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Superior Court of California
County of Sacramento

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and all similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

CECILIA LOMELI, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

KPB IMMIGRATION LAW FIRM PC, a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 23CV001689

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

- 1. Failure to Pay Overtime Wages**
- 2. Failure to Pay Minimum Wages**
- 3. Meal Period Violations**
- 4. Rest Period Violations**
- 5. Wage Statement Violations**
- 6. Waiting Time Penalties**
- 7. Failure to Reimburse Expenses**
- 8. Unfair Competition**
- 9. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

Plaintiff CECILIA LOMELI ("Plaintiff"), on behalf of herself and all other similarly situated employees, hereby files this First Amended Complaint against Defendants KPB IMMIGRATION LAW FIRM PC, a California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff allege the following:

1 **INTRODUCTION**

2 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by
3 Plaintiff for failure to provide overtime wages, failure to provide minimum wages, meal and rest period
4 violations, wage statement violations, waiting time penalties, failure to reimburse expenses, and unfair
5 competition.

6 **JURISDICTION AND VENUE**

7 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
8 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
9 Labor Code, California Business and Professions Code, and Wage Order No. 4. Venue is proper
10 pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that wrongful acts and violations of law
11 asserted herein occurred within Sacramento County, and Defendants' obligation to pay wages and
12 comply with the California Labor Code provisions at issue were to be performed in, and arose in
13 Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
14 (1984).

15 3. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to
16 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
17 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
18 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
19 (“LWDA”) on approximately May 12, 2023. Plaintiff provided facts and legal basis for her claims
20 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause
21 of action. Plaintiff also submitted the \$75.00 filing fee. The May 12, 2023, notice was also sent via
22 certified mail to Defendants on the same day. To date, the LWDA has not provided any response to
23 Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies
24 pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of himself
25 and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A),
26 (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).
27 Aggrieved Employees include, but is not limited to the following: all employees who have worked, or
28

1 continue to work, for Defendants in California as non-exempt employees, including misclassified,
2 salaried employees, from May 12, 2022 to the present.

3 **PARTIES**

4 4. CECILIA LOMELI is an individual over the age of eighteen (18) and is a resident of
5 the State of California.

6 5. On information and belief, Plaintiff alleges, KPB IMMIGRATION LAW FIRM PC,
7 is now and/or at all times mentioned in this Complaint was a California Corporation and the owner
8 and operator of an industry, business and/or facility doing business in the State of California.

9 6. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
10 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
11 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
12 names and capacities of these DOE Defendants when they are ascertained.

13 7. At all times mentioned herein, each Defendant was the agent or employee of each of the
14 other Defendants and was acting within the course and scope of such agency or employment. The
15 Defendants are jointly and severally liable to Plaintiff.

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

20 9. Defendants, and each of them, now and/or at all times mentioned in this Complaint
21 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

22 10. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
23 wrongs, complaints, injuries and/or damages alleged in this Complaint.

24 **CLASS ALLEGATIONS**

25 11. Plaintiff brings the First through Eight Causes of Action on behalf of herself and all
26 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.
27 The class which Plaintiff seeks to represent is composed of, and defined, as follows:
28

1 All employees who have worked, or continue to work, for Defendants in
2 California as non-exempt employees, including misclassified, salaried
3 employees, from May 15, 2019, to the present.

4 12. This action has been brought and may be properly maintained as a class action,
5 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
6 defined community of interests in the litigation and the proposed class is easily ascertainable.

7 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
8 is impracticable under the circumstances of this case. While the exact number of class
9 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
10 Defendants have employed as many as fifty (50) individuals falling within the above
11 stated class definition throughout the State of California during the applicable statute of
12 limitations, who were subjected to the policies and practices outlined in this Complaint.
13 As such, joinder of all members of the putative class is not practicable.

