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David W. Slayton,
Executive Officer/Clerk of Court,
By E. Galicia, Deputy Clerk

Attorney for Plaintiff MARTA ALICIA GARCIA JACINTO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARTA ALICIA GARCIA JACINTO, an individual;

Plaintiff,

v.

YZER, LLC, a Limited Liability Company; and DOES
1 through 20, inclusive;

Defendants.

Case Number: **23STCV17662**

COMPLAINT FOR:

- 1. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, CALIFORNIA LABOR CODE § 2698 et seq. ("PAGA");**
- 2. FAILURE TO PAY MINIMUM WAGE (Cal. Lab. Code § 1197);**
- 3. FAILURE TO COMPENSATE FOR ALL HOURS WORKED (Cal. Lab. Code § 1198);**
- 4. FAILURE TO PAY OVERTIME COMPENSATION (Cal. Lab. Code § 1198);**
- 5. FAILURE TO PAY REST PERIOD COMPENSATION (Cal. Lab. Code § 226.7);**
- 6. FAILURE TO PAY MEAL PERIOD COMPENSATION (Cal. Lab. Code § 226.7);**
- 7. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (Cal. Lab. Code § 226);**
- 8. FAILURE TO PAY WAGES UPON DISCHARGE (Cal. Lab. Code § 201);**
- 9. STATUTORY PENALTIES (Cal. Lab. Code §§ 203 and 558);**

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**10. FAILURE TO INDEMNIFY AND
ILLEGAL DEDUCTIONS FROM
WAGES (Cal. Lab. Code § 2802);
11. UNFAIR COMPETITION (Business
and Professions Code 17200);**

**(UNLIMITED CIVIL)
(DEMAND EXCEEDS \$25,000)**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff MARTA ALICIA GARCIA JACINTO (“Plaintiff”) hereby complains against Defendants YZER, LLC and DOES 1 through 20, inclusive, (collectively “Defendants”) and each of them, and alleges as follows:

JURISDICTION

1. This Court has personal jurisdiction over Defendants because Defendants engaged in wrongful conduct in the State of California, which caused harm to Plaintiff in this state.

2. Venue is proper in this Court, because Defendants employ persons in this county, employed Plaintiff in this county, and thus a substantial portion of the occurrences related to this action occurred in this county. *Cal. Civ. Proc. Code* § 395.

PARTIES

3. Plaintiff MARTA ALICIA GARCIA JACINTO is an individual and a resident of the County of Los Angeles and citizen of the State of California.

4. Plaintiff is informed and believes, and based thereon alleges that Defendant YZER, LLC is a Florida Limited Liability Company, organized and existing to do business under the laws of the State of California, with its principal place of business located in Union City, California.

5. Plaintiff is informed and believes, and based thereon alleges that at all times herein mentioned Defendants and DOES 1 through 20, are and were individuals, sole proprietorships, corporations, business entities, persons, and partnerships, licensed to do business and/or actually doing business in the State of California.

6. Plaintiff is unaware of the true names and capacities, whether informed and believes and thereon alleges that at all times herein mentioned Defendants and DOES 1 through 20, are and were

1 individual, corporate, associate, or otherwise, of the Defendants sued as DOES 1 through 20, inclusive.
2 They are unknown to Plaintiff and therefore Plaintiff issues them by such fictitious names. Plaintiff
3 will amend this complaint to allege their true names and capacities when they become known to
4 Plaintiff. Plaintiff is informed and believes, and based thereon alleges, that DOES 1 through 20,
5 inclusive, are indebted to Plaintiff as hereinafter alleged, and that Plaintiff's rights against such
6 fictitiously named Defendants arise from such indebtedness.

7 7. Plaintiff is informed and believes, and based thereon alleges that each Defendant sued in this
8 action, including each Defendant sued by the fictitious names DOES 1 through 20, inclusive, is
9 responsible and liable in some manner for the occurrences, controversies and damages alleged below.

10 8. All references to "Defendants," "Defendants," "company," "company's," "employer" or any
11 similar language, whether singular or plural, shall mean "Defendants, and each of them" when used
12 throughout this complaint.

13 9. At all times herein mentioned, Defendants participated in the doing of the acts and omissions
14 herein alleged, were acting within the purpose, course and scope of said agency and/or employment
15 to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were
16 the agents, managing agents, servants, employees, alter-egos, co-conspirators, joint-venturers,
17 partners, successors in interest and predecessors in interest of each of the other Defendants.

18 10. At all times herein mentioned, Defendants were acting within the purpose, course and scope
19 of said agency and/or employment so as to invoke vicarious liability and *respondeat superior* liability
20 among other theories of liability to hold Defendants liable and responsible for the injuries and damages
21 to Plaintiff.

22 11. At all times herein mentioned, Defendants were members of and engaged in a joint venture,
23 partnership and common enterprise, and acting within the purpose, course and scope of, and in pursuit
24 of, said joint venture, partnership and common enterprise.

25 12. At all times herein mentioned, the acts and omissions of various Defendants contributed to the
26 various acts and omissions of each and all of the other Defendants in proximately causing the injuries
27 and damages as herein alleged.

28 13. At all times herein mentioned, Defendants, including Defendants' managing agents, officers

1 and directors, had advanced knowledge of and/or ratified each and every act or omission complained
2 throughout this complaint. At all times relevant herein, Defendants and/or their managing agents,
3 officers or directors committed and/or participated in the wrongful acts and omissions complained of
4 throughout this complaint or ratified such acts and omissions. At all times herein mentioned, the
5 Defendants aided and abetted the acts and omissions of each and all of the other Defendants in
6 proximately causing the damages as herein alleged.

7 14. Plaintiff is informed and believes, and based thereon alleges that there exists such a unity of
8 interest and ownership between Defendants that the individuality and separateness of Defendants have
9 ceased to exist.

10 15. The business affairs of Defendants are, and at all times relevant hereto were, so mixed and
11 intermingled that the same cannot reasonably be segregated, and the same are in inextricable
12 confusion.

13 16. The recognition of the separate existence of any Defendants would not promote injustice, in
14 that it would permit that Defendants to wrongfully insulate itself from liability to Plaintiff.

15 17. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times there has
16 existed a unity of interest and ownership between Defendants such that any individuality and
17 separateness between the entities has ceased.

18 18. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the
19 corporate privilege, and would promote injustice by protecting Defendants from liability for the
20 wrongful acts committed by it.

21 19. Plaintiff is informed and believes, and based thereon alleges that Defendants are alter egos of
22 each other.

23 20. The individual defendants DOES 1 through 20 have treated the entity Defendant YZER, LLC
24 as their “alter ego”, rather than as a separate entity.

25 21. Upholding the corporate entity and allowing for the shareholders to dodge personal liability
26 for its debts would sanction a fraud or promote an injustice.

27 22. Additionally, per *Labor Code 558.1*, each individual Defendant and DOES 1 through 20 are
28 liable for their direct causation of wage and hour violations against Plaintiff and other aggrieved

employees.

GENERAL FACTS AND ALLEGATIONS

23. This is an action brought by Plaintiff MARTA ALICIA GARCIA JACINTO (“Plaintiff”) pursuant to California statutory, decisional, and regulatory laws. Plaintiff was an employee of Defendants. Plaintiff was at all times relevant to this complaint, employed by Defendants.

24. At all relevant times set forth herein, Defendants, jointly and severally, employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California.

25. Plaintiff is informed, believes and thereon alleges that Defendant YZER, LLC is a freight shipping/trucking company, who employed Plaintiff at its business address located at 2040 E. Locust Ct, Ontario, California 91761.

