requiring Plaintiff and Class to
7 shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiff and
8 Class for necessary expenditures.

9 102. Accordingly, Plaintiff and Class are entitled to an award of “necessary
10 expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s
11 fees and interest.

12 **SEVENTH CAUSE OF ACTION**

13 **Unfair Business Practices**

14 **(Against Defendant, DOES 1 through 50, and each of them)**

15 103. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs
16 of this complaint as though fully set forth herein.

17 104. Business and Professions Code Section 17200 et seq. (also referred to herein as
18 the “Unfair Business Practices Act” or “Unfair Competition Law”) prohibits unfair competition
19 in the form of any unlawful, unfair or fraudulent business act or practice.

20 105. Business and Professions Code Section 17204 allows “a person who has suffered
21 injury in fact and has lost money or property as a result of the unfair competition” to prosecute a
22 civil action for violation of the Unfair Competition Law (“UCL”).

23 106. Labor Code Section 90.5, subdivision (a) states that it is the public policy of
24 California to vigorously enforce minimum labor standards in order to ensure employees are not
25 required to work under substandard and unlawful conditions, and to protect employers who
26 comply with the law from those who attempt to gain competitive advantage at the expense of their
27 workers by failing to comply with minimum labor standards.

1 107. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)
2 years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as
3 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent
4 business practices and acts described in this Complaint including but not limited to violations of
5 Labor Code Sections 201-204, 210, 221, 222, 223, 226.3, 246, 227.3, 510, 558, 1174.5, 1197.1,
6 1198, 2802, 2699(f)(2) as well as other statutes.

7 108. The violations of these laws and regulations, as well as of the fundamental
8 California public policies protecting workers, serve as unlawful predicate acts and practices for
9 purposes of Business and Professions Code Section 17200 et seq.

10 109. The acts and practices described above constitute unfair, unlawful and fraudulent
11 business practices, and unfair competition, within the meaning of Business and Professions Code
12 Section 17200 et seq. Among other things, the acts and practices have forced Plaintiff and other
13 similarly situated employees to labor for many consecutive hours without receiving the meal and
14 rest periods and overtime compensation to which they are entitled by law, while enabling
15 Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

16 110. As a result of Defendant's acts, Plaintiff and Class Members have suffered injury
17 in fact in being denied their statutorily entitled meal and rest periods and full compensation for
18 hours worked.

19 111. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
20 and Class have suffered lost wages in an amount to be proven at trial.

21 112. Business and Professions Code Section 17203 provides that a court may make
22 such orders or judgments as may be necessary to prevent the use or employment by any person
23 of any practice which constitutes unfair competition. Injunctive relief is necessary and
24 appropriate to prevent Defendant from repeating its unlawful, unfair and fraudulent business acts
25 and business practices alleged above.

26 113. Business and Professions Code Section 17203 provides that the Court may restore
27 to any person in interest any money or property that may have been acquired by means of such
28 unfair competition. Plaintiff and Class are entitled to restitution pursuant to Business and

1 Professions Code Section 17203 for all wages and payments unlawfully withheld from
2 employees, including the fair value of the meal and rest periods taken away from them during the
3 four-year period prior to the filing of this Complaint, as well as for all expenses or losses incurred
4 by Plaintiff and Class in direct consequence of the discharge of his or her duties, or of his or her
5 obedience to the directions of the employer.

6 114. Business and Professions Code Section 17202 provides, “Notwithstanding Section
7 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
8 forfeiture, or penal law in a case of unfair competition.” Plaintiff and Class are entitled to enforce
9 all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code
10 Section 17202.

11 115. Plaintiff’s success in this action will enforce important rights affecting public
12 interest, and in that regard, Plaintiff sues on behalf of the general public, as well as herself and
13 other similarly situated employees. Plaintiff and Class seek and are entitled to restitution, civil
14 penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

15 116. Plaintiff herein takes upon herself enforcement of these laws and lawful claims.
16 There is a financial burden involved in pursuing this action. The action is seeking to vindicate a
17 public right, and it would be against the interests of justice to penalize Plaintiff by forcing her to
18 pay attorneys’ fees from the recovery in this action. Attorneys’ fees are appropriate pursuant to
19 Code of Civil Procedure Section 1021.5 and otherwise.

20 **EIGHTH CAUSE OF ACTION**

21 **Violation of California Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.***

22 **(Against Defendants, DOES 1 through 50, and each of them)**

23 117. Plaintiff re-alleges and incorporates by reference all preceding paragraphs herein,
24 as if fully alleged herein.

