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 Superior Court of California
 County of Los Angeles
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David W. Slayton, Executive Officer / Clerk of Court
 By: R. Sanchez Deputy

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

VERONICA CHIANG, on behalf of herself and
 all others similarly situated,

Plaintiff,

vs.

ZIPFIZZ CORPORATION; and DOES 1
 through 100, inclusive,

Defendants.

Case No. 23STCV17431

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

- (1) **MINIMUM WAGE VIOLATIONS**
 (LABOR CODE §§ 204, 226.2, 558,
 1182.12, 1194, 1194.2, 1197, 1198);
- (2) **OVERTIME VIOLATIONS (LABOR**
CODE §§ 204, 510, 558, 1194, 1198)
- (3) **MEAL PERIOD VIOLATIONS**
 (LABOR CODE §§ 226.7, 512, 1198);
- (4) **REST PERIOD VIOLATIONS**
 (LABOR CODE §§ 226.2, 226.7, 516,
 1198)
- (5) **WAGE STATEMENT VIOLATIONS**
 (LABOR CODE § 226, *et seq.*);
- (6) **WAITING TIME PENALTIES**
 (LABOR CODE §§ 201-203);
- (7) **FAILURE TO REIMBURSE**
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);
- (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 Veronica Chiang (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby bring this Class and Representative Action Complaint against Zipfizz
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 bring this
7 class action for recovery of unpaid wages and penalties under California Business and Professions
8 Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7, 510, 512, 516, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*; and Industrial Welfare Commission
10 Wage Order No. 1 (“Wage Order 1”), in addition to seeking declaratory relief and restitution.
11 This class action is brought pursuant to California Code of Civil Procedure section 382. This
12 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
13 amount in controversy exceeds this Court’s jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is over the age of eighteen (18). At all relevant times, Plaintiff was, and
22 is, a California resident. Within the statute of limitations periods applicable to each cause of action
23 herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a
24 victim of Defendants’ policies and/or practices complained of herein, lost money and/or property,
25 and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 226, 226.7, 510, 512,
26 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*; Business & Professions
27 Code § 17200, *et seq.* (Unfair Competition), and Wage Order 1, which sets employment standards
28 for the manufacturing industry.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
2 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
3 business as a beverage manufacturer, and that they employed Plaintiff and other similarly situated
4 non-exempt employees within Los Angeles County and the state of California.

5 5. Plaintiff does not know the true names or capacities, whether individual, partner,
6 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
7 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
8 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
9 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
10 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
11 and proximately caused Plaintiff and the Classes (as defined in Paragraph 22) to be subject to the
12 unlawful employment practices, wrongs, injuries, and damages complained of herein.

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

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

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

26 **GENERAL FACTUAL ALLEGATIONS**

27 9. Plaintiff was employed by Defendants as a non-exempt employee. Her
28 employment with Defendants ended on or about August 29, 2022.

1 10. During Plaintiff's employment with Defendants, Plaintiff and other non-exempt
2 employees were paid an hourly rate less than the legal minimum wage, as a result of Defendants'
3 unlawful pay plan. Specifically, Defendants paid Plaintiff \$10 per hour, which at all relevant times
4 was less than the legal minimum wage for work in California, and then used Plaintiff's earned
5 commissions to offset any minimum wage shortfall. In other words, Defendants promised to pay
6 Plaintiff commissions in addition to hourly wages, and then "borrowed" from the commissions in
7 order to meet Defendants' minimum wage obligations, in violation of *Armenta v. Osmose, Inc.*,
8 135 Cal. App. 4th 314 (2005) and *Oman v. Delta Air Lines, Inc.*, 9 Cal. 5th 762 (2020). In *Oman*,
9 the California Supreme Court held that an employer is obligated to compensate any given hour
10 worked at the legal minimum wage and that there may be "no borrowing" from other
11 compensation to make up for a shortfall when the hourly wage is paid at less than the statutorily
12 required minimum wage. Defendants violated this "no borrowing" rule by borrowing from
13 commissions to make up for a minimum wage shortfall. For example, in the pay period of August
14 8-14, 2022, Plaintiff was paid for 8 hours of work at a rate of \$10.00 per hour, which was less
15 than the \$15.00 per hour minimum wage in effect in 2022. In the same pay period, Plaintiff also
16 earned a commission of \$72.00. Because Plaintiff's \$10 hourly wage plus her \$72.00 in
17 commissions, added together and divided by the 8 hours, equaled more than \$15 per hour,
18 Defendants kept Plaintiff's hourly wage at \$10 and used the commissions to make up the shortfall.
19 In other words, rather than pay Plaintiff at least the minimum wage for all hours worked,
20 Defendants *borrowed* from Plaintiff's \$72.00 in commissions to meet Defendants' minimum
21 wage obligations. This payment scheme is unlawful because, as noted above, California law
22 prohibits Defendants from "borrowing" from earnings promised as compensation for
23 commission, in order to meet its minimum wage obligations.