26. Plaintiff alleges that Defendants were in charge of managing, supervising, and controlling Plaintiff’s and other employees’ wages, work hours, pay, and work conditions, along with managing the day-to-day operations for the business. Therefore, Defendants controlled Plaintiff’s (and other aggrieved employees’) employment.

27. Defendants employed Plaintiff as a delivery driver and laborer between approximately July 2022 through approximately April 11, 2023.

28. Defendants classified Plaintiff and other employees as independent contractors in violation of Labor Code 226.8.

29. Plaintiff alleges that Defendants failed to keep track of Plaintiff's and other employees' actual hours worked. Employees' pay was rounded and inaccurate. This is in violation of Section 7 of Wage Order 9 and other wage orders.

30. Defendants failed to provide Plaintiff and other employees timely meal and rest breaks. Meal and rest breaks violations were rampant; Plaintiff would take her lunch breaks after her 5th hour of work. Meal and rest breaks were dependent on business necessities and frequently late, short or nonexistent.

31. Plaintiff alleges that Plaintiff and other employees were not paid for the use of their personal items such as cell phones.

32. Plaintiff alleges that sick leave was not provided or reported in violation of Labor Code 246.

1 33. Defendants failed to provide employees' full final pay upon separation.

2 34. Plaintiff is informed and believes, and based thereon alleges that Defendants controlled or
3 affected the working conditions, wages, working hours, scope and conditions of employment of
4 Plaintiff during Plaintiff's employment with Defendants.

5 35. Plaintiff alleges that California statutory, decisional, and regulatory laws prohibit the conduct
6 by Defendants herein alleged, and therefore Plaintiff has an entitlement to monetary relief on the basis
7 that Defendants violated such statutes, decisional law, and regulations.

8 36. Plaintiff alleges that Defendants failed to compensate Plaintiff for all hours worked, missed,
9 short, late, and/or interrupted meal periods and/or rest breaks.

10 37. Defendants had the authority to hire and terminate Plaintiff, to set work rules and conditions
11 governing Plaintiff's employment, and to supervise her daily employment activities. Therefore,
12 Defendants controlled Plaintiff's employment.

13 38. Defendants directly hired and paid wages to Plaintiff.

14 39. Plaintiff alleges that at all relevant times, Defendants were each an "employer" of Plaintiff
15 within the meaning of all applicable California state laws and statutes.

16 40. At all times herein mentioned, Defendants ratified each and every act or omission complained
17 herein.

18 **Wage and Hour Allegations:**

19 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a
20 uniform policy of wage abuse against their hourly-paid or non-exempt employees within the State of
21 California. This uniform policy involved, inter alia, failing to pay them for all hours worked, missed,
22 short, late, and/or interrupted meal periods, rest breaks, etc. in violation of California law.

23 42. Plaintiff is informed and believes, and based thereon alleges, that at all material times set forth
24 herein, Defendants were advised by skilled lawyers and other professionals, employees, and advisors
25 knowledgeable about California and federal labor and wage law and employment and personnel
26 practices, and about the requirements of California and federal law.

27 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
28 have known that Plaintiff was entitled to receive certain wages for overtime compensation and that

1 Plaintiff was not receiving wages for overtime compensation.

2 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide
3 Plaintiff the required rest and meal periods during the relevant time period as required under the
4 Industrial Welfare Commission Wage Orders and thus Plaintiff was entitled to any and all applicable
5 penalties.

6 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
7 have known that Plaintiff was entitled to receive all meal periods or payment of one additional hour
8 of pay at Plaintiff's regular rate of pay when a meal period was missed, and Plaintiff did not receive
9 all meal periods or payment of one additional hour of pay at Plaintiff's regular rate of pay when a meal
10 period was missed.

11 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
12 have known that Plaintiff was entitled to receive all rest periods or payment of one additional hour of
13 pay at Plaintiff's regular rate of pay when a rest period was missed, and Plaintiff did not receive all
14 rest periods or payment of one additional hour of pay at Plaintiff's regular rate of pay when a rest
15 period was missed.

16 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
17 have known that Plaintiff was entitled to receive all wages owed to him upon discharge or resignation,
18 including overtime, minimum wages, meal and rest period premiums, and Plaintiff did not, in fact,
19 receive all such wages owed to him at the time of his discharge or resignation.

20 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
21 have known that Plaintiff was entitled to receive all wages owed to him during his employment.
22 Plaintiff did not receive payment of all wages, including overtime and minimum wages and meal and
23 rest period premiums, within any time permissible under California Labor Code section 204.

24 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
25 have known that Plaintiff was entitled to receive complete and accurate wage statements in accordance
26 with California law, however Plaintiff did not receive complete and accurate wage statements from
27 Defendants. The deficiencies included, inter alia, the failure to include the total number of hours
28 worked by Plaintiff.

1 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
2 have known that Defendants had to keep complete and accurate payroll records for Plaintiff in
3 accordance with California law, but, in fact, did not keep complete and accurate payroll records.

4 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
5 have known that they had a duty to compensate Plaintiff pursuant to California law, and that Defendant
6 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed
7 to do so, and falsely represented to Plaintiff that Plaintiff was properly denied wages, all in order to
8 increase Defendant's profits.

9 52. Plaintiff alleges that during the time of his employment, these Defendants acted negligently,
10 recklessly, and/or intentionally to routinely deprive Plaintiff of statutorily mandated rest breaks during
11 work shifts of four (4) hours or greater. Defendants also intentionally failed to compensate Plaintiff
12 for those missed rest breaks over the entire period of her employment with Defendants.

13 53. Plaintiff was not properly compensated for his overtime hours and Defendants failed to keep
14 accurate records of Plaintiff's overtime hours and compensation.

15 54. Defendants, and each of them, violated other provisions of the laws of the State of California,
16 including Employment Laws and Regulations which provide for a civil penalty to be assessed and
17 collected by the California Labor and Workforce Development Agency or its various departments,
18 divisions, commissions, boards, agencies, or employees.

19 55. In addition to any other remedies which may be available at law or equity, or as may otherwise
20 asserted herein, Plaintiff seeks payment of overtime wages and other compensation owed to him, plus
21 all benefits required pursuant to the laws of the State of California, including Employment Laws and
22 Regulations, based on the sums withheld from Plaintiff. Plaintiff also seeks recovery of penalties,
23 attorney's fees, and costs as provided by statute.

24 56. Plaintiff seeks restitution and disgorgement of all sums wrongfully obtained by Defendants
25 through their unfair business practices in violation of California Business & Professions Code Section
26 17200 et seq., to prevent Defendants from benefitting from their ongoing unfair practices, and which
27 sums recovered under the Unfair Competition Act and Unfair Businesses Act are equitable in nature
28 and are not to be considered damages. Plaintiff is also entitled to costs, attorney's fees, interest and

1 penalties as provided for by the California Labor Code and California Business & Professions Code.

2 57. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit
3 the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under
4 this article.”

5 58. WHEREFORE, Plaintiff requests relief as hereinafter provided.

6 **PRIVATE ATTORNEY GENERAL ACT OF 2004 (“PAGA”)**

7 **(Cal. Lab. Code section 2698 *et seq.*)**

8 59. In 2003, California’s Legislature declared that, “staffing levels for state labor law enforcement
9 agencies have, in general, declined over the last decade and are likely to fail to keep up with the growth
10 of the labor market in the future. It is therefore in the public interest to provide those civil penalties
11 for violations of the Labor Code may also be assessed and collected by aggrieved employees acting as
12 private attorneys general, while also ensuring that state labor law enforcement agencies’ enforcement
13 actions have primacy over any private enforcement efforts undertaken pursuant to this act.” Dunlap v.
14 Superior Court (2006) 142 Cal.App.4th 330, 337-338, citing Stats. 2003. Ch. 906 § 1.