25 118. Plaintiff seeks recovery of penalties under the Labor Code Private Attorney
26 General Act of 2004 (“PAGA.”) (Labor Code sections 2698 *et seq.*)

27 119. PAGA permits an “aggrieved employee” to recover penalties on behalf of
28 himself/herself and other employees subject to violations of the Labor Code, including violations

of sections 201-203, 204, 221, 222, 223, 226, 226.7, 227.3, 510, 512, 1174, 1194, 1198, and 2802, as well as violations of the applicable Wage Order.

120. Plaintiff is informed and believes Defendants at all relevant times employed one or more employees.

121. For those code sections that provide for the recovery of civil penalties, Plaintiff will seek on behalf of all aggrieved employees those penalties. For those sections of the Labor Code that do not specifically provide for civil penalties, Plaintiff will seek civil penalties of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code section 2699, subdivision (f).

122. Section 2699, subdivision (a) provides that civil penalties may be “recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.” (Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g), provides that an employee who prevails in a civil action under section 2699 shall be entitled to an award of reasonable attorneys’ fees and costs.

123. The State of California, Plaintiff and aggrieved employees are, therefore, entitled to civil penalties, attorneys’ fees and costs, according to proof.

PRAYER FOR RELIEF

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

Class Certification

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

As to the First Cause of Action

4. That the Court declare, adjudge and decree that Defendant violated California

1 Labor Code §§ 204, 221, 222, 223, 510, 1194, 1198 and applicable IWC Wage Orders by
2 willfully failing to pay all wages due and for unlawful deductions;

3 5. For general unpaid wages as may be appropriate;

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

6 7. For liquidated damages;

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

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

11 As to the Second Cause of Action

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

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

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

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

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

21 As to the Third Cause of Action

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

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

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

1 18. For reasonable attorneys' fees under California Code of Civil Procedure §
2 1021.5, and for costs of suit incurred herein; and

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

5 As to the Fourth Cause of Action

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

9 21. For penalties and actual damages pursuant to California Labor Code § 226(e);

10 22. For injunctive relief to ensure compliance with this Section, pursuant to
11 California Labor Code § 226(h);

12 23. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

15 As to the Fifth Cause of Action

16 25. That the Court declare, adjudge and decree that Defendant violated California
17 Labor Code §§ 201, 202, 203, 227.3 by willfully failing to pay all compensation and
18 accrued vacation owed at the time of termination of the employment;

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

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

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

24 29. For such other and further relief as the Court may deem equitable and
25 appropriate.
26

27 As to the Sixth Cause of Action
28

1 30. That the Court declare, adjudge and decree that Defendant violated Labor Code §
2 2802 and the IWC Wage Orders;

3 31. For general unpaid wages and reimbursement of business expenses as may be
4 appropriate;

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

7 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

8 34. For such other and further relief as the Court may deem equitable and
9 appropriate.
10

11 As to the Seventh Cause of Action

12 35. That the Court declare, adjudge and decree that Defendant violated California
13 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked,
14 unlawful deductions, accrued vacation pay, failing to provide meal periods, failing to
15 maintain accurate records of meal periods, failing to authorize and permit rest periods, and
16 failing to maintain accurate records of all hours worked and meal periods, failing to furnish
17 accurate wage statements, and failing to indemnify necessary business expenses;

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

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

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

26 39. For injunctive relief to ensure compliance with this Section, pursuant to
27 California Business & Professions Code §§ 17200, *et seq.*; and,
28

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

3 As to the Eighth Cause of Action

4 41. That the Court declare, adjudge and decree that Defendants violated the
5 California Labor Code Sections 201-203, 204, 221, 222, 223, 226, 226.7, 227.3, 510, 512,
6 1174, 1194, 1198, and 2802, as well as violations of the applicable Wage Order ;

7 42. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all
8 other applicable Labor Code provisions;

9 43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Labor Code § 2699;

11 44. For such other and further relief as the Court may deem equitable and
12 appropriate.
13

14 As to all Causes of Action

15 45. For any additional relief that the Court deems just and proper.
16
17

18 Dated: June 12, 2023

TUNYAN LAW, APC

19
20 
21 _____

22 Lilit Tunyan
23 Artur Tunyan

24 Attorneys for Plaintiff MARKEL ROCKE
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Dated: June 12, 2023

Thurs

Attorneys for Plaintiff MARKEL ROCKE

Exhibit “A”



Lilit Tunyan, Esq.
1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

April 5, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Agent for Service of Process for
Pink Chicku LLC
Ketan Shah
6418 Camden Avenue
San Jose, CA 95120

