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

JESSICA URIBE, as an individual, and on
behalf of all others similarly situated,

Plaintiff,

v.

AUTO DRIVEAWAY FRANCHISE
SYSTEMS, LLC, a Michigan limited liability
company; and DOES 1 through 100, inclusive,

Defendants.

Case No. 23CV417146

Amended as a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

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

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (5) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200, *et seq.*);**
- (8) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);
AND**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Jessica Uribe (hereinafter “Plaintiff”), as an individual, and on behalf of all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 against Auto Driveaway Franchise Systems, LLC, a Michigan limited liability company; and
4 DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff hereby brings this First Amended Class and Representative Action
8 Complaint for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200 *et seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12,
10 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, and Industrial Welfare Commission Wage Order 9
11 (“Wage Order 9”), in addition to seeking declaratory relief and restitution. This Complaint is
12 brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
13 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
14 this Court's jurisdictional minimum.

15 **VENUE**

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

22 **PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was and currently is a California resident. During the four years immediately preceding
25 the filing of the Complaint in this action and within the statute of limitations periods applicable
26 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
27 employee. Plaintiff was and is a victim of Defendants’ policies and/or practices complained of
28 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code

§§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and Wage Order 9, which sets employment standards for the transportation industries.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business by transporting vehicles in California and the United States, employed Plaintiff within Santa Clara County and the state of California and, therefore, were (and are) doing business in Santa Clara County and the State of California.

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

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

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

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of, and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes towards Plaintiff and
2 all members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff worked for Defendants in the position of “driver” between approximately
5 October 1, 2020 and approximately November 16, 2022, when she went on disability leave.
6 Plaintiff’s hourly rate was \$15.56. Plaintiff’s job duties revolved around delivering vehicles to
7 customers throughout Northern, Central and Southern California. Plaintiff did not have a set
8 schedule, but generally worked Monday through Friday for an average of over 70 hours per week,
9 and up to around 14 hours per shift. However, as discussed below, Plaintiff worked considerably
10 more hours than she was credited for by Defendants, who intentionally shaved hours worked off
11 of the timesheets of Plaintiff and other non-exempt employees, and falsely manipulated their
12 hours to reflect that they exercised 30-minute unpaid meal periods that in reality they were unable
13 to take.

14 10. Throughout the duration of Plaintiff’s employment with Defendants, Plaintiff and
15 other non-exempt employees were not paid for all hours worked as their supervisors intentionally
16 acted to deprive them of compensation that they were duly entitled to through rounding, time
17 shaving, and otherwise manipulating their hours to reflect that they worked fewer hours than they
18 actually did. Plaintiff clocked in and out on her personal cellular phone using an application
19 called “Paylocity” at the express direction of Defendants. Plaintiff would clock in when she
20 entered her company vehicle at the beginning of her work day, and clocked out upon exiting the
21 company vehicle at the end of her workday. However, upon information and belief, the time
22 records maintained by Defendants were not reflective of the actual number of hours that Plaintiff
23 and other non-exempt employees actually worked. For example, during the week of June 6, 2022,
24 Plaintiff worked 21.05 hours, but was only compensated for 20.85 hours. This practice was
25 pervasive throughout Plaintiff’s employment and was the subject of frequent complaints from
26 Plaintiff and other non-exempt employees. Plaintiff does not recall being made to confirm or sign
27 off on her hours worked.