14 (b) Common Questions Predominate: Common questions of law and fact exist as to all
15 members of the putative class and predominate over questions that affect only individual
16 members of the class. These common questions of law and fact include, without
17 limitation, the following:

- 18 (1) Whether Defendants violated the law by not paying employees for all hours
19 worked;
- 20 (2) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
21 class members were not paid all minimum and overtime wages owed;
- 22 (3) Whether Defendants violated the law by misclassifying employees as salary
23 exempt which led to employees not being paid for overtime, and meal and rest
24 breaks;
- 25 (4) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
26 class members were not authorized to take all meal and rest periods owed;
- 27 (5) Whether Defendant failed to reimburse Plaintiff and putative class members for
28 all necessary business expenses;

(6) Whether as a result of Defendants' policies and practices Plaintiff's and putative class members received all wages, due and owing, at the time of their termination or separation; and

(7) Whether Defendants provided Plaintiff's and putative class members with wage statements that complied with Labor Code section 226.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees and/or misclassified salaried employees who were not paid minimum and overtime wages, meal and rest period premiums, and reimbursement of expenses as a result of Defendants' policies and practices resulting in a failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, and failure of paying reimbursement expenses. Additionally, Defendants issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff is an adequate representative of the putative class as Plaintiff has no interests that are adverse to those of putative class members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously,

efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

13. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

14. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 13 as though fully set forth herein.

15. Plaintiff was employed with Defendants from December 9, 2019, December 6, 2022. KPB Immigration Law Firm PC is an immigration law firm that provides immigration services with offices in San Francisco, Los Angeles, Santa Rosa, San Jose, Sacramento, Walnut Creek, Napa, and San Rafael, California. Prior to September 2020, KPB IMMIGRATION LAW FIRM PC was known as KEROSKY, PURVES, & BOUGE, LLP. When Plaintiff was hired, Defendants' name was KEROSKY, PURVES, & BOUGE, LLP. Plaintiff's job title was case manager. Initially, Plaintiff was paid hourly at a rate of \$26 per hour.

16. Plaintiff and similarly situated employees worked over eight (8) hours per day and over forty (40) hours per week. Plaintiff assisted three attorneys with day-to-day activities, which included two associate attorneys and the KPB Immigration Law Firm PC's manager and Chief Executive Officer, Wilson Purves. However, most of the time, Plaintiff assisted four associate attorneys with their day-to-day tasks. Defendants assigned approximately three hundred (300) cases to Plaintiff to work and assist on.

1 17. Plaintiff performed non-exempt duties more than 50% of the time, such as working as a
2 front desk receptionist by meeting walk in clients and taking phone calls from clients as well as potential
3 clients, scheduling appointments for attorney consultations and/or client meetings, translating documents
4 from Spanish to English, translating attorney client communications, talking to clients regarding the
5 status of their case or communicating attorney messages for clients, filling out immigration application
6 for clients as directed, scheduling immigration court hearings and/or confirming immigration hearings,
7 filing different legal documents with the immigration court, helping attorneys with filings and
8 formatting certain legal documents, travel to other offices to pick up client files or meet with clients,
9 acquiring signatures from clients for immigration legal documents and applications, acquiring and
10 processing payment from clients for Defendants' services, dropping off documents to clients or driving
11 to local post office to mail documents to clients, meeting and greeting clients, providing attorneys with
12 client applications for review, call immigration offices for status updates such as for pending
13 applications or cases, scheduling deadlines and filing required court or immigration documents by the
14 required deadlines, and setting up psychological evaluations for clients. Other similarly situated
15 employees performed the same tasks as Plaintiff for more than 50% of their total workday.

16 18. Plaintiff worked in a high volume, fast-paced environment where she had to talk to
17 clients and assist attorneys in meeting deadlines all the time. As a result, Plaintiff worked regularly off
18 the clock. Plaintiff is informed and believes that other similarly situated employees worked off the
19 clock as well. Clients and potential clients called after business hours and on weekends to talk about
20 their case and things that were needed in their case. Furthermore, attorneys and Defendants' staff would
21 contact Plaintiff and similarly situated employees after work regarding work issues or tasks. Sometimes,
22 attorneys would contact Plaintiff at 5:00 a.m., 6:00 a.m., or 11:00 p.m. at night with requests or
23 questions regarding cases. Attorneys and staff would contact Plaintiff via Google Chat App, work
24 email, or texts. Clients and potential clients would call or texts Plaintiff via different cell phone apps
25 such as WhatsApp. Sometimes, Plaintiff was also on call, taking phone calls from clients who had
26 emergencies such as deportations. Defendants were aware that Plaintiff and Aggrieved Employees
27 worked off the clock work because Defendants' staff and attorneys contacting Plaintiff after business
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1 hours regularly. Plaintiff worked approximately two (2) hours per week off the clock assisting attorneys
2 and talking to clients. Defendants did not pay Plaintiff and similarly situated employees for off-the-
3 clock work that they performed outside regular business hours.