VIA CERTIFIED MAIL

Return Receipt Requested

Pink Chicku LLC
1155 Meridian Avenue, Suite 110
San Jose, CA 95125

VIA CERTIFIED MAIL

Return Receipt Requested

Attorneys for Pink Chicku LLC
Jackson Lewis PC
Julie Zong
50 California Street, 9th Floor
San Francisco, CA 94111

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Markel Rocke v. Pink Chicku LLC*

To Whom It May Concern:

Please be advised that my office has been retained by Markel Rocke (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§

2699, *et seq.*) against her former employer Pink Chicku LLC dba Home Helpers of Santa Clara Valley (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiff alleges Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff’s Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Tulare County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a client care coordinator from July 2020 to May 16, 2022, primarily in Santa Clara County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and over 8 hours each workday.

Throughout Plaintiff’s employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff’s experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the

employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

An employee's regular rate of pay is properly determined by "dividing his total remuneration for employment (except statutory exclusions) in any work week by the total number of hours actually worked by him in that workweek for which such compensation was paid." *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 905.) Thus, employees "who receive incentive bonuses in addition to their guaranteed base pay clearly receive a greater regular rate than the minimum base rate." *Id.* quoting *Walling v. Hamischfeger Corp.* 325 U.S. 427, 431 (1945).

Throughout the statutory time period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). Defendant regularly used a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant' operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Defendant required Plaintiff and the Aggrieved Employees to enter their scheduled shift start and end time using the timekeeping application regardless the fact that actual time worked by Plaintiff and the Aggrieved Employees was more than the scheduled time. Defendant also never required Plaintiff and the Aggrieved Employees to record their meal periods when they were able to take them. Accordingly, Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. Throughout the statutory period, Defendant paid additional remuneration to Plaintiff and the Aggrieved Employees in the form of non-discretionary bonuses and other COVID sick pay, but failed to include those bonuses and additional pay in the regular rate of pay for purposes of calculating overtime rate of pay and sick pay. Throughout the statutory period, Defendant also maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work "off-the-clock". During the statutory period Defendant regularly required Plaintiff and the Aggrieved Employees to work after the scheduled shifts and during weekends to complete work-related tasks and to answer the managers' calls and other tasks. Defendant failed to compensate for that time performed after clocking out from work. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods or recording of meal periods. Defendant has not required that Plaintiff and the Aggrieved Employees to record their meal periods, and never tracked Plaintiff's and the Aggrieved Employees' meal periods. Plaintiff and the Aggrieved Employees would often times miss their meal periods, have interrupted or short meal periods. Plaintiff and the Aggrieved Employees have never been authorized or taken their second or third meal periods. Most importantly, throughout the statutory period Plaintiff and the Aggrieved Employees have not provided duty free meal periods. Plaintiff and the Aggrieved Employees were required to keep their cell phones turned on and to respond to work-related calls and text messages during their meal periods. In fact, Plaintiff and the Aggrieved Employees were on call during their meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant did not schedule rest periods every 4 hours or a major fraction. Plaintiff and the Aggrieved Employees have missed almost 100% of their first, second and third rest breaks as they have not been authorized to take them. Most importantly, throughout the statutory period Plaintiff and the Aggrieved Employees have not provided duty free rest periods. In those occasions when Plaintiff and the Aggrieved Employees had an opportunity to take rest periods, Plaintiff and the Aggrieved Employees were required to keep their cell phones turned on and to respond to work-related calls and text messages during their rest periods. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5.

Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees. Defendant never required to record meal periods and has not tracked and recorded meal periods taken by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included the usage of personal cell phones and vehicles for work. Plaintiff and the Aggrieved Employees were required to use their personal cell phones to download and use work related applications as well as respond and make work-related calls to co-workers, managers and Defendant's customers, but failed to compensate for personal cell phone usage. Plaintiff and the Aggrieved Employees were also required to work from home during 2020 and 2021, but were not reimbursed for their home internet and home office. Plaintiff and the Aggrieved Employees were also required to use their personal vehicles for work. While Defendant reimbursed them for the mileage but used an incorrect mileage reimbursement rate of

54 cents per mile in 2021 and 2022. Internal Revenue Service set 56 cents per mile for reimbursement of mileage in 2021 and 58.5 cents per mile in 2022 for reimbursement of mileage. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

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

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Plaintiff was terminated on May 18, 2022, but received her final paycheck on May 24, 2022.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units

earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify overtime hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the

16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Pay All Accrued Vacation Wages at Termination

Labor Code § 227.3 requires employers to pay employees for all unused vested vacation time at their final rate of pay upon termination of their employment.