24 11. On information and belief, Defendants have similarly paid its other non-exempt
25 employees in the same manner, i.e., paying less than minimum wage for each hour worked, and
26 borrowing from amounts paid as commission to make up for the minimum wage shortfall. As a
27 result of Defendants' failure to pay the legal minimum wage, Plaintiff and other non-exempt
28 employees have not been paid at least the minimum wage for all hours worked.

1 12. Moreover, to the extent Defendants allege that their pay plan was a lawful
2 commission pay plan, Defendants' commission pay plan failed to pay at least the minimum wage
3 for all rest period hours and nonproductive time, in violation of Labor Code § 226.2(a)(3) and
4 (a)(4), and *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017). Specifically, Section
5 226.2 provides that employees paid on a piece-rate pay plan must be paid separately for rest and
6 recovery periods and "nonproductive time" at a rate of at least the minimum wage, and *Vaquero*
7 held that Section 226.2 applies equally to employees paid on commission. Defendants failed to
8 pay Plaintiff or other non-exempt employees separately for their rest periods or for their
9 nonproductive time, such as time spent setting up and breaking down tables, communicating with
10 management, and other tasks that did not generate commissions.

11 13. Defendants also unlawfully rounded Plaintiff's and other non-exempt employees'
12 hours worked. Specifically, although Defendants required Plaintiff and other non-exempt
13 employees to clock in and out using an app on their phones (discussed in more detail *infra*), and
14 on information and belief recorded their clock-in and clock-out times to the minute, Defendants
15 rounded Plaintiff's and other non-exempt employees' time records in quarter-hour increments, to
16 the detriment of Plaintiff and other non-exempt employees. As a result of this rounding
17 policy/practice, Plaintiff and other non-exempt employees were not paid for all hours worked and
18 suffered unpaid wages, including unpaid minimum wages and overtime wages.

19 14. Defendants also failed to reimburse Plaintiff and other employees for expenses
20 they incurred in the course of their employment. Specifically, Defendants required Plaintiff and
21 other employees to use their personal cellphones to clock in and out of their shifts as well as
22 communicate with management. Indeed, Defendants' written policy mandates that employees
23 "Use Celayix Team Xpress [a mobile app] to clock into your shift" and further states if the app is
24 unsuccessful, "A screenshot of error message must be immediately texted to your DM." Plaintiff
25 and other employees were also required to send "Morning pictures to DM," inclusive of pictures
26 of table set-ups and selfies. Plaintiff and other employees were also required to use their personal
27 cell phones to receive and send work-related text messages and phone calls to and from
28 management. Despite requiring Plaintiff and other employees to use their personal cellular phones

for work-related purposes, Defendants failed to reimburse Plaintiff and other employees for any portion of their personal cellular phone bills. As a result of the foregoing, Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

15. Defendants have also failed to provide Plaintiff and other non-exempt employees with all statutorily mandated meal periods due to Defendants' meal period policies/practices. Specifically, the workload imposed on Plaintiff and other non-exempt employees made it impracticable for Plaintiff and other non-exempt employees to take a 30-minute off-duty meal period prior to the end of the fifth hour of work, and/or a second 30-minute meal period on shifts over 10.0 hours. If Plaintiff took a meal period, it was often interrupted by customers or by texts and/or calls from management. In those instances that Defendants failed to provide Plaintiff and other non-exempt employees with a legally compliant meal period, Defendants failed to pay the meal period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying meal period premiums when Defendants failed to provide a legally compliant meal period.

16. Defendants have also failed to authorize and permit rest periods to Plaintiff and other non-exempt employees. Specifically, Defendants have failed to authorize and permit a 10-minute net rest period for every 4 hours worked or major fraction thereof, as Plaintiff and other non-exempt employees were frequently unable to take the rest periods to which they were entitled as a result of the workload imposed by Defendants, including but not limited to the frequent interruptions mentioned above from customers and/or management. Moreover, as noted above, Defendants failed to pay separately for rest periods, rendering them unpaid. In those instances that Defendants failed to authorize and permit Plaintiff and other non-exempt employees to take a legally compliant rest period, Defendants failed to pay the rest period premiums required by Labor Code § 226.7. Upon 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.

1 17. As a result of Defendants’ failure to pay all minimum and overtime wages, as well
2 as Defendants’ failure to pay meal and rest period premium wages, Defendants failed to pay all
3 wages to Plaintiff and other formerly employed non-exempt employees at the separation of their
4 employment.

5 18. As a further result of Defendants’ failure to pay all minimum wages, as well as
6 Defendants’ failure to pay meal and rest period premium wages, Defendants maintained
7 inaccurate payroll records, and issued inaccurate wage statements to Plaintiff.