28 11. Furthermore, Plaintiff and other non-exempt employees worked overtime hours,

1 based on the requirements of Wage Order 9, but did not receive overtime compensation equal to
2 one and one-half times their regular rates of pay for all overtime hours worked. Upon information
3 and belief, Defendants systemically failed to pay overtime compensation due to Plaintiff and other
4 non-exempt employees when they worked the requisite number of hours to be entitled to such
5 pay. Instead, Plaintiff and other non-exempt employees would either be paid their normal hourly
6 rate for overtime hours worked, or simply not paid for these hours worked at all. Defendants also
7 failed to provide “Reporting Time Pay” to Plaintiff and other non-exempt employees on those
8 occasions where they were required to report to Defendants’ worksite but not provided with at
9 least half a day of work. Despite maintaining a policy that required its employees to report to the
10 worksite every day regardless of how many work hours would be assigned, Defendants failed to
11 provide any sort of compensation to Plaintiff and the other non-exempt employees on those
12 occasions where they reported to the worksite but were assigned minimal or no work at all in
13 violation of the “Reporting Time Pay” requirements as set forth in Wage Order 9 § 4. As a result
14 of Defendants’ policy/practice of manipulating the time records of Plaintiff and other non-exempt
15 employees in a manner that served to intentionally undercompensate them, Defendants failed to
16 ensure that Plaintiff and other non-exempt employees were being paid at least the minimum wage
17 for all hours actually worked, and failed to ensure that Plaintiff and other non-exempt employees
18 received proper overtime wages for all overtime hours worked, in compliance with Wage Order
19 9.

20 12. Plaintiff and other non-exempt employees were not authorized to take all legally
21 required rest periods. Plaintiff does not recall ever receiving a rest period throughout her
22 employment with Defendants. Instead, she would be made to work generally throughout the
23 entirety of her shifts without interruption. For example, on Plaintiff’s wage statement with a
24 representing the pay period between 04/23/22 and 05/07/22, Plaintiff’s records (which as
25 explained above are under representative of her actual hours worked) indicate that she worked
26 over 12 hours on 4/25/22, which should have entitled her to three rest periods. However, despite
27 not being able to exercise any rest periods on this date, Plaintiff was not provided with a
28

1 corresponding rest period premium. This practice was pervasive throughout Plaintiff's
2 employment. Despite Defendants' failure to authorize and permit Plaintiff and other non-exempt
3 employees to take all lawful paid rest periods, due to their uniform and unlawful practices,
4 Defendants did not provide Plaintiff and other non-exempt employees with an hour of pay at their
5 regular rate for each rest period violation as required by Labor Code § 226.7. Upon information
6 and belief, during at least a portion of the class period, Defendants maintained no payroll code or
7 another mechanism for the payment of rest period premiums in the event Plaintiff and other non-
8 exempt employees were not authorized to take lawful rest periods.

9
10 13. Defendants also did not provide Plaintiff and other non-exempt employees with a
11 legally compliant first meal period when they worked shifts in excess of 6.0 hours. Plaintiff and
12 other non-exempt employees rarely, if ever, were entitled to exercise the use of a thirty-minute
13 uninterrupted meal period despite almost always working at least 6.0 hours in a day. Rather,
14 Plaintiff and other non-exempt employees would generally work through their shifts without
15 taking any time for a compliant meal period, instead opting to eat while driving, if at all. For
16 example, on Plaintiff's wage statement representing the pay period between 04/23/22 and
17 05/07/22, Plaintiff's records indicate that she worked 8.25 hours on 4/25/22 before allegedly
18 receiving a meal period meaning that she should have been provided with a meal period premium
19 as the meal period she received, if she even was able to exercise it, was not taken until well after
20 the 5th hour worked. Despite the fact that she experienced a meal period violation on this date,
21 Plaintiff was not provided with any corresponding premium payments. This practice was
22 pervasive throughout Plaintiff's employment with Defendants, such as on May 28, 2022, when
23 after Plaintiff worked through her shift without being able to exercise any meal or rest periods,
24 Plaintiff's supervisor Jonathan Mei sent Plaintiff a text stating, "I went ahead and adjusted the
25 timesheet....I clocked you and Gilbert out at 3:00 p.m. for Thursday." Plaintiff responded
26 "[t]hank you I don't think He took lunch either [sic]." Consistent with the text, Plaintiff's
27 timesheet for Thursday, May 26, 2022 shows a clock out time of 3:00 p.m. and a lunch period
28 from noon to 12:30 p.m. even though Plaintiff did not exercise any meal period, and worked

