

Tuvia Korobkin, Esq. # 268066
tuvia@abramsonlabor.com
Rijenea Appling, Esq. # 346329
rijenea@abramsonlabor.com
ABRAMSON LABOR GROUP
11846 Ventura Boulevard, Suite 100
Studio City, California 91604
Tel: (213) 493-6300
Fax: (213) 723-2522

Attorneys for Plaintiff

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

07/10/2023 at 02:58:00 PM

Clerk of the Superior Court
By Katie Winburn, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

MARIA ARCE, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

BEZSAM, INC., a California corporation; and
DOES 1 through 100, Inclusive,

Defendants.

Case No. 37-2023-00018538-CU-OE-CTL

**FIRST AMENDED CLASS AND
REPRESENTATIVE CLASS ACTION
COMPLAINT FOR:**

- (1) FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- (3) FAILURE TO PAY MEAL PERIOD
PREMIUMS AT THE REGULAR
RATE OF COMPENSATION
(LABOR CODE §§ 226.7, 1198);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198);**
- (5) FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);**
- (6) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (7) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (8) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*).**
- (9) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Maria Arce (“Plaintiff”), on behalf of herself and all others similarly situated,
2 hereby brings this Class and Representative Action Complaint against Bezsam, Inc., a California
3 corporation; and Does 1 through 100, inclusive (collectively, “Defendants”), and on information
4 and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 action for recovery of unpaid wages and penalties under Business and Professions Code section
8 17200, *et seq.*; Labor Code sections 201-204, 226, 226.7, 510, 512, 516, 558, 1194, 1198, 2698
9 *et seq.*; and Industrial Welfare Commission Wage Order No. 9 (“Wage Order 9”), in addition to
10 seeking declaratory relief and restitution. This class action is brought pursuant to California Code
11 of Civil Procedure section 382. This Court has jurisdiction over Defendants’ violations of the
12 Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to California Code of Civil
15 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
16 occurred in San Diego County. Defendants own, maintain offices, transact business, have an agent
17 or agents within San Diego County, and/or otherwise are found within San Diego County, and
18 Defendants are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
22 the filing of this action and within the statute of limitations periods applicable to each cause of
23 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
24 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
25 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
26 204, 226, 226.7, 510, 512, 516, 558, 1194, 1198, 2698 *et seq.*; California Business & Professions
27 Code § 17200, *et seq.* (Unfair Competition), and Wage Order 9, which sets employment standards
28 for employees in the transportation industry.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
2 years preceding the filing of this action and continuing to the present, Defendants did (and do)
3 business by providing transportation to customers within California, and that they employed
4 Plaintiff and other similarly situated non-exempt employees within San Diego County and the
5 state of California.

6 5. Plaintiff does not know the true names or capacities, whether individual, partner,
7 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
8 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
9 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
10 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
11 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
12 and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be subject to the
13 unlawful employment practices, wrongs, injuries, and damages complained of herein.

14 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
15 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

16 7. At all times herein mentioned, each of said Defendants participated in the acts
17 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
18 each of them, were the agents, servants, and employees of each of the other Defendants, as well
19 as the agents of all Defendants, and at all times herein mentioned were acting within the course
20 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
21 and/or otherwise ratified each of the acts or omissions alleged herein.

22 8. At all times mentioned herein, Defendants, and each of them, were members of
23 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
24 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
25 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
26 Members (as defined in Paragraph 17).