8 19. In addition, Defendants have maintained payroll practices which have resulted in
9 Plaintiff and other employees being paid late, in violation of Labor Code Section 204b.
10 Specifically, Defendants maintain a payroll practice in which Plaintiff and other employees have
11 been paid on a weekly basis, but are paid 9 days after the end of each weekly pay period. This
12 practice has resulted in many pay periods in which Plaintiff and other employees have been paid
13 late under Labor Code Section 204b. Section 204b provides (emphasis added): “Section 204 shall
14 be inapplicable to employees paid on a weekly basis on a regular day designated by the employer
15 in advance of the rendition of services as the regular payday. **Labor performed by a weekly-**
16 **paid employee during any calendar week and prior to or on the regular payday shall be**
17 **paid for not later than the regular payday of the employer for such weekly-paid employee**
18 **falling during the following calendar week.** Labor performed by a weekly-paid employee
19 during any calendar week and subsequent to the regular payday shall be paid for not later than
20 seven days after the regular payday of the employer for such weekly-paid employee falling during
21 the following calendar week.”

22 20. Defendants’ paydays are on Tuesdays. Thus, Section 204b requires that “any labor
23 performed...prior to or on [Tuesday]” must be “paid for not later than the [Tuesday]...falling
24 during the following week.” Defendants’ pay periods run from Monday through Sunday, and
25 there are 9 days between the close of each pay period and the pay date. For example, Defendants’
26 pay period of Monday, August 1 through Sunday, August 7, 2022, had a pay date of Tuesday,
27 August 16, 2022. Defendants’ pay practices have resulted in labor worked on Monday and
28 Tuesday of each calendar week (in this example, August 1 and 2, 2022), not being paid on the

Tuesday of the following week, but rather on the Tuesday of two calendar weeks later, in violation of Labor Code Section 204b.

21. As another example, in the pay period of Monday, August 8 to Sunday, August 14, 2022, Defendants paid Plaintiff on August 23, 2022, 9 days after the close of the pay period. Pursuant to Labor Code Section 204b, wages from August 8 and 9 (Monday and Tuesday) should have been paid no later than the regular payday falling during the following calendar week, i.e., by August 16, 2022. Thus, Defendants' pay practices resulted in wages earned on August 8 and 9 (prior to and on that calendar week's regular pay day) to be paid late.

CLASS ACTION ALLEGATIONS

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

a. The Minimum Wage Class consists of all of the Defendants' current and former non-exempt employees in California who (i) were subject to Defendants' commission pay plan, and/or (ii) were subject to Defendants' time-rounding practice, at any time from four years prior to the filing of this action through the present.

b. The Overtime Class consists of all of the Defendants' current and former non-exempt employees in California who were subject to Defendants' time-rounding practice, at any time from four years prior to the filing of this action through the present.

c. The Meal Period Class consists of all of the Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, at any time from four years prior to the filing of this action through the present.

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

e. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage statement at any time from one year prior to the filing of this action through the present.

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f. The Waiting Time Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period 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 prior to the filing of this action through the present.

g. The Expense Reimbursement Class consists of all of Defendants' employees (exempt and non-exempt) who were required to use their personal cellular phones for work-related purposes, at any time from four years prior to the filing of this action through the present.

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

24. **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 paid at least the minimum wage for all hours worked to members of the Minimum Wage Class;
- ii. Whether Defendants properly paid overtime and/or double-time compensation to all members of the Overtime Class;
- iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;
- iv. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- vi. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment; and

vii. Whether Defendants properly reimbursed expenses incurred by members of the Expense Reimbursement Class.

25. **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' timekeeping, pay plan, 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.

26. **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 minimum wages and overtime wages, was subject to Defendants' 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.

27. **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.

28. **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 20 are
17 maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

18 **FIRST CAUSE OF ACTION**

19 **MINIMUM WAGE VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

22 30. Wage Order 1, § 4 and Labor Code §§ 1197 and 1182.12 establish employees'
23 right to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§
24 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage
25 as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees,
26 costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

27 31. At all relevant times, Defendants failed to conform their pay practices to the
28 requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours

1 actually worked including, but not limited to, all hours they were subject to Defendants' control
2 and/or suffered or permitted to work under the Labor Code and Wage Order 1.

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

8 33. As a direct and proximate result of Defendants' unlawful conduct as alleged
9 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
10 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
11 entitled to recover economic and statutory damages and penalties and other appropriate relief as
12 a result of Defendants' violations of the California Labor Code and Wage Order 1.

13 34. Defendants' practice and uniform administration of corporate policy regarding
14 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
15 the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated
16 damages, interest thereon, statutory penalties, and attorneys' fees and costs of suit, per Labor
17 Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

18 **SECOND CAUSE OF ACTION**

19 **OVERTIME VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

22 36. 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 37. 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 1. 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.” As alleged herein, Defendants caused Plaintiff and Overtime
8 Class members to work overtime hours but did not compensate them at one and one-half times
9 (or two times) their regular rate of pay for such hours.

10 38. 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 **THIRD CAUSE OF ACTION**

16 **MEAL PERIOD VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

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

19 40. 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 and Wage Order 1, for the reasons set forth in this
23 Complaint.

24 41. 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 1, Labor
26 Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

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1 among other things, the non-payment of all their minimum and overtime wages and