beyond 3:00 p.m. Plaintiff and the other non-exempt employees were not informed by Defendants of their legal right to take duty-free uninterrupted meal periods before the conclusion of their fifth hour of work pursuant to Labor Code Section 512 and frequently complained about not receiving them. Defendants were not only aware of, but actively encouraged this practice. Defendants also failed to provide second meal periods when Plaintiff and other non-exempt employees worked shifts in excess of 10.0 hours. Plaintiff frequently worked in excess of 10 hours during her employment, but she cannot recall ever receiving a second meal period. For example, during her shifts on May 17, 23, 24, 25 and 31st, along with June 1, 2, 3, and 7th, Plaintiff worked in excess of 10.0 hours, but was only credited with having exercised one meal period (which, as discussed above, she did not actually have the opportunity to exercise). Despite Defendants' failure to provide Plaintiff and other non-exempt employees with all lawful meal periods due to their uniform and unlawful practices, Defendants did not provide Plaintiff and other non-exempt employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

14. Furthermore, Defendants failed to adequately reimburse Plaintiff for all reasonable and necessary work expenditures, including but not limited to, requiring Plaintiff to utilize her personal cellular phone in the performance of her work duties at the express direction of her supervisors for the purpose of i) clocking in and out; ii) contacting customers; and iii) using the GPS on her personal cellular phone for navigation while driving, all for the benefit of Defendants. Despite Defendants' requirement that Plaintiff and other non-exempt employees utilize their personal cellular phones in the performance of their job duties, at no point were they ever provided any reimbursement for their necessary use.

15. As a result of Defendants' failure to accurately compensate Plaintiff and other non-exempt employees for all hours worked, failure to pay all minimum and overtime wages, and failures to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof, Defendants have maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and issued inaccurate wage statements. Moreover, Defendants failed to

1 timely pay all wages owed in violation of Labor Code § 204. For example, on Plaintiff's wage
2 statement numbered 2511, Plaintiff was paid for work performed during the period of May 23,
3 2022, to June 7, 2022, but was paid on June 15, 2022. Labor Code § 204(a), provides that wages
4 earned between the 16th and the last day of the month must be paid between the 1st and 10th day
5 of the month. Labor Code §204(d) provides that the requirements of Labor Code § 204 can be
6 satisfied by biweekly payment of wages if the wages are paid not more than seven calendar days
7 following the closing of the payroll period. Defendants failed to satisfy either requirement because
8 the payment for work performed between the 16th day of the month and the last day of the month
9 was not paid by the 10th day of the following month. Instead, the payment was not made until the
10 15th day of the following month. Moreover, Defendants failed to satisfy Labor Code §204(d),
11 because Plaintiff was not paid within seven calendar days following the close of the payroll
12 period, and instead had to wait until at least 8 days after the end of the payroll period.

13
14 16. Finally, Defendants failed to conform to the requirements of Labor Code § 2810.5
15 by failing to provide Plaintiff and other non-exempt employees written notices, in the language
16 normally used to communicate employment related information to the employees, containing
17 information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part
18 of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the
19 employer; v) the address of the legal entity that is the employer; vi) the telephone number of the
20 employer; vii) identifying information for the employer's workers' compensation insurance
21 carrier; and viii) information informing the employee of their right to accrue and use paid sick
22 leave. Despite maintaining an obligation to provide these disclosures to Plaintiff and other non-
23 exempt employees, Defendants failed to do so, in violation of Labor Code § 2810.5.