27 ///

28 ///

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

10. During Plaintiff's employment with Defendants, Plaintiff and other non-exempt employees often worked over 8.0 hours in a workday and/or over 40.0 hours in a workweek, but Defendants failed to pay them overtime compensation at one-and-one-half times (or two times in the case of double-time) their "regular rate" of pay as required under Labor Code § 510. Specifically, Plaintiff and other non-exempt employees earned shift differentials, commissions, and/or other forms of compensation not excludable from the "regular rate" of pay (these forms of pay are hereinafter referred to collectively as "Incentive Pay"). However, Defendants failed to incorporate these payments in employees' "regular rate" when calculating overtime, thereby under-paying Plaintiff's and other non-exempt employees' overtime compensation. For example, in the pay period of June 18 to June 24, 2022, Plaintiff's wage statement reflects that she was paid for 14.07 "night shift" hours at \$17.18 per hour, which was higher than Plaintiff's base hourly rate of \$15.68. During this pay period, Plaintiff's wage statement reflects that she also earned 7.17 hours of overtime, but Defendants failed to incorporate Plaintiff's shift differential into her regular rate and instead paid Plaintiff's overtime at one-and-one-half times her *base* rate of pay of \$15.68, i.e. at \$23.52 per hour. Likewise, in the same pay period Plaintiff's wage statement reflects that she earned 10.65 hours of double-time, which were paid at two times her *base* rate of pay, i.e., at \$31.36 per hour, rather than two times her "regular rate" of pay. As another example, in Plaintiff's last pay period working for Defendants her personnel file indicates that she was paid bonuses and/or commissions equaling about \$350.00. Those same records indicate that Plaintiff also worked overtime during that time period, but that her overtime wages were paid at \$24.00, which was 1.5 times her *base* hourly rate of \$16.00, and that she was paid for 10.91 hours of double-time at \$32.00 per hour, which was two times her *base* hourly rate of \$16.00. On information and belief, during the putative class period Defendants likewise failed to properly calculate the "regular rate" of pay with respect to other non-exempt employees, resulting in those employees not being paid all overtime wages due to them.

1 11. Defendants have also failed to provide Plaintiff and other non-exempt employees
2 with all statutorily mandated meal periods due to Defendants’ meal period policies/practices.
3 Specifically, the workload imposed on Plaintiff and other non-exempt employees often made it
4 impracticable for Plaintiff and other non-exempt employees to take a 30-minute off-duty meal
5 period prior to the end of the fifth hour of work, and/or a second 30-minute meal period on shifts
6 over 10.0 hours. Plaintiff and other non-exempt employees frequently had their meal periods
7 interrupted, delayed, missed, and/or cut short due to the excessive workload placed on Plaintiff
8 and other non-exempt employees. Indeed, Plaintiff’s time records are replete with missed, short,
9 and late meal periods. While Defendants have paid some meal period premiums (as discussed
10 below), for at least a portion of the putative class period Defendants failed to pay meal period
11 premiums when Plaintiff and other non-exempt employees were not provided legally compliant
12 meal periods. For example, in the pay period of July 31 to August 6, 2021, Plaintiff’s time records
13 reflect meal periods beginning at 11:00 a.m., but also reflect that Plaintiff began working well
14 before 6:00 a.m. on August 4 and 5, 2021, thereby rendering those meal periods late (i.e.,
15 commencing after more than 5 hours of work). Those same timekeeping records reflect that
16 Plaintiff worked over 10.0 hours on each day during that pay period, but her time records do not
17 reflect a second meal period. However, Plaintiff’s wage statement from this pay period reflects
18 that she was not paid any meal period premiums, despite not being provided the legally complaint
19 meal periods to which she was entitled. On information and belief, for a portion of the putative
20 class period, Defendants maintained no payroll code or mechanism to pay meal period premiums
21 to Plaintiff or other employees on those occasions when legally compliant meal periods were not
22 provided.

23 12. In addition, even when Defendants did pay meal period premiums, Defendants
24 failed to incorporate Incentive Pay into the “regular rate of compensation” as required under
25 Labor Code § 226.7. The California Supreme Court has held that the terms “regular rate of pay”
26 used in Labor Code § 510 and “regular rate of compensation” used in Labor Code § 226.7 are
27 synonymous, and therefore, just as shift differentials and other remuneration must be incorporated
28 into the “regular rate of pay” when calculating overtime pay, they must also be incorporated into

1 the “regular rate of compensation” when calculating meal and rest period premiums under Labor
2 Code § 226.7. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858, 862 (2021) (holding
3 “that the terms are synonymous: ‘regular rate of compensation’ under section 226.7(c), like
4 ‘regular rate of pay’ under section 510(a), encompasses all nondiscretionary payments, not just
5 hourly wages.”) When paying meal period premiums, which were denoted as “Meal Premium”
6 on wage statements, Defendants have failed to incorporate Incentive Pay and have thereby
7 underpaid Plaintiff and other non-exempt employees their meal period premium wages. For
8 example, Plaintiff’s wage statement from the pay period of July 23 to July 29, 2022, reflects that
9 Plaintiff worked 17.75 hours at a “night shift” rate of pay of \$17.18, and that she was also paid 2
10 meal period premiums. However, Defendants paid her meal period premiums at \$15.68 per hour,
11 which was Plaintiff’s *base* hourly rate during that pay period, and failed to incorporate her night
12 shift earnings into her “regular rate of compensation” when paying the meal period premiums.
13 Similarly, in the pay period of August 20 to August 26, 2022, Plaintiff’s wage statement reflects
14 that she worked 6.75 hours at the “night shift” hourly rate of \$17.18, but that Defendants failed
15 to incorporate this into Plaintiff’s “regular rate of compensation” and paid her 2 meal period
16 premiums at her *base* hourly rate of \$15.68. On information and belief, Defendants have likewise
17 failed to incorporate other non-exempt employees’ Incentive Pay into their “regular rate of
18 compensation,” resulting in Plaintiff and other non-exempt employees being paid meal period
19 premiums at a rate lower than their respective “regular rate of compensation” required under
20 Labor Code § 226.7.