15 60. In response, California’s Legislature passed the Private Attorney General Act of 2004
16 (“PAGA”), which “was adopted to empower aggrieved employees, acting as private attorneys general,
17 to seek civil penalties for Labor Code violations, penalties which previously could be assessed only
18 by state agencies.” Dunlap v. Superior Court (2006) 142 Cal.App.4th 330, 336. “Thus, PAGA
19 empowers or deputizes an aggrieved employee to sue for civil penalties ‘on behalf of himself or herself
20 and other current or former employees’ as an alternative to enforcement by the LWDA.” Id. At 337
21 citing to Cal. Lab. Code 2699(a). Class action requirements do not apply to representative actions
22 brought by one employee on behalf of other current or former employees under the PAGA. Arias v.
23 Superior Court (2009) 46 Cal. 4th 969, 984.

24 61. Prior to bringing the action, the aggrieved employee shall give written notice by certified mail
25 to the Labor and Workforce Development Agency and the employer of the specific provisions of this
26 code alleged to have been violated, including the facts and theories to support the alleged violation.
27 Cal. Lab. Code 2699.3 (c)(1). The agency shall notify the employer and the aggrieved employee or
28 representative by certified mail that it does not intend to investigate the alleged violation within 60

1 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of
2 that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given
3 pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section
4 2699.

5 62. The aggrieved employee is entitled to keep 25% of the civil penalties recovered in the PAGA
6 action and the remaining 75% goes to the Labor and Workforce Development Agency. *Cal. Lab. Code*
7 2699(i).

8 63. On May 10, 2023, Plaintiff MARTA ALICIA GARCIA JACINTO gave written notice by
9 certified mail to the Labor and Workforce Development Agency (“LWDA”) and the employers
10 (Defendant YZER, LLC), of the specific conditions of the codes alleged to have been violated,
11 including the facts and theories to support the alleged violations. Attached hereto as “**EXHIBIT A**”,
12 is a true and correct copy of Plaintiff’s written PAGA Notice Letter, dated May 10, 2023.

13 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**

14 **(Violation of the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.*)**

15 64. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

16 65. Plaintiff seeks civil penalties for the above acts, which violate the California Labor Code, under
17 the Private Attorneys General Act (“PAGA”), Cal. Labor Code § 2698 *et seq.*

18 66. Plaintiff is “aggrieved employees” under PAGA, as he was employed by Defendants during
19 the applicable statutory period and suffered one or more of the Labor Code violations set forth herein.
20 Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and former aggrieved
21 employees of Defendants, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and
22 costs.

23 67. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted
24 by PAGA and the *California Supreme Court in Arias v. Superior Court*, (2009) 46 Cal.4th 969.
25 Therefore, class certification of the PAGA claims is not required.

26 68. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor Code
27 provisions:

28 *a.* failure to provide prompt payment of wages to employees upon termination and

1 resignation in violation of Labor Code § 201, 202, 203;

2 b. failure to provide itemized wage statements to employees in violation of Labor Code
3 §§ 226(a), 1174, and 1174.5;

4 c. failure to provide meal and rest periods in violation of all applicable IWC wage orders
5 and Labor Code §§ 1174 and 1174.5;

6 d. failure to pay overtime wages in violation of all applicable IWC wage orders and Labor
7 Code §§ 510, 558, 1194 and 1198;

8 e. failure to provide unpaid balance of full amount of overtime compensation in violation
9 of Labor Code section 1194 and 2698 *et seq.*;

10 f. failure to pay minimum wage in violation of all applicable IWC wage orders and Labor
11 Code §§ 1182.12, 1194, and 1197;

12 g. Violation of Labor Code section 1199 (a) and (c) and 2699.5 *et seq.*;

13 h. failure to reimburse employees for all reasonably necessary expenditures and losses
14 incurred by employees in direct consequence of the discharge of their duties and other
15 work-related expenses, in violation of Labor Code section 2802;

16 i. failure to provide itemized wage statements to employees in violation of Labor Code
17 section 226(a); and

18 j. Violation of Labor Code 226.8 by misclassifying its employees as independent
19 contractors;

20 k. Violations of California Labor Code sections 201; 202; 203; 204; 206; 216; 218.6; 221;
21 226 *et seq.*; 226.8; 432.5; 450; 226.7; 512; 1174; 1174.5; 2802; and all applicable IWC
22 wage orders.

23 69. On May 10, 2023, Plaintiff MARTA ALICIA GARCIA JACINTO gave written notice by
24 certified mail to the Labor and Workforce Development Agency (“LWDA”) and the employers
25 (Defendant YZER, LLC), of the specific conditions of the codes alleged to have been violated,
26 including the facts and theories to support the alleged violations. Attached hereto as “**EXHIBIT A**”,
27 is a true and correct copy of Plaintiff’s written PAGA Notice Letter, dated May 10, 2023.

28 70. The LWDA did not provide notice of its intention to investigate Defendants’ alleged violations

1 within sixty-five (65) calendar days of the postmark date of the notice sent by Plaintiff. *See Cal. Labor*
2 *Code section 2699.3(a)(2)(A).*

3 71. With respect to violations of Labor Code section 226(a), Labor Code section 226.3 imposes a
4 civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
5 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee
6 for each subsequent violation of Labor Code section 226(a).

7 72. With respect to violations of Labor Code sections 510, 512, Labor Code section 558 imposes
8 a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial
9 violations for each unpaid employee for each pay period for which the employee was underpaid in
10 addition to an amount sufficient to recover underpaid wages, and one hundred dollars (\$100) for
11 subsequent violations for each underpaid employee for each pay period for which the employee was
12 underpaid in addition to an amount sufficient to recover underpaid wages.

13 73. Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to aggrieved
14 employees pursuant to Labor Code section 558(a)(3).

15 74. With respect to violations of Labor Code section 1174, Labor Code section 1174.5 imposes a
16 civil penalty of \$500.

17 75. Labor Code section 2699 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay
18 period, per aggrieved employee for initial violations, and two hundred dollars (\$200) pay period, per
19 aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty
20 is not specifically provided, including Labor Code sections 226.7, 226.8, 1174, 1182.12, 1194, 1197,
21 1198, and 2802.

22 76. WHEREFORE, Plaintiff requests relief as hereafter provided.

23 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**

24 **(Failure to Pay Minimum Wage)**

25 **(Cal. Lab. Code §§ 1182.12, 1194, 1197 & 1198 *et seq.*)**

26 77. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

27 78. Pursuant to Labor Code §§ 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or
28 permit a California employee to work without paying wages at the proper minimum wage for all time

1 worked.

2 79. At all times material hereto, “hours worked” included “the time during which an employee is
3 subject to the control of an employer, and includes all the time the employee is suffered or permitted
4 to work, whether or not required to do so.”

5 80. Plaintiff alleges Defendants failed to keep track of Plaintiff's and other employees' actual hours
6 worked. Employees' pay was rounded and inaccurate. This is in violation of Section 7 of Wage Order
7 9 and other wage orders.