4 19. Furthermore, Plaintiff and similarly situated employees worked overtime because of the
5 high volume of cases and the high demand of the job. However, Defendants required Plaintiff and
6 similarly situated employees to request authorization prior to working overtime. Defendants did not pay
7 overtime if it was not pre-authorized even where it was Plaintiff's and similarly situated employees'
8 supervisors contacting them and requiring the off-the-clock work to be performed. Plaintiff is informed
9 and believes that Defendant's Human Resources employee would change the hours in the timecards to
10 remove overtime hours worked. Plaintiff and similarly situated employees were not paid overtime for
11 all overtime hours worked. For example, Defendants denied paying Plaintiff overtime for hours worked
12 because Defendants claimed that Plaintiff did not receive approval for overtime. Defendants' overtime
13 policy states on page 66 of Defendants' Employee Handbook that "employees need to request overtime
14 at least 24 hours in advance and 48 hours in advance of the pay period." Plaintiff and similarly situated
15 employees were usually asked to finish tasks, deadlines, filings, or other important assignments on the
16 same day which made it impossible for them to request overtime 24 hours in advance, let alone 48
17 hours. Usually, associate attorneys would ask Plaintiff and similarly situated employees to finish certain
18 tasks which would require them to stay and work overtime. In some instances, Plaintiff would remind
19 associate attorneys that they needed to communicate let HR know that Plaintiff's overtime was
20 approved. However, many times, the associates would inform Plaintiff that they would ask another case
21 manager for help instead, resulting in Plaintiff working overtime which would not be authorized since
22 Plaintiff had already worked a certain amount of overtime before associates informed her of transferring
23 the task to someone else. Plaintiff worked approximately two (2) hours of unpaid overtime per week.
24 Defendants failed to pay Plaintiff and similarly situated employees for all overtime hours worked.

25 20. Defendants were aware that Plaintiff and similarly situated employees worked overtime
26 and that they were not being paid for overtime hours worked. In fact, Plaintiff spoke to Defendants'
27 Chief Executive Officer, Wilson Purves, regarding the unpaid overtime and asked Defendants' CEO for
28

1 a raise. At that time, Defendants' CEO gave Plaintiff a raise and classified Plaintiff and at least another
2 case manager as salary exempt. However, Plaintiff and similarly situated employees continued to
3 perform the same non-exempt duties more than 50% of their total workday.

4 21. Plaintiff started receiving a salary from February 1, 2022, until her termination of
5 employment. Plaintiff performed the same non-exempt tasks and duties as prior to being classified as
6 salary exempt. Also, Plaintiff's job title and duties did not change at all. Defendants did not require
7 Plaintiff to perform any other exempt duties or tasks. Plaintiff's work schedule and hours remained
8 consistent throughout her tenure with Defendants. Plaintiff is informed and believes that similarly
9 situated employees' work schedule and hours remained consistent throughout their tenure with
10 Defendants also. Plaintiff spent approximately 90-100% of her hours worked performing non-exempt
11 duties as opposed to management, executive, or administrative duties. Plaintiff and similarly situated
12 employees did not manage any employees or subordinates and continued to perform non-exempt, non-
13 managerial and non-supervisory duties. Plaintiff and similarly situated employees did not have the
14 authority to hire and fire staff. Plaintiff was always under the supervision of attorneys and other
15 managers and did not regularly exercise discretion and independent judgment in performing her duties
16 and tasks since she was only assisting attorneys with legal assistant tasks. Plaintiff was involved in
17 Defendants' day-to-day operations and her primary duty was to assist attorneys with legal assistant tasks
18 and not administer the business affairs of the firm. Furthermore, Plaintiff continued to perform the same
19 amount of workload and hours as prior to being misclassified as salary exempt. Plaintiff is informed and
20 believes that similarly situated employees continued to perform the same amount of workload and hours
21 as prior to being misclassified. Relying on Plaintiff's and similarly situated employees'
22 misclassification as exempt employees, Defendants did not pay Plaintiff and similarly situated
23 employees for any overtime hours worked or off the clock work after the salary exempt classification.