21 13. Defendants have also failed to authorize and permit rest periods to Plaintiff and
22 other non-exempt employees. Specifically, Defendants have failed to authorize and permit a 10-
23 minute net rest period for every 4 hours worked or major fraction thereof, as Plaintiff and other
24 non-exempt employees were frequently unable to take the rest periods to which they were entitled
25 as a result of the workload imposed by Defendants. In those instances that Defendants failed to
26 authorize and permit Plaintiff and other non-exempt employees to take a legally compliant rest
27 period, Defendants failed to pay the rest period premiums required by Labor Code § 226.7. Upon
28 information and belief, during at least a portion of the putative class period, Defendants

maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to authorize and permit a legally compliant rest period.

14. Defendants also have failed to reimburse Plaintiff and other employees for expenses they incurred in the course of their employment. Specifically, Defendants required Plaintiff and other employees to use their personal cell phones to communicate with dispatch, customers, and others. Despite requiring Plaintiff to use her personal cellular phone for work-related purposes, Defendants failed to reimburse Plaintiff for any portion of her personal cellular phone bill, in violation of Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

15. As a result of Defendants' failure to pay all overtime wages, as well as Defendants' failure to pay meal and rest period premium wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff. In addition, the wage statements issued by Defendants have been facially deficient, for multiple reasons. First, until approximately late June 2022, the wage statements issued by Defendants failed to include the address of the employer, in violation of Labor Code § 226(a)(8). In addition, when Defendants began paying meal periods, the wage statements issued by Defendants included meal period premiums – which are *not* payments for hours worked – among “Total Hrs Worked” on employee wage statements. For example, in the pay period of July 9 to July 15, 2022, Defendants paid Plaintiff one meal period premium, and included that 1.00 hour in the 58.03 “Total Hrs Worked” reported on Plaintiff's wage statement, thereby misreporting the number of total hours worked, in violation of Labor Code § 226(a)(2).

16. As a further result of Defendants' failure to pay all overtime wages as well as Defendants' failure to pay meal and rest period premium wages, Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation of their employment.

///

///

///

1 **CLASS ACTION ALLEGATIONS**

2 17. Class Definitions: Plaintiff bring this action on behalf of herself and the following
3 Classes pursuant to Section 382 of the Code of Civil Procedure:

4 a. The Overtime Class consists of all of the Defendants' current and former non-
5 exempt employees in California who worked more than 8.0 hours in a workday and/or over
6 40.0 hours in a workweek, and earned Incentive Pay during a corresponding pay period, at
7 any time from four years immediately preceding the filing of this action through the
8 present.

9 b. The Meal Period Class consists of all of the Defendants' current and former non-
10 exempt employees in California who worked at least one shift in excess of 5.0 hours, during
11 the four years immediately preceding the filing of this action through the present.

12 c. The Meal Period Premium Underpayment Class consists of all of Defendants'
13 current and former non-exempt employees in California, who received a meal period
14 premium and also received Incentive Pay in a corresponding pay period, at any time from
15 four years immediately preceding the filing of this action through the present.

16 d. The Rest Period Class consists of all of the Defendants' current and former non-
17 exempt employees in California who worked at least one shift of 3.5 hours or more, at any
18 time from four years immediately preceding the filing of this action through the present.

19 e. The Expense Reimbursement Class consists of all of the Defendants' employees
20 in California who used their personal cellular phones for work purposes, at any time from
21 four years immediately prior to the filing of this action through the present.