24 **CLASS ACTION ALLEGATIONS**

25 17. **Class Definitions:** Plaintiff brings this action on behalf of herself and the
26 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 27 a. The Minimum Wage Class consists of all current and former non-exempt
28 employees of Defendants who performed work in California and were subject to

Defendants' timekeeping systems and/or practices during the four years immediately preceding the filing of this lawsuit through the present.

b. The Overtime Wage Class consists of all current and former non-exempt employees of Defendants who performed work in California and worked overtime hours (based on criteria set forth in Wage Order 9) during the four years immediately preceding the filing of this lawsuit through the present.

c. The Rest Period Class consists of all current and former non-exempt employees of Defendants who performed work in California and worked at least one shift in excess of 3.5 hours during the four years immediately preceding the filing of this lawsuit through the present.

d. The Meal Period Class consists of all current and former non-exempt employees of Defendants who performed work in California and: (i) worked at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work, and who do not have a corresponding meal period premium payment made for such shifts and/or (ii) worked at least one shift in excess of 10.0 hours while performing work for Defendants in California without a second meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth hour of work, and who do not have a corresponding meal period premium payment made for such shifts during the four years preceding the filing of this lawsuit through the present.

e. The Employee Expense Class consists of all current and former non-exempt employees of Defendants who performed work in California who were not reimbursed for expenses in the performance of their job duties, including but not limited to cell phone expenses, during the four years immediately preceding the filing of this lawsuit to the present.

f. The Wage Statement Class consists of all members of the Rest Period Class, Minimum Wage Class, Overtime Class, and/or Meal Period Class who received a

wage statement from Defendants during the one year immediately preceding the filing of this lawsuit through the present.

- g. The Waiting Time Class consists of all former non-exempt employees of Defendants who performed work in California and were subject to Defendants' timekeeping systems and/or practices, during the 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 not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of 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. Those common questions include, without limitation:

- i. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 9 by requiring members of the Overtime Wage Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage Class;
- iv. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- v. Whether Defendants provided all legally compliant rest periods to members of the

Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

- vi. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;
- vii. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- viii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

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' uniform timekeeping policies and practices, meal and rest period policies and practices, non-reimbursement policies and practices, wage statement policies and practices, and the policies and practices regarding the timely payment of final wages. 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:** The claims of Plaintiff 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 limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was subject to Defendants' meal/rest period and timekeeping policies and practices, was subjected to Defendants' unlawful failure to reimburse business expenses, was provided inaccurate wage statements, and was not paid all wages earned at the time of her separation of employment.

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

1 Plaintiff and the Classes. Plaintiff's attorneys have prosecuted and defended numerous wage-
2 and-hour class actions in state and federal courts in the past and are committed to vigorously
3 prosecuting this action on behalf of the members of the Classes.

4 23. **Superiority:** The California Labor Code is broadly remedial in nature and serves
5 an important public interest in establishing minimum working conditions and standards in
6 California. These laws and labor standards protect the average working employee from
7 exploitation by employers who have the responsibility to follow the laws and who may seek to
8 take advantage of superior economic and bargaining power in setting onerous terms and
9 conditions of employment. The nature of this action and the format of laws available to Plaintiff
10 and members of the Classes make the class action format a particularly efficient and appropriate
11 procedure to redress the violations alleged herein. If each employee were required to file an
12 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
13 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
14 their vastly superior financial and legal resources. Moreover, requiring each member of the
15 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
16 employees who would be disinclined to file an action against their former and/or current employer
17 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
18 employment. Further, the prosecution of separate actions by the individual class members, even
19 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
20 with respect to the individual class members against Defendants herein; and which would
21 establish potentially incompatible standards of conduct for Defendants; and/or legal
22 determinations with respect to individual class members which would, as a practical matter, be
23 dispositive of the interest of the other class members not parties to adjudications or which would
24 substantially impair or impede the ability of the class members to protect their interests. Further,
25 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
26 individual prosecution considering all of the concomitant costs and expenses attending thereto.
27
28 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of

Civil Procedure.

FIRST CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

25. Wage Order 9, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours actually worked including, but not limited to, all hours she was subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 9.

26. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

27. Wage Order 9 § 4 (A) requires that "Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two hours nor more than four hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." By requiring Plaintiff and the Minimum Wage Class to routinely report to the worksite without providing them work to perform, and failing to compensate them for Reporting Time Pay as mandated by Wage

1 Order 9 § 4 (A), Defendants have failed to pay Plaintiff and the Minimum Wage Class all
2 minimum wages.

3 28. As a direct and proximate result of Defendants' unlawful conduct as alleged
4 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
5 not limited to, unpaid wages and lost interest in an amount to be established at trial, and are
6 entitled to recover economic and statutory damages and penalties and other appropriate relief as
7 a result of Defendants' violations of the California Labor Code and Wage Order 9.

8 29. Defendants' practice and uniform administration of corporate policy regarding
9 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
10 the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated
11 damages, including interest thereon, statutory penalties, and attorneys' fees and costs of suit
12 according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of Civil
13 Procedure § 1021.5.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY ALL OVERTIME WAGES**

16 **(AGAINST ALL DEFENDANTS)**

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

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

22 32. At all times relevant herein, Defendants were required to properly compensate
23 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
24 Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay overtime
25 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
26 in the Wage Order.

27 33. Wage Order 9 § 4 (A) requires that "Each workday an employee is required to
28 report for work and does report, but is not put to work or is furnished less than half said

1 employee's usual or scheduled day's work, the employee shall be paid for half the usual or
2 scheduled day's work, but in no event for less than two hours nor more than four hours, at the
3 employee's regular rate of pay, which shall not be less than the minimum wage." By requiring
4 Plaintiff and the Minimum Wage Class to routinely report to the worksite without providing them
5 work to perform, and failing to compensate them for Reporting Time Pay as mandated by Wage
6 Order 9 § 4 (A), Defendants have failed to pay Plaintiff and the Overtime Wage Class all overtime
7 wages.

8 34. The foregoing policies and practices are unlawful and create entitlement to
9 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
10 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of
11 suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 9, and
12 Code of Civil Procedure § 1021.5.

13 **THIRD CAUSE OF ACTION**

14 **MEAL PERIOD VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

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

17 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 failed in their affirmative obligation to provide all of their non-exempt employees in California,
19 including Plaintiff and members of the Meal Period Class with all legally compliant meal periods
20 in accordance with the mandates of the California Labor Code and Wage Order 9, § 10. Despite
21 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and the Meal
22 Period Class at their respective regular rate of pay, in accordance with California Labor Code §§
23 204, 210, 226.7, and 512.

24 37. As a result, Defendants are responsible for paying premium compensation for meal
25 period violations including interest thereon, as well as statutory penalties, civil penalties, and
26 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 9, and Civil Code §§
27 3287(b) and 3289.

28 ///

(AGAINST ALL DEFENDANTS)

41. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid rest period wages and the amount of rest period premiums owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

(AGAINST ALL DEFENDANTS)

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

1 45. Defendants' failures create an entitlement to recovery by Plaintiff and the Wage
2 Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226
3 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit
4 according to California Labor Code § 226 *et seq.*

5 **SIXTH CAUSE OF ACTION**

6 **WAITING TIME PENALTIES**

7 **(AGAINST ALL DEFENDANTS)**

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

9 47. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
10 an employer to pay all wages immediately at the time of termination of employment in the event
11 the employer discharges the employee or the employee provides at least 72 hours of notice of
12 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
13 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
14 employee's last date of employment.

15 48. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class
16 all final wages due to them at the time of their separation including, among other things, unpaid
17 and/or underpaid overtime and minimum wages owed, and meal and rest period premium wages.
18 Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform
19 policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all
20 earned wages at the end of employment in a timely manner pursuant to the requirements of Labor
21 Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of
22 Labor Code § 203.

23 49. Defendants' willful failure to timely pay Plaintiff and the Waiting Time Class their
24 earned wages upon separation from employment results in a continued payment of wages up to
25 thirty (30) days from the time the wages were due. Therefore, Plaintiff and the Waiting Time
26 Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees
27 and costs of suit.