During the statutory period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of vacation pay owed at the termination of employment. For instance, when Plaintiff's employment with Defendant terminated, she was owed vacation wages at her true final wage rate on her final paycheck from Defendant even though she had accrued unused vacation time. However, Defendant failed to pay Plaintiff for her accrued but unused vacation. On information and belief, Defendant's failure to pay Plaintiff the correct amount of vacation pay was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to pay all accrued vacation wages at termination.

Unlawful Deductions

Pursuant to Labor Code § 224, Labor Code §§ 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee's wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or

medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.

During the statutory period, Defendant made unlawful 401K deductions from Plaintiff and the Aggrieved Employees since Plaintiff and the Aggrieved Employees have not expressly authorized these deductions and the deduction does not fall under any of the categories listed in Labor Code Section 224.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 204 by failing to pay all earned wages two times per month.
10. Labor Code §§ 221, 222 and 223 by failing to obtain authorizations for deductions from wages.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 221, 222, 223, 227.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendant or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

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- Complete items 1, 2, and 3.
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1. Article Addressed to:

Ketan Shah
Agent for Service of Process
for Pink Chicku LLC
6418 Camden Avenue
San Jose, CA 95120



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PS Form 3811, July 2020 PSN 7530-02-000-9053

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1. Article Addressed to: Julie Zong Jackson Lewis PC Attorneys for Pink Chicku LLC 50 California Street., 9th Floor San Francisco, CA 94111		B. Received by (Printed Name) MARTINA BALESTIER	
2. Article Number (Transfer from service label) 7022 1670 0001 3766 3155		C. Date of Delivery 4/7/23	
3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☐ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)		☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
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PS Form 3800, April 2

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San Jose, CA 95125

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PS Form 3800, April

Julie Zong
Jackson Lewis PC
Attorneys for Pink Chicku LLC
50 California Street., 9th Floor
San Francisco, CA 94111

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04/05/2023

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Total Postage and Fees \$9.48
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PS Form 3800, April

Ketan Shah
Agent for Service of Process
for Pink Chicku LLC
6418 Camden Avenue
San Jose, CA 95120

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04/05/2023



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101 N VERDUGO RD
GLENDALE, CA 91206-9998
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04/05/2023

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Product	Qty	Unit Price	Price
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First-Class Mail®	1		\$1.98
Large Envelope			
San Jose, CA 95120			
Weight: 0 lb 3.60 oz			
Estimated Delivery Date			
Sat 04/08/2023			
Certified Mail®			\$4.15
Tracking #:			
70221670000137663148			
Return Receipt			\$3.35
Total			\$9.48

First-Class Mail®	1		\$1.98
Large Envelope			
San Jose, CA 95125			
Weight: 0 lb 3.80 oz			
Estimated Delivery Date			
Sat 04/08/2023			
Certified Mail®			\$4.15
Tracking #:			
70221670000137663179			
Return Receipt			\$3.35
Total			\$9.48

First-Class Mail®	1		\$1.98
Large Envelope			
San Francisco, CA 94111			
Weight: 0 lb 3.40 oz			
Estimated Delivery Date			
Sat 04/08/2023			
Certified Mail®			\$4.15
Tracking #:			
70221670000137663155			
Return Receipt			\$3.35
Total			\$9.48

Grand Total: \$28.44

Credit Card Remit \$28.44

Card Name: VISA
Account #: XXXXXXXXXXXX0153
Approval #: 03132G
Transaction #: 196
AID: A0000000031010 Contactless
AL: VISA CREDIT
CHASE VISA

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Wednesday, April 5, 2023 12:21:26 PM

4/5/2023

LWDA Case No. LWDA-CM-946583-23
Law Firm : Tunyan Law, APC
Plaintiff Name : Markel Rocke
Employer: Pink Chicku LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1336 Rossmoyne Avenue Glendale, California 91207. On June 12, 2023, I served the foregoing document described as:

On the date indicated below, I served the document described as: **FIRST AMENDED COMPLAINT** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

Marlene S. Muraco
mmuraco@littler.com
Alec DiMario
adimario@littler.com
LITTLER MENDELSON. P.C.
50 W. San Fernando
7th Floor
San Jose, California 9513243
Telephone: 408-998- 4150
Facsimile: 408-288-5686

Attorney for Defendant PINK CHICKU LLC

[✓] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[✓] **BY ELECTRONIC SERVICE:** Based on a court order, Rule of Court, or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 12, 2023, at Glendale, California.

Lilit Tunyan

Name



Signature