22 f. The Wage Statement Class consists of (i) all members of the Overtime Class, Meal
23 Period Class, Meal Period Premium Underpayment Class, and/or Rest Period Class who
24 received a wage statement during the one year immediately preceding the filing of this
25 lawsuit through the present; and/or (ii) all of the Defendants' employees who received a
26 wage statement that did not contain the address of the employer, or that included meal
27 period premiums among total hours worked, at any time from one year prior to the filing
28 of this action through the present.

g. The Waiting Time Class consists of all members of the Overtime Class, Meal Period Class, Meal Period Premium Underpayment Class, and/or Rest Period Class, who are no longer employed by Defendants and whose employment with Defendants ended at any time from three years immediately preceding the filing of this lawsuit through the present.

18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via Defendants' employment records.

19. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants' timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;
- ii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;
- iii. Whether Defendants paid meal period premiums to members of the Meal Period Premium Underpayment Class at the regular rate of compensation;
- iv. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- v. Whether Defendants properly reimbursed expenses incurred by members of the Expense Reimbursement Class;
- vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and

vii. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment.

20. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' overtime, wage statement, meal period, rest period, expense reimbursement, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

21. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime wages, was subject to Defendants' uniform meal and rest period policies/practices, was furnished with inaccurate wage statements, was deprived of all final wages upon her separation of employment from Defendants, and was not reimbursed for all expenses she incurred in carrying out her job duties for Defendants.

22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

23. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to

1 take advantage of superior economic and bargaining power in setting onerous terms and
2 conditions of employment. The nature of this action and the format of laws available to Plaintiff
3 and members of the Classes make the class action format a particularly efficient and appropriate
4 procedure to redress the violations alleged herein. If each employee were required to file an
5 individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able
6 to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
7 superior financial and legal resources. Moreover, requiring each member of the Classes to pursue
8 an individual remedy would discourage the assertion of lawful claims by employees who would
9 be disinclined to file an action against their former and/or current employer for real and justifiable
10 fear of retaliation and permanent damages to their careers at subsequent employment. Further, the
11 prosecution of separate actions by individual class members would create a substantial risk of
12 inconsistent or varying verdicts or adjudications with respect to the individual class members
13 against Defendants herein; and which would establish potentially incompatible standards of
14 conduct for Defendants. Further, the claims of the individual members of the Classes are not
15 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
16 costs and expenses attending thereto. As such, the Classes identified in Paragraph 17 are
17 maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME WAGES**

20 **(AGAINST ALL DEFENDANTS)**

21 24. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

22 25. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
23 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
24 overtime hours worked and provide a private right of action for the failure to pay all overtime
25 compensation for overtime work performed.

26 26. At all times relevant herein, Defendants were required to properly compensate
27 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
28 Labor Code §§ 510 and 1194 and Wage Order 9. Labor Code § 510(a) provides, “Any work in

1 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek
2 and the first eight hours worked on the seventh day of work in any one workweek shall be
3 compensated at the rate of no less than one and one-half times the regular rate of pay for an
4 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
5 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours
6 on any seventh day of a workweek shall be compensated at the rate of no less than twice the
7 regular rate of pay of an employee.” Defendants caused Plaintiff and Overtime Class members
8 to work overtime hours but did not compensate them at one and one-half times (or two times)
9 their regular rate of pay for such hours.

10 27. The foregoing policies and practices are unlawful and create entitlement to
11 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
12 premiums owing, including interest thereon, statutory penalties, and attorneys’ fees and costs of
13 suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of
14 Civil Procedure § 1021.5.

15 **SECOND CAUSE OF ACTION**

16 **MEAL PERIOD VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

18 28. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

19 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 failed in their affirmative obligation to provide all their hourly non-exempt employees, including
21 Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with
22 the mandates of the California Labor Code (including Labor Code § 512) and Wage Order 9, for
23 the reasons set forth in this Complaint.

24 30. As a result, Defendants owe premium compensation for meal period violations,
25 including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 9, Labor
26 Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY MEAL PERIOD PREMIUMS AT REGULAR RATE OF COMPENSATION**
3 **(AGAINST ALL DEFENDANTS)**

4 31. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

5 32. At all relevant times, Defendants have been required to pay meal period premiums
6 at employees' "regular rate of compensation" pursuant to Labor Code § 226.7. "Regular rate of
7 compensation" is synonymous with "regular of pay" as used in Labor Code § 510. Thus, meal
8 period premiums must be calculated in the same manner as the "regular rate of pay" is calculated
9 for overtime purposes, and must incorporate the value of Incentive Pay.