24 22. Also, Defendants did not provide Plaintiff and similarly situated employees with
25 compliant meal and rest periods. Plaintiff and similarly situated employees were unable to take
26 uninterrupted meal and rest breaks. Attorneys would ask Plaintiff and similarly situated employees for
27 help with filings, phone calls, deadlines, or other emergency tasks that needed attention during Plaintiff
28

1 and similarly situated employees' meal and rest periods. This occurred approximately 40% of the time
2 during Plaintiff's tenure with Defendants. Undoubtedly, relying on Plaintiff's and similarly situated
3 employees' misclassification as salaried-exempt employees, Defendants stopped keeping records of
4 Defendants' and similarly situated employees' hours worked and meal periods.

5 23. Defendants also required Plaintiff and similarly situated employees to use their personal
6 cell phones for work purposes. Plaintiff and similarly situated employees used their personal cell
7 phones to communicate with managers, attorneys, clients, and other Aggrieved Employees regarding
8 work issues via Google Chat, work email, and texts. For example, Plaintiff and another case manager
9 that worked at the Sacramento office used their personal cell phones all the time during the first three or
10 four months of employment because the Sacramento office did not have a phone. Plaintiff and similarly
11 situated employees received phone calls and texts from clients and staff even after the Sacramento office
12 obtained a phone line. Plaintiff used her personal cell phone for about 50% of the time. Plaintiff pays
13 approximately \$252 per month for her family plan cell phone bill, which would equate to about \$62 per
14 phone line. Moreover, Plaintiff and similarly situated employees worked from home during the COVID
15 pandemic. Defendants did not provide any phones, printers, ink, or paper during the pandemic to
16 Plaintiff and similarly situated employees. Plaintiff's internet monthly bill is approximately \$100 per
17 month. Also, Plaintiff and similarly situated employees had to use their personal printers, buy toner
18 and/or ink for printers, as well as paper for printing during the COVID-pandemic time. Defendants did
19 not reimburse Plaintiff and similarly situated employees for such work-related expenses. In addition,
20 Defendants were aware that Plaintiff and similarly situated employees used their cell phones and printer
21 for work purposes because they communicated with Plaintiff and similarly situated employees during
22 and after business hours. Defendants also knew that Plaintiff received many phone calls from clients on
23 her cell phone because Plaintiff informed Defendants many times. Defendants knew that Plaintiff and
24 similarly situated employees were using their printers because attorneys mentioned many times to
25 Plaintiff during the COVID-pandemic that it wasn't right for Plaintiff and similarly situated employees
26 to use their own printers and papers for work purposes. Defendants did not reimburse Plaintiff or
27 similarly situated employees for these expenses.

1 24. As a result of Defendants' failure to pay Plaintiff and similarly situated employees all
2 overtime, off the clock hours, and meal and rest period premiums owed, the wage statements Defendants
3 issued were inaccurate. The paystubs that Defendants issued did not accurately itemize all hours
4 worked, the overtime wages earned, the number of meal and rest period premiums owed, and the
5 accurate gross and net wages earned.

6 25. To date, Defendant has not paid Plaintiff and similarly situated employees all minimum
7 wages, overtime wages, meal and rest period premiums, and reimbursement expenses owed to them.

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**
10 **FAILURE TO PAY OVERTIME WAGES**
11 **(As to all Defendants)**

12 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
13 set forth herein.

14 27. During the period Plaintiff was employed by Defendants, Defendants were required to
15 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
16 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
17 hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 4, section (3)(A);
18 Cal. Lab. Code §§ 510, 1194.

19 28. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
20 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
21 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
22 worked at their regular rate of pay.

23 29. Plaintiff and similarly situated employees were not exempt from overtime protections
24 employees under the California Wage Orders and Labor Code.

25 30. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
26 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
27 the extent pertinent as if set forth here in full.
28

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully set forth herein.

32. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code § 1194.

33. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

34. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

35. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 34 as though fully set forth herein.

36. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

37. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

38. California Labor Code section 512 and Wage Order No. 4 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may

1 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
2 (1) hour of pay at their regular rate of compensation for each meal period not provided.

3 39. Defendants employed Plaintiff and similarly situated employees for periods of more
4 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
5 period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more
6 than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated
7 employees to take their first meal period before the completion of their fifth hour of work and failed
8 to allow Plaintiff and similarly situated employees to take their second meal period before the
9 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
10 rights to all meal periods throughout their employment.

11 40. Defendants further failed to pay Plaintiff and similarly situated employees the
12 applicable meal period premiums for any such missed meal breaks.

13 41. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
14 employees have been damaged as stated in the section below entitled "DAMAGES," which is
15 incorporated here to the extent pertinent as if set forth here in full.

16 **FOURTH CAUSE OF ACTION**
17 **REST PERIOD VIOLATIONS**
(As to all Defendants)

18 42. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 41 as though fully
19 set forth herein.

20 43. An employer must provide an employee a rest period in accordance with the
21 applicable Wage Order and California Labor Code section 226.7.

22 44. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an
23 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
24 four (4) hours or a major fraction thereof.

25 45. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
26 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
27 they worked more than four (4) hours or a major fraction thereof.

46. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully set forth herein.

49. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

50. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime

1 and double time hours worked and corresponding rates of pay, and gross and net wages earned. The
2 paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours
3 worked due to Defendants' non-counting of off the clock hours towards the amount of total hours
4 worked, overtime hours worked, nonpayment of meal and rest period premiums, and work-related
5 calls, texts, and messages that resulted in off the clock work and further due to Defendants'
6 misclassification of Plaintiff and similarly situated employees as salary exempt employees which led
7 to Defendants not keeping track of meal periods, total hours worked, as well as overtime hours
8 worked. Plaintiff and similarly situated employees were not able to promptly and easily determine
9 their total hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated
10 employees suffered confusion over whether they received all wages owed and were prevented from
11 effectively challenging information on their wage statements.

12 51. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
13 employees have been damaged as stated in the section below entitled "DAMAGES," which is
14 incorporated here to the extent pertinent as if set forth here in full.

15 **SIXTH CAUSE OF ACTION**
16 **WAITING TIME PENALTIES**
(As to all Defendants)

17 52. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 51 as though fully
18 set forth herein.

19 53. An employer must pay an employee who is terminated all unpaid wages immediately
20 upon termination. *See* Cal. Lab. Code § 201.

21 54. An employer must pay an employee who resigns all unpaid wages within seventy-two
22 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

23 55. Plaintiff and similarly situated employees did not receive all wages, including minimum
24 and overtime wages, meal and rest period premiums owed at their termination or within the required
25 time after their separation from employment.
26
27
28

1 56. An employer who willfully fails to pay an employee wages in accordance with California
2 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
3 days. *See* Cal. Lab. Code § 203.

4 57. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
5 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
6 and similarly situated employees worked off the clock and worked overtime because Defendants' staff
7 and attorneys regularly contacted Plaintiff and similarly situated employees after business hours and at
8 different times at night to complete certain tasks or deadlines. Furthermore, Defendants knew that
9 Plaintiff worked overtime because Plaintiff informed HR as well as Defendant Wilson Purves of her
10 overtime hours and the fact that she did not get paid for overtime. Moreover, Defendants changed
11 Plaintiff's and similarly situated employee's classification to salary exempt and were aware that Plaintiff
12 contributed to work the same schedule as before while performing the same non-exempt duties and tasks
13 as prior to her misclassification. Such conduct shows Defendants had knowledge of earned, but unpaid
14 wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

15 58. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
16 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
17 thirty (30) days for Defendants' failure to pay all wages due.

18 **SEVENTH CAUSE OF ACTION**
19 **FAILURE TO REIMBURSE EXPENSES**
 (As to all Defendants)

20 59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully
21 set forth herein.

22 60. California Labor Code section 2802(a) states that "An employer shall indemnify his or
23 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
24 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
25 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
26 unlawful."