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1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 51. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 *et seq.*, by failing to pay Plaintiff and the Classes all minimum and overtime wages, provide all
8 required meal and rest periods, or pay premium payments in lieu thereof, failing to furnish
9 accurate, itemized wage statements, failing to reimburse for necessary business expenses, and
10 willfully failing to timely pay Plaintiff and members of the Waiting Time class all final wages
11 due upon separation of employment.

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

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

21 54. The acts complained of herein occurred within the last four years immediately
22 preceding the filing of the Complaint in this action.

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

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

9 58. Due to Defendants’ unlawful policy and practice of requiring employees to utilize
10 their personal cellular phones in the performance of their job duties, Defendants have violated
11 Labor Code § 2802.

12 59. Plaintiff and the members of the Employee Expense Class are entitled to attorneys’
13 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

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

18 **NINTH CAUSE OF ACTION**

19 **PRIVATE ATTORNEYS GENERAL ACT**

20 **(AGAINST ALL DEFENDANTS)**

21 61. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
22 fully set forth herein.

23 62. Defendants have committed several Labor Code violations against Plaintiff,
24 members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee”
25 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved
26 employees, brings this representative action against Defendants to recover the civil penalties due
27 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
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1 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
2 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
3 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
4 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
5 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
6 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
7 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
8 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
9 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
10 subsequent violation per employee per pay period for those violations of the Labor Code for which
11 no civil penalty is specifically provided, based on the following Labor Code violations:

- 12 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
13 Wage Class, and other aggrieved employees in violation of Labor Code §§ 551-
14 552, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 15 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
16 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
17 1194, and 1198;
- 18 c. Failing to authorize and permit all legally required rest periods, and failure to
19 pay rest period premium wages, to Plaintiff, the Rest Period Class, and other
20 aggrieved employees at the regular rate of compensation in violation of Labor
21 Code §§ 226.7, 516, 558, and 1198;
- 22 d. Failing to provide all legally required meal periods, and failure to pay meal
23 period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
24 employees at the regular rate of compensation in violation of Labor Code §§
25 226.7, 512, 558, and 1198;
- 26 e. Failing to reimburse Plaintiff, the Employee Expense Class, and other
27 aggrieved employees for necessary business expenditures incurred by Plaintiff,
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the Employee Expense Class, and other aggrieved employees in violation of Labor Code §§ 2800, 2802 and 2804;

- f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- i. Failing to pay Plaintiff and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday in violation of Labor Code § 205;
- j. Failing to permit and authorize Plaintiff and other non-exempt to exercise the use of their accrued paid sick leave days in violation of Labor Code § 245.5;
- k. Failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Plaintiff and other aggrieved employees in violation of Labor Code § 2810.5; and
- l. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

63. On June 9, 2023, Plaintiff notified Defendants via certified mail, and notified 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 violations of the California Labor Code identified in Paragraph 62 (a)-(l). Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

special damages according to proof pursuant to Labor Code § 2802;

12. Upon the Ninth Cause of Action, for (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 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 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 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 for each subsequent violation per employee per pay period for the violations of the Labor Code Sections cited in Labor Code § 2699.5.

13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §226, and Code of Civil Procedure § 1021.5; and

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

Dated: October 9, 2023

Respectfully submitted,
STANSBURY BROWN LAW, PC

By:

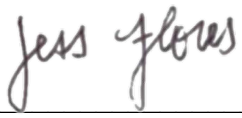

Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: October 9, 2023

Respectfully submitted,
STANSBURY BROWN LAW, PC

By: 

Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On October 9, 2023 I served the document listed below on the parties in this action as follows:

- **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) In accordance with California Code of Civil Procedure section 1010.6 in compliance with the Judicial Council's Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 9, 2023 at Frazier Park, California.

Isabella C. Aguinaga

Isabella C. Aguinaga

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