10 33. As alleged herein, Defendants failed to incorporate the value of Incentive Pay, and
11 otherwise failed to accurately calculate the regular rate of compensation, when calculating meal
12 period premiums for Plaintiff and members of the Meal Period Premium Underpayment Class,
13 and thus have underpaid Plaintiff and members of the Meal Period Premium Underpayment Class
14 for their meal period premium wages due under Labor Code § 226.7.

15 34. As a result of the foregoing, Plaintiff and members of the Meal Period Premium
16 Underpayment Class are entitled to the amount of underpayment of meal period premium wages,
17 including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor
18 Code §§ 226.7, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of
19 the California Constitution.

20 **FOURTH CAUSE OF ACTION**

21 **REST PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

23 35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24 36. Labor Code §§ 226.7 and 516, and Wage Order 9, § 12 establish the right of
25 employees to be authorized and permitted a rest period of at least ten (10) minutes for each four
26 (4) hour period worked, or major fraction thereof.

27 37. As alleged herein, Defendants failed to authorize and permit Plaintiff and Rest
28 Period Class members to take their legally entitled rest periods. Defendants also failed to

compensate Plaintiff and Rest Period Class members with a rest period premium for each rest period to which they were entitled while working.

38. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

40. At all relevant times, Defendants were subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

41. At all relevant times, Defendants were subject to Labor Code § 2804, which states, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

42. Due to Defendants’ unlawful policy and practice of requiring employees to use their personal property, including but not limited to their personal cell phones, for work purposes, and their failure to reimburse Plaintiff and members of the Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

43. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class suffered damages in sums, which will be shown according to proof.

///

44. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

45. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

47. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all wages earned, all meal and rest period premium wages earned, the address of the employer, and total hours worked, in violation of Labor Code § 226.

48. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their overtime wages and meal and rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

49. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 51. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
2 an employer to pay all wages immediately at the time of separation of employment in the event
3 the employer discharges the employee, or the employee provides at least 72 hours of notice of
4 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
5 to quit, said employee's wages become due and payable not later than 72 hours upon said
6 employee's last date of employment.

7 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
9 at their separation from employment, including (but not limited to) unpaid overtime wages and
10 unpaid meal and rest period premium wages.

11 53. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
12 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
13 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
14 to the requirements of Labor Code §§ 201-203.

15 54. Defendants' failure to pay all final wages was willful within the meaning of Labor
16 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
17 Time Class their earned wages upon separation from employment results in a continued payment
18 of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the
19 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
20 attorneys' fees and costs of suit.

21 **EIGHTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

24 55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 56. Defendants have engaged, and continue to engage, in unfair and/or unlawful
26 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay
27 Plaintiff and the Classes all overtime wages due, failing to provide meal periods or pay meal
28 period premium wages, failure to authorize and permit rest periods or pay rest period premium

wages, failing to furnish accurate and complete itemized wage statements, failing to reimburse business expenses, and failing to pay all earned wages at separation of employment.

57. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

58. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself, and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

59. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

60. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

61. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

62. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.* Plaintiff, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for

each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 512, 516, 558, and 1198;
- c. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses, in violation of Labor Code §§ 2802, 2804, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;
- f. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203; and

g. Failing to maintain accurate records (including but not limited to records of actual hours worked) on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code §§ 1174 and 1198.

63. On or about May 4, 2023, Plaintiff notified Defendant Bezsam, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 62 (a)-(g) above. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

64. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;

///

1 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
2 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;

3 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
4 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

5 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
6 226, *et seq.*;

7 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to
8 Labor Code §§ 201-203;

9 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
10 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
11 practices declared by this Court to be in violation of Business and Professions Code § 17200, *et*
12 *seq.*;

13 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
14 employees, and the State of California according to proof pursuant to Labor Code § 2699,
15 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
16 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
17 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
18 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
19 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
20 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
21 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
22 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
23 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
24 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
25 Labor Code § 2699(f);

26 13. Prejudgment interest on all due and unpaid wages and other damages pursuant to
27 California Labor Code §§ 218.6, 1194(a), and 2802(b); Civil Code § 3287; and Art. XV, § 1 of
28 the California Constitution;

1 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
2 226(e), 1194 *et seq.*, 2802(c), 2699(g), and Code of Civil Procedure § 1021.5; and

3 15. For such other and further relief the Court may deem just and proper.

4
5 Date: July 10, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

6
7 By: _____


Tuvia Korobkin
Attorneys for Plaintiff

8
9
10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

12
13 Dated: July 10, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

14
15 By: _____


Tuvia Korobkin
Attorneys for Plaintiff