8 81. As a direct and proximate result of Defendants' failure to pay Plaintiff the minimum wage,
9 Plaintiff has been damaged in the amount of unpaid minimum wages. Pursuant to Labor Code §§ 1194
10 and 1194.2, Plaintiff is entitled to recover the full amount of unpaid minimum wages, liquidated
11 damages in an equal amount, interest and attorney's fees, all in a total amount subject to proof at time
12 of trial. In addition, insofar as the failure of Defendants to pay the minimum wage was willful, Plaintiff
13 who no longer works for Defendants are entitled to waiting time penalties pursuant to Labor Code §
14 200 *et seq.*

15 82. The aforementioned acts by Defendants were intentional, with the intention on the part of the
16 Defendants to deprive Plaintiff of his property and/or legal rights and causing injury to him. As a result
17 of Defendants' failure to compensate Plaintiff at the minimum wage, pursuant to Labor Code § 1197.1,
18 Plaintiff is entitled to civil penalties from Defendants of \$50 for each underpaid employee for each
19 pay period for which the employee is underpaid, for the initial violation; and \$100 for each underpaid
20 employee for each pay period for which the employee is underpaid, for each subsequent violation.

21 83. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant to Labor
22 Code §558.1.

23 84. WHEREFORE, Plaintiff requests relief as hereinafter provided.

24 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**

25 **(Failure to Compensate for All Hours Worked)**

26 **(Cal. Lab. Code § 1198 *et seq.*)**

27 85. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

28 86. At all times relevant herein, Defendants were required to compensate Plaintiff for all hours

1 worked upon reporting for work at the appointed time stated by Defendants, pursuant to applicable
2 IWC Wage Orders, and Labor Code §§ 200, 226, 500, 510, and 1197.

3 87. At all times relevant hereto, Defendants failed to compensate Plaintiff for all hours worked by
4 not compensating him for work performed. Defendants failed to pay minimum wages; Defendants
5 failed to provide breaks as required by law; Defendants failed to compensate employees for all
6 overtime worked; Defendants failed to pay for break periods; Defendants did not accurately record
7 hours worked; Defendants failed to properly itemize wages.

8 88. Under the applicable IWC Wage Orders and California law, Plaintiff is entitled to recover
9 compensation for all hours worked, but not paid, for the three (3) years preceding the filing of this
10 Complaint, plus reasonable attorney's fees and costs of suit pursuant to Labor Code § 218.5, and
11 penalties pursuant to Labor Code §§ 203 and 226.

12 89. In violation of state law, Defendants have knowingly and willfully refused to perform their
13 obligations to compensate Plaintiff for all wages earned and all hours worked. As a direct result,
14 Plaintiff has suffered, and continues to suffer, substantial losses related to the use and enjoyment of
15 such wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel
16 Defendants to fully perform their obligations under state law, all to his respective damage in amounts
17 according to proof at time of trial, but not in amounts in excess of the jurisdiction of this Court.

18 90. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and
19 deliberate intention of injuring Plaintiff, and in conscious disregard of Plaintiff's rights. Plaintiff is
20 thus entitled to recover nominal, actual, compensatory, and liquidated damages in amounts according
21 to proof at time of trial, but not in amounts in excess of the jurisdiction of this Court.

22 91. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an
23 amount according to proof at time of trial, but not in an amount in excess of the jurisdiction of this
24 Court.

25 92. Defendants' conduct described herein violates Labor Code §§ 200, 226, 500, 1197 and 1198,
26 and applicable IWC Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5, 226, 558, 1194,
27 and 1194.2, Plaintiff is entitled to recover damages for the nonpayment of wages of all hours worked
28 that were improperly deducted by Defendants' policies, penalties, reasonable attorney's fees,

1 expenses, and costs of suit.

2 93. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant to Labor
3 Code §558.1.

4 94. WHEREFORE, Plaintiff requests relief as hereinafter provided.

5 **FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

6 **(Failure to Pay Overtime Compensation)**

7 **(Cal. Lab. Code §§ 1198 & 510 *et seq.*)**

8 95. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

9 96. Pursuant to applicable IWC Wage Orders, and Labor Code §§ 200, 226, and 1198, at all times
10 relevant hereto, Defendants were required to compensate Plaintiff for all overtime, which is calculated
11 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours
12 per day and/or forty (40) hours per week.

13 97. Pursuant to applicable IWC Wage Orders, and Labor Code §§ 200, 226, and 1198, as of
14 January 1, 1998, Defendants were required to compensate Plaintiff for all overtime, which is calculated
15 as one and one-half (1½) times the regular rate of pay for hours worked in excess of forty (40) hours
16 per week.

17 98. Pursuant to Labor Code §§ 200, 226, 500, 510, and 1198, Defendants were required to
18 compensate Plaintiff for all overtime, which is calculated at one and one-half (1½) times the regular
19 rate of pay for hours worked in excess of eight (8) hours per day.

20 99. Plaintiff was a non-exempt employee entitled to the protections of California Labor Code §§
21 200, 226, 500, 510, and 1198. During the course of Plaintiff's employment, Defendants failed to
22 properly compensate him for overtime hours worked as required under the aforementioned Labor Code
23 sections.

24 100. In violation of state law, Defendants have knowingly and willfully refused to perform their
25 obligations to compensate Plaintiff for all wages earned and all hours worked.

26 101. As a direct result of aforementioned violations, Plaintiff has suffered, and continues to suffer,
27 substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and
28 expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations under

1 state law, all to his respective damage in amounts according to proof at time of trial, but not in amounts
2 in excess of the jurisdiction of this Court.

3 102. Defendants' conduct described herein violates Labor Code §§ 200, 226, 500, 510 and 1198.
4 Therefore, pursuant to Labor Code § 200, 203, 218.5, 226, 558, and 1194, Plaintiff is entitled to
5 recover the unpaid balance of overtime compensation Defendants owe Plaintiff and civil penalties
6 (including the penalties described in Labor Code § 558 and other statutory penalties) plus interest
7 penalties, attorney's fees, expenses, and costs of suit.

8 103. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant to Labor
9 Code §558.1.

10 104. WHEREFORE, Plaintiff requests relief as hereinafter provided.

11 **FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

12 **(Failure to Pay Rest Period Compensation)**

13 **(Cal. Lab. Code §§ 226.7 & 1198 *et seq.*)**

14 105. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

15 106. Defendants failed to allow Plaintiff to take rest periods during every four-hour period worked.
16 The law requires that non-exempt employees be allowed a 10-minute break during every four-hour
17 work period, or major fraction thereof. Defendants denied him such breaks.

18 107. In addition, Plaintiff is entitled to recover interest on the unpaid rest period wages due to him.
19 Further, Plaintiff demands reasonable attorney's fees and costs of suit, pursuant to Labor Code § 218.5,
20 plus all appropriate penalties for the wage and hour violations, in addition to the one-hour's
21 compensation as premium pay as provided for by law.

22 108. Defendants failed to provide Plaintiff and other employees timely meal and rest breaks. Meal
23 and rest breaks violations were rampant; Plaintiff would take her lunch breaks after her 5th hour of
24 work. Meal and rest breaks were dependent on business necessities and frequently late, short or
25 nonexistent.

26 109. As a result of the conduct alleged herein, Plaintiff was damaged by Defendants' failure to pay
27 wages for breaks withheld in an amount to be established at the time of trial. Moreover, Defendants'
28 failure to pay wages, as alleged herein was at all times knowing and willful.

110. Plaintiff is not only entitled to compensation for the lost rest periods, but to the extent that Defendants claim that rest periods were taken which are not documented, Plaintiff also seeks all applicable penalties for Defendants' failure to keep accurate time records and to issue to Plaintiff his accurate earnings statements.

111. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant to Labor Code §558.1.

112. WHEREFORE, Plaintiff requests relief as hereinafter provided.

SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Failure to Pay Meal Period Compensation)

(Cal. Lab. Code §§ 226.7, 512(a) & 1198 et seq.)

113. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

114. At all times herein mentioned, Plaintiff was a non-exempt employee and subject to the meal period provisions.

115. Defendant failed to allow Plaintiff to take 30-minute meal periods for every 5 hours worked. Defendant denied him such breaks. Thus, Defendant sometimes deprived employees of both his meal period and the 30 minutes pay for the time when the employees were working, when they should have been allowed to take their meal breaks.

116. Defendants failed to provide Plaintiff and other employees timely meal and rest breaks. Meal and rest breaks violations were rampant; Plaintiff would take her lunch breaks after her 5th hour of work. Meal and rest breaks were dependent on business necessities and frequently late, short or nonexistent.

117. Wages are due to employees for "all hours worked" pursuant to applicable laws, rules, orders, requirements, and regulations. Plaintiff demands all applicable reimbursement and penalties for his lost meal breaks, in addition to the one-hour's compensation due under the wage order. Further, Plaintiff demands reasonable attorney's fees and costs of suit, pursuant to Labor Code § 218.5.

118. Under California law, meal periods must be recorded unless all operations cease during the scheduled meal periods. Defendant failed to record the meal periods. Plaintiff is not only entitled to compensation for the lost meal periods, but to the extent that Defendant claims that meal periods were

1 taken which are not documented, Plaintiff also seeks all applicable penalties for Defendant's failure
2 to keep accurate time records and to issue to Plaintiff his accurate earnings statements.

3 119. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant to Labor
4 Code §558.1.

5 120. WHEREFORE, Plaintiff requests relief as hereinafter provided.

6 **SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

7 **(Failure to Furnish Accurate Wage and Hour Statements)**

8 **(Cal. Lab. Code § 226)**

9 121. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

10 122. At all relevant times herein, California Labor Code section 226(a) provides that every
11 employer shall furnish each of his or her employees an accurate and complete itemized wage statement
12 in writing, including, but not limited to, the name and address of the legal entity that is the employer,
13 the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

14 123. During the relevant time period, Defendants have knowingly and intentionally provided
15 Plaintiff with uniform, incomplete, and inaccurate wage statements. Specifically, Defendants violated
16 sections 226(a)(1), 226(a)(5), 226(a)(8), and 226(a)(9). Because Plaintiff was forced to work during
17 all or part of his rest break periods, and because Defendants did not calculate Plaintiff's regular rate
18 of pay correctly for purposes of paying overtime, Defendants did not list the correct amount of gross
19 wages earned by Plaintiff in compliance with section 226(a)(1). For the same reasons, Defendants
20 failed to list the correct amount of net wages earned by Plaintiff in violation of section 226(a)(5).
21 Plaintiff was damaged by these failures because, among other things, these failures led him to believe
22 that he was not entitled to be paid overtime, even though he was so entitled and because these failures
23 hindered him from determining the amounts of overtime wages owed to him.

24 124. Defendants also failed to correctly list all applicable hourly rates in effect during the pay
25 period, namely, correct overtime rates of pay and correct rates of pay for premium wages, as a result
26 of miscalculating the regular rate of pay, in violation of section 226(a)(9).

27 125. The wage statement deficiencies also include, among other things, failing to list total hours
28 worked by employees; failing to list the number of piece-rate units earned and any applicable piece

1 rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive
2 dates of the period for which employees were paid; failing to list the name of the employee and only
3 the last four digits of his or her social security number or an employee identification number other
4 than a social security number; failing to list the correct name of the legal entity that is the employer;
5 and/or failing to state all hours worked as a result of not recording or stating the hours he or she worked
6 off-the-clock.

7 126. By causing Plaintiff to work without compensation, Defendants have violated the requirement
8 that the total hours worked and all wages earned is included in the wage statement that must be
9 provided to Plaintiff.

10 127. Plaintiff was damaged by these failures because, among other things, these failures led Plaintiff
11 to believe that he was not entitled to be paid overtime, even though he was so entitled and because
12 these failures hindered Plaintiff from determining the amounts of overtime wages owed to him.

13 128. By virtue of Defendants' knowing, intentional, and unlawful failure to provide accurate wage
14 statements, Plaintiff has suffered, and will continue to suffer, damages in amounts, which will be
15 ascertained according to proof at trial.

16 129. Plaintiff is entitled to recover from Defendants the greater of his actual damages caused by
17 Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not
18 exceeding four thousand dollars (\$4,000) per employee.

19 130. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant to Labor
20 Code §558.1.

21 131. WHEREFORE, Plaintiff requests relief as hereinafter provided.

22 **EIGHTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

23 **(Failure to Pay Wages Upon Discharge)**

24 **(Cal. Lab. Code §§ 201 & 202 *et seq.*)**

25 132. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

26 133. Pursuant to California Labor Code § 201, upon former employee Plaintiff's termination date,
27 Defendants were required to pay Plaintiff all earned wages. At the time of former employee Plaintiff's
28 termination date, former employee Plaintiff had unpaid wages. In violations of Labor Code § 201,

1 Defendants failed to pay former employee Plaintiff any amount of wages due and owing him, in
2 amounts to be proven at the time of trial, but not in excess of the jurisdiction of this Court.

3 134. Defendants' failure to pay former employee Plaintiff the wages due and owing him was willful,
4 and done with the wrongful and deliberate intention of injuring Plaintiff, and in conscious disregard
5 of Plaintiff's rights. Plaintiff is thus entitled to recover nominal, actual, compensatory, and liquidated
6 damages in amounts according to proof at time of trial, but not in amounts in excess of the jurisdiction
7 of this Court.

8 135. Defendants failed to provide employees' full final pay upon separation.

9 136. Defendants' willful failure to pay Plaintiff the wages due and owing to him constitutes
10 violations of Labor Code §§ 201 and 203, which provides that an employee's wages will continue as
11 a penalty for up to thirty (30) days from the time the wages were due. Therefore, Plaintiff is entitled
12 to statutory penalties pursuant to Labor Code § 203.

13 137. Pursuant to Labor Code § 218.5, Plaintiff is also entitled to an award of reasonable attorney's
14 fees, expenses, and costs incurred in this action.

15 138. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant to Labor
16 Code §558.1.

17 139. WHEREFORE, Plaintiff requests relief as hereinafter provided.

18 **NINTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

19 **(Statutory Penalties)**

20 **(Cal. Lab. Code §§ 203 and 558)**

21 140. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

22 141. Labor Code section 201 provides, in relevant part: "(a) If an employer discharges an employee,
23 the wages earned and unpaid at the time of discharge are due and payable immediately."

24 142. Labor Code section 202 provides in relevant part:

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

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

5 143. Labor Code section 203 provides:

6 “If an employer willfully fails to pay, without abatement or reduction, in accordance with
7 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
8 quits, the wages of the employee shall continue as a penalty from the due date thereof at the
9 same rate until paid or until an action therefore is commenced; but the wages shall not continue
10 for more than 30 days. An employee who secretes or absents himself or herself to avoid
11 payment to him or her, or who refuses to receive the payment when fully tendered to him or
12 her, including any penalty then accrued under this section, is not entitled to any benefit under
13 this section for the time during which he or she so avoids payment. Suit may be filed for these
14 penalties at any time before the expiration of the statute of limitations on an action for the
15 wages from which the penalties arise.”

16 144. By willfully failing to pay its separated employee the amounts owed in a timely manner as
17 required by Labor Code sections 201 and 202, Defendants are liable for statutory penalties pursuant
18 to Labor Code § 203, in an amount equal to thirty (30) days of said employee’s per diem wage rate.
19 These statutory penalties, in a sum to be proven at trial, are owed and unpaid.