61. Defendants required Plaintiff and similarly situated employees to use their home internet, personal cell phone, printer, and printing paper but failed to reimburse them for such use. Defendants knew that Plaintiff and similarly situated employees were using their personal cell phone, printer, and home internet for work purposes because they communicated with Plaintiff and similarly situated employees by sending text messages and making phone calls to Plaintiff's and similarly situated employees' personal cell phones. Moreover, Defendants knew that Plaintiff and similarly situated employees were using their personal printers and internet because Plaintiff and similarly situated employees worked from home during the COVID-pandemic, printed work-related documents while working from home during the COVID-pandemic, and communicated with staff and clients using their personal cell phones throughout their employment. Defendants knew that Plaintiff was using her cell phone to communicate with clients because the first three months of Plaintiff employment Defendants did not even have a phone line connected to the Sacramento office. Defendants also knew that Plaintiff received many phone calls from clients on her cell phone because Plaintiff informed Defendants many times. Defendants also knew that Plaintiff and similarly situated employees were using their printers because attorneys mentioned many times to Plaintiff during the COVID-pandemic that it wasn't right for Plaintiff and similarly situated employees to use their own printers and papers for work purposes.

62. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to All Defendants)

63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 62 as though fully set forth herein.

64. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions ("B&P") Code § 17200.

65. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, or reimbursed for business expenses, during their employment or any time thereafter. Moreover, through Defendants' conduct Plaintiff and similarly situated employees were denied statutory protections regarding meal and rest periods.

66. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

67. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

68. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 67 as though fully set forth herein.

69. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

70. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

71. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

72. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;

- d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
- a. Wages in an amount to be proven at trial;
- b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
- a. Wages in an amount to be proven at trial;
- b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:
- a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);
7. As to the Seventh Cause of Action:
- a. An amount to be proven at trial;
- b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
8. As to the Ninth Cause of Action:
- a. For civil penalties as provided in the Labor Code for each enumerated violation;
- b. For those Labor Code sections where there is no civil penalty provided for their violation, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay

period; For any subsequent violation, two hundred dollars (\$200) for each
aggrieved employee per pay period;

- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- d. For any other remedies as allowed by law and/or deemed appropriate by the
Court;

9. For such other and further relief as this Court may deem just and proper,
including, but not limited to:

- a. Wages as proved at trial;
- b. Injunctive and Declaratory relief;
- c. Attorney's fees and costs as provided for by law; and
- d. Interest.

Dated: March 18, 2024

Shimoda & Rodriguez Law, PC

By: _____



Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff

1 *Lomeli, et al. v. KPB Immigration Law Firm PC, et al.*
2 *Sacramento County Superior Court of California 23CV001689*

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Shaniya Baird, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On March 26, 2024, I served the following documents on the party below:

9 • **FIRST AMENDED COMPLAINT FOR DAMAGES**

10 Jamie N. Stein 11 Light Gabler Law 12 760 Paseo Camarillo, Suite 300 13 Camarillo, California 93010 14 Phone: 805-248-7139 15 Facsimile: Email: jstein@lightgablerlaw.com koffenbacher@lightgablerlaw.com azeider@lightgablerlaw.com	
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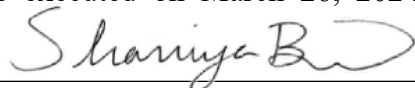
16 [] [By Mail] I am familiar with my employer's practice for the collection and
17 processing of correspondence for mailing with the United States Postal Service
18 and that each day's mail is deposited with the United States Postal Service that
19 same day in the ordinary course of business. On the date set forth above, I served
20 the aforementioned document(s) on the parties in said action by placing a true
21 copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for
22 collection and mailing on this date, following ordinary business practices, at Elk
23 Grove, California, addressed as set forth above.

24 [] [By Personal Service] By personally delivering a true copy thereof to the office
25 of the addressee above.

26 [XXX] [By Electronic Mail] I e-mailed the document(s) to the person(s) shown above. No
27 error was reported by the e-mail service that I used.

28 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service:_____.

I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct, and that this declaration was executed on March 26, 2024, at Elk Grove,
California.



Shaniya Baird