20 145. Labor Code section 558 provides:

21 “(a) Any employer or other person acting on behalf of an employer who violates, or causes to
22 be violated, a section of this chapter or any provision regulating hours and days of work in any
23 order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

24 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
25 period for which the employee was underpaid in addition to an amount sufficient to recover
26 underpaid wages.

27 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
28 for each pay period for which the employee was underpaid in addition to an amount sufficient

1 to recover underpaid wages.

2 146. By violating Labor Code sections above and the within-referenced orders of the Industrial
3 Welfare Commission, Defendants are liable for statutory penalties pursuant to Labor Code § 558, in a
4 sum to be proven at trial.

5 147. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant to Labor
6 Code §558.1.

7 148. WHEREFORE, Plaintiff requests relief as hereinafter provided.

8 **TENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

9 **(Failure to Indemnify and Illegal Deductions from Wages)**

10 **(Cal. Lab. Code § 2802)**

11 149. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

12 150. Pursuant to Labor Code § 2802, requiring employees to expend monies or indemnify their
13 employer for losses in direct consequence of the discharge of their duties is unlawful. Pursuant to
14 aforementioned orders, Labor Code § 226, and other laws of the State of California, it is also unlawful
15 for employers to make set-offs and/or deductions from employees' wages and fail to properly itemize
16 all deductions from wages.

17 151. At all times relevant hereto, Plaintiff was employed by Defendants, and each of them, within
18 the State of California. Defendant was required to indemnify and reimburse Plaintiff for all
19 expenditures or losses incurred in direct consequence of the discharge of Plaintiff's duties, but failed
20 to indemnify and reimburse as an employer is required to do under the laws and regulations of the
21 State of California; further, Defendant made unlawful deductions and/or set-offs from Plaintiff's
22 wages, and failed to properly itemize all deductions from wages in violation of Labor Code §§ 226
23 and 2802, and aforementioned Orders; Defendant also breached the employment contract by failing
24 to fully reimburse Plaintiff for, or requiring Plaintiff to pay other employees out of Plaintiff's own
25 compensation; failing to pay for all hours worked; failing to provide breaks as required by law; failing
26 to provide meal periods as required by law; illegally not accurately recording time worked; and other
27 reason to be discovered.

28 152. At all times relevant hereto, Defendant has withheld indemnification from, charged, deducted,

1 and or set-off the wages of Plaintiff, for illegal purposes.

2 153. Plaintiff alleges that Plaintiff and other employees were not paid for the use of their personal
3 items such as cell phones.

4 154. In violation of state law, Defendant has knowingly and willfully refused to perform its
5 obligations to compensate Plaintiff for all wages earned and all hours worked and failed to properly
6 indemnify and reimburse Plaintiff. As a direct result, Plaintiff has suffered, and continues to suffer,
7 substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and
8 expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligation under
9 state law, respective damage in amounts according to proof at time of trial, but not in amounts in
10 excess of the jurisdiction of this Court.

11 155. Defendant committed the acts alleged herein knowingly and willfully, with the wrongful and
12 deliberate intention of injuring Plaintiff, and in conscious disregard of Plaintiff's rights. Plaintiff is
13 entitled to recover nominal, actual, compensatory, and liquidated damages in amounts according to
14 proof at time of trial, but not in amounts in excess of the jurisdiction of this Court.

15 156. Defendant's conduct described herein violates Labor Code §§ 200, 226 and 2802. As a
16 proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according
17 to proof at time of trial, but not in an amount in excess of the jurisdiction of this Court. Therefore,
18 pursuant to Labor Code §§ 200, 203, 218.5, 226, and 2802, Plaintiff is entitled to recover the unpaid
19 balances of wages Defendant owes Plaintiff, plus interest, statutory penalties, attorneys' fees,
20 expenses, and costs of suit.

21 157. Plaintiff alleges that Defendants are liable jointly and severally for damages pursuant to Labor
22 Code §558.1.

23 158. WHEREFORE, Plaintiff requests relief as hereinafter provided.

24 **ELEVENTH CAUSE OF ACTION ALL AGAINST DEFENDANTS**

25 **(Unfair Competition)**

26 **(Violation of California Business & Professions Code §§ 17200 *et seq.*)**

27 159. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

28 160. Business & Professions Code § 17200 prohibits unfair competition in the form of any unlawful,

1 unfair, or fraudulent business act or practice.

2 161. Business & Professions Code § 17204 allows “any person acting for the interests of itself, its
3 members or the general public” to prosecute a civil action for violation of the UCL.

4 162. Defendants are a “person” as defined by California Business & Professions Code sections
5 17201, as it is a corporation, firm, partnership, joint stock company, and/or association.

6 163. Beginning at an exact date unknown to Plaintiff, but at least since approximately 2017,
7 Defendants have committed unlawful, unfair, and/or fraudulent business acts and practices as defined
8 by Business & Professions Code § 17200, by engaging in the following conduct:

- 9 a. failing to pay Plaintiff minimum wage for all hours worked, as required by Labor Code §§
10 1182.12, 1194 *et seq.*, 1197 *et seq.* and applicable IWC wage orders;
- 11 b. failing to pay Plaintiff overtime compensation for all hours worked over eight (8) in a day
12 or forty (40) in a workweek, as required by Labor Code §§ 510, 1194 *et seq.* and applicable
13 IWC wage orders;
- 14 c. failing and/or refusing to provide rest and meal break periods to Plaintiff, as required by
15 Labor Code §§ 226.7 and 512 and applicable IWC wage orders;
- 16 d. failing to indemnify Plaintiff for employment-related business expenses and losses, as
17 required by Labor Code §2802;
- 18 e. failing to provide accurate itemized wage statements to Plaintiff, as required by Labor Code
19 § 226 and applicable IWC wage orders;
- 20 f. failing to maintain payroll records showing the actual hours worked each day by Plaintiff
21 as require by Labor Code § 1174 *et seq.* and applicable IWC wage orders; and
- 22 g. failing to pay, upon termination of employment, all wages due to Plaintiff, as required by
23 Labor Code §§ 201, 202, and 203.
- 24 h. misclassifying Plaintiff as a contractor in violation of Cal. Lab. Code § 226.8 (b).

25 164. Defendants’, and each of their, conduct as alleged herein, has been, and continues to be, unfair,
26 and harmful to Plaintiff, and to the general public. Plaintiff has suffered injury in fact and has lost
27 money as a result of Defendants’, and each of their, unfair business practices. Plaintiff seeks to enforce
28 important rights affecting the public interest within the meaning of Code of Civil Procedure section

1 1021.5.

2 165. A violation of California Business & Professions Code sections 17200 *et seq.* may be
3 predicated on any unfair business practice. In the instant case, Defendants' policies and practices have
4 violated the spirit of California's meal and rest break laws and constitute acts against the public policy
5 behind these laws. Plaintiff is entitled to restitution pursuant to Business & Professions Code §§ 17203
6 and 17208 for all unpaid wages, minimum wage, overtime pay, missed rest period compensation,
7 reporting time compensation, and interest for four years prior to the filing of this complaint.

8 166. Pursuant to Business & Prof. Code §17203, Plaintiff is entitled to restitution of money acquired
9 by Defendants by means of its unfair business practices, in amounts not yet ascertained but to be
10 ascertained at trial.

11 167. Plaintiff is entitled to enforce all applicable penalty provisions of the Labor Code pursuant to
12 Business & Professions Code § 17202.

13 168. By all of the foregoing alleged conduct, Defendants, and each of them, have committed, and
14 are continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the
15 meaning of Business & Professions Code §17200 *et seq.*

16 169. Plaintiff has assumed the responsibility of enforcement of the laws and lawful claims specified
17 herein. There is a financial burden incurred in pursuing this action, which is in the public interest.
18 Therefore, reasonable attorney's fees are appropriate pursuant to Cal. Code of Civil Procedure §
19 1021.5.

20 170. WHEREFORE, Plaintiff requests relief as hereinafter provided.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

- 23 1. For general damages, in an amount not less than \$25,000, according to proof, on each
24 cause of action for which such damages are available (\$275,000);
- 25 2. For additional compensatory damages for Plaintiffs' emotional pain and suffering, in
26 an amount to be proven at trial, in an amount not less than \$50,000;
- 27 3. That Defendants are found to have violated the above-referenced provisions of the
28 Labor Code and IWC Wage Orders as to Plaintiff;

- 1 4. That Defendants' actions are found to be willful and/or in bad faith to the extent
2 necessary under Sections 201, 202 and 203 of the Labor Code for failure to pay all
3 compensation owed at the time of separation to Plaintiff, as to Section 226 of the Labor
4 Code for willful failure to provide the required accurate and itemized wage statements
5 to Plaintiff;
- 6 5. That Defendants are found to have violated provisions of the Labor Code and Wage
7 Orders regarding meal periods and rest periods;
- 8 6. That Plaintiff receives an award in the amount of unpaid wages owed, including
9 interest thereon, and penalties subject to proof at trial;
- 10 7. An award to Plaintiff of statutory penalties because of Defendants' failure to provide
11 Plaintiff with itemized wage statements that comply with the requirements of Labor
12 Code § 226 and because of Defendants' failure to pay all wages due upon the date of
13 his termination, subject to proof at trial;
- 14 8. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff for
15 Defendants' failure to pay legally required minimum wage, overtime compensation,
16 business expenses, missed meal break and rest break periods, pursuant to Business &
17 Professions Code § 17203;
- 18 9. For Statutory penalties under Labor Code Section 226.8;
- 19 10. For prejudgment interest at the legal rate pursuant to California Labor Code section
20 218.6 and other applicable sections;
- 21 11. For lost earnings;
- 22 12. For liquidated damages in an amount to be ascertained at trial;
- 23 13. For all other penalties as required by law;
- 24 14. For costs of suit incurred herein;
- 25 15. For restitution of money acquired by Defendants by means of their unfair business
26 practices pursuant to Business & Prof. Code § 17203;
- 27 16. For Labor Code penalties pursuant to pursuant to Business & Professions Code §
28 17202;

- 1 17. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g);
2 18. For reasonable attorney's fees pursuant to California Labor Code section 218.5 and
3 other applicable sections; and
4 19. For such further relief as is appropriate in the interest of justice.

5
6 DATED: July 27, 2023

SIRMABEKIAN LAW FIRM, PC

7 By: 
8 Sarkis Sirmabekian, Esq.
9 Attorney for Plaintiff

10
11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands that this matter be tried before a jury under California Code of Civil
13 Procedure Section 631.

14
15 DATED: July 27, 2023

SIRMABEKIAN LAW FIRM, PC

16 By: 
17 Sarkis Sirmabekian, Esq.
18 Attorney for Plaintiff
19
20
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24
25
26
27
28

EXHIBIT A



SIRMABEKIAN
LAW FIRM

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May 10, 2023

YZER, LLC
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Ontario, California 91761

via U.S. Certified Mail

YZER, LLC
301 Whipple Road
Union City, California 94587

via U.S. Certified Mail

Labor and Workforce Development Agency
("LWDA")
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

filed/served online at:
<http://www.dir.ca.gov>

**RE: MARTA ALICIA GARCIA JACINTO's Notice of Labor Code Violations
Pursuant to California Labor Code Section 2699 *et seq.* ("PAGA")**

Dear Sir or Madam:

Please be advised that MARTA ALICIA GARCIA JACINTO (hereinafter "Plaintiff") has retained the Sirmabekian Law Firm, PC to represent her and other aggrieved employees for various California Labor Code violations including wage and hour claims against YZER, LLC (hereafter referred to as "Employer," "Defendant," or "You" and/or referred to with "Your" and "Yours", and "EMPLOYER" or "DEFENDANT").

EMPLOYER is hereby on notice that Plaintiff seeks compensation and all other available relief. Pursuant to the procedures specified in California Labor Code *Section 2699.3*, Plaintiff claims that EMPLOYER has violated, and/or caused to be violated, several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code § 2698 *et seq.*

The scope of this PAGA letter is intended to include Plaintiff and all other aggrieved employees of all positions against whom the below labor law violations have been committed. The scope includes each employee of each employer named above, whether or not such employee was also employed by any of the remaining employers. Plaintiff and other aggrieved employees engaged in working as delivery drivers, laborers and other positions for Defendant.

Defendant YZER, LLC is a freight shipping/trucking company, who employed Plaintiff at its business address located at 2040 E. Locust Ct, Ontario, California 91761.

Plaintiff alleges that Defendant was in charge of managing, supervising, and controlling Plaintiff's and other employees' wages, work hours, pay, and work conditions, along with managing the day-to-day operations of the business. Therefore, Defendant controlled the employment of Plaintiff and other aggrieved employees.

Defendant employed Plaintiff as a delivery driver and laborer between approximately July 2022 through approximately April 11, 2023. Below are facts supporting allegations of Defendants' labor code violations against Plaintiff and other employees:

- Defendant classified Plaintiff and other employees as independent contractors in violation of Labor Code 226.8;
- Defendant failed to keep track of Plaintiff's and other employees' actual hours worked. Employees' pay was rounded and inaccurate. This is in violation of Section 7 of Wage Order 9 and other wage orders;
- Meal and rest breaks violations were rampant; Plaintiff would take her lunch breaks after her 5th hour of work. Meal and rest breaks were dependent on business necessities and frequently late, short or nonexistent;
- Plaintiff and other employees were not paid for the use of their personal items such as cell phones;
- Sick leave was not provided or reported in violation of Labor Code 246;
- Defendants failed to provide Plaintiff's final pay upon separation;
- Defendants violated these and other labor laws as described throughout this letter;

The term "aggrieved employees" is broadly defined as all employees of either Defendant, regardless of exempt or non-exempt status, and regardless of whether such employee was also employed by the remaining Defendant. All employees are included in this definition, including positions other than that of Plaintiff.

EMPLOYER deprived Plaintiff and other aggrieved employees of certain protections of the Industrial Welfare Commission Orders, including overtime pay, minimum wage, meal and rest periods, and sick pay and failure to reimburse under Labor Code 2802, among numerous other California Labor Code violations. Many other aggrieved employees were also treated as exempt from those protections.

Plaintiff and other aggrieved employees primarily engage(d) in duties that failed to meet the requirements of the various exemptions. They lacked the requisite discretion and independent judgment required by the labor code and the IWC Orders (without limitation) to qualify as exempt from various labor law protections. By misclassifying aggrieved employees, EMPLOYER deprived them of many protections.

Unlawful Failure to Pay Overtime

EMPLOYER fails to maintain a policy that compensates Plaintiff and other employees for all hours worked, including overtime. Specifically, EMPLOYER only pays employees for the majority of time that they spend at work. Many employees, including Plaintiff, routinely worked work over eight (8) hours per day and/or forty (40) hours per

week but are not paid one and one-half their regular rate of pay for overtime work. As a result of violations of California Labor Code §§ 510, 1194, and applicable Industrial Welfare Commission Wage Orders for failure to pay overtime, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Unpaid Balance of Full Amount of Overtime Compensation

As described above, EMPLOYER has required employees to work hours in excess of eight hours in a day and forty hours in a week as a result of working their regular shifts, but EMPLOYER has not paid these employees overtime compensation. Here, Defendants failed to keep track of Plaintiff's and other employees' actual hours worked. Employees' pay was rounded and inaccurate. This is in violation of Section 7 of Wage Order 9 and other applicable wage orders. As a result, Plaintiff and other employees have been denied "the unpaid balance of the full amount of this ... overtime compensation" as required by California Labor Code § 1194, and EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Unlawful Failure to Pay Minimum Wage

EMPLOYER has failed to maintain a policy that compensates Plaintiff and other employees an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197, 1197.1 and applicable Industrial Welfare Commission Wage Orders. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. EMPLOYER did not compensate Plaintiff and other employees for time spent working off the clock. Here, Defendants failed to keep track of Plaintiff's and other employees' actual hours worked. Employees' pay was rounded and inaccurate. This is in violation of Section 7 of Wage Order 9 and other wage orders. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and applicable Industrial Welfare Commission Wage Orders, for failure to pay minimum wage, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558, 1197.1, and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

EMPLOYER has failed to maintain a policy that provides Plaintiff and other employees with off-duty meal periods as required by California law. Plaintiff and similarly situated employees regularly worked in excess of five (5) hours a day without being provided at least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and applicable Industrial Welfare Commission Wage Orders. EMPLOYER failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed meal periods. They would be required to work through their meal breaks, or take short meal breaks, and no premium compensation was provided. Many employees, including Plaintiff, were forced to skip or take untimely breaks without appropriate compensation. Here, meal break violations were rampant; Plaintiff would take her lunch breaks after her 5th hour of work. Meal breaks were dependent on business necessities and frequently late, short or nonexistent. As a result of violations of California Labor Code §§ 226.7 and 512 and applicable Industrial Welfare Commission Wage Orders, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

EMPLOYER has failed to maintain a policy that provides Plaintiff and other employees with off-duty rest periods as required by California law. Plaintiff and other employees regularly worked in excess of 3.5 hours or major fraction thereof during work days without being provided at least a ten-minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and applicable Wage Orders. EMPLOYER failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods. Many employees, including Plaintiff, were forced to skip or take untimely rest breaks without appropriate compensation. Here, rest break violations were rampant. Rest breaks were dependent on business necessities and frequently late, short or nonexistent. As a result of violations of California Labor Code §§ 226.7, 512 and applicable Industrial Welfare Commission Wage Orders, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Reimburse Expenses

EMPLOYER has failed to indemnify Plaintiff and other employees for all necessary expenditures or losses incurred by Plaintiff. Here, Defendants failed to reimburse their employees for reasonable business expenses. For example, Plaintiff and other employees were not paid for the use of their personal items such as cell phones. California Labor Code § 2802 requires the employer to indemnify employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge their duties. As a result of violations of California Labor Code § 2802, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558, 2802 and 2698 *et seq.*

Unlawful Failure to Furnish Wage Statements

EMPLOYER has violated California Labor Code § 226(a) by willfully failing to furnish Plaintiff and other employees with required wage statement information. As a result of violations of California Labor Code § 226(a), EMPLOYER is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of her or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, 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 her 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.

Here, Defendants paid its employees outside of payroll, as independent contractors, thereby depriving employees of wage statements and other labor law protections. Further, Defendants unfair rounding of employees' hours resulted in an underpayment of wages to their employees. As a result of violations of California Labor Code § 226(a), EMPLOYER is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Unlawful Failure to Keep Accurate Payroll Records of Daily Hours Worked

EMPLOYER has failed to keep payroll records showing total hours worked and wages paid to Plaintiff and other employees. Under California Labor Code § 1174(d), employers must keep "payroll records showing the hours worked daily by and the wages paid to ... employees". Because EMPLOYER did not keep complete and accurate time records reflecting hours worked for Plaintiff and other employees, including, but not limited to, beginning work prior to the start of their shifts, working after the end of their shifts, and missed/short/late rest and meal breaks, it is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.* Section 6 or 7 of the applicable wage order requires the recording of this time. EMPLOYER would not keep track of action time. Instead, Defendants unfairly rounded employees' hours, which resulted in underpayment of wages to their employees. Defendants also failed to properly pay out Plaintiff's and others' sick leave. To the extent that EMPLOYER's failure to keep accurate payroll records was willful, it is liable for civil penalties under California Labor Code § 1174.5.

Unlawful Violation of California Labor Code § 1199

Under California Labor Code §§ 1199(a) and (c) and 2699.5 *et seq.*, an employer who "requires or causes any employee to work for longer hours than those fixed" or "violates or refuses or neglects to comply with any provision of" the Labor Code regarding employees' wages, hours, and working conditions, is subject to PAGA penalties. As described above, EMPLOYER has required Plaintiff and other employees to work hours in excess of eight (8) in a day and forty (40) in a week (thereby violating § 1199(a)), failed to provide adequate rest and meal breaks, failed to pay minimum wage and has violated numerous provisions of the Labor Code pertaining to employee wages and hours (thereby violating § 1199(b)). Accordingly, EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Misclassification of Employees

It unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Cal. Lab. Code § 226.8(a)(1). This permits Plaintiff to recover a civil penalty from five thousand dollars (\$5,000) to twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code § 226.8(b)-(c). Here, Defendants classified Plaintiff and other employees as independent contractors in violation of Labor Code 226.8 by paying them outside of payroll

and depriving them of various labor law rights as outlined throughout this letter. Defendants paid its employees outside of payroll, as independent contractors, thereby depriving employees of wage statements and other labor law protections. As such, Defendants violated California Labor Code § 226.8 and numerous other Labor Code sections. Plaintiff and others were always employees as evidenced by the following facts: Plaintiff's position required him to work for EMPLOYER, among many other duties which were directly related to the services provided by EMPLOYER. EMPLOYER supplied the instrumentalities, tools, and the place for the employees to do their work (all work was done under EMPLOYER's supervision; the employees' investment in the equipment or materials required were limited or non-existent; no special skills were required of the employees; the employees' services were to be performed for a long period of time with a high degree of permanence in the working relationship; and the parties believed they were maintaining an employer-employee relationship.).

Unlawful Failure to Pay Wages Due Upon Termination

EMPLOYER has violated California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing to Plaintiff and other employees at the time employment was terminated, EMPLOYER willfully failed to pay Plaintiff and other employees who are no longer employed by it all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202 including, but not limited to, missing wages due to inaccurate tracking of employees' time records and failing to properly track their hours works and premium pay for missed/short/late meal and rest breaks. Here, Defendants failed to provide Plaintiff's final pay upon separation. Therefore, and for other failures to pay as stated within this letter, Defendants failed to provide Plaintiff's final pay upon separation. Plaintiff and other employees are now also entitled to recover up to thirty (30) days of wages due to EMPLOYER's "willful" failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code.

Additionally, because EMPLOYER violated California Labor Code §§ 201, 201and 203 of the Labor Code, EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Conclusion

EMPLOYER has violated or has caused to be violated a number of California wage and hour laws. Plaintiff therefore intends to file civil claims for the aforementioned violations of the Labor Code and other law. Plaintiff requests the agency review this notice per PAGA's provisions.

Sincerely,

SIRMABEKIAN LAW FIRM, PC

A handwritten signature in black ink, appearing to read 'Sarkis Sirmabekian', with a stylized flourish at the end.

Sarkis Sirmabekian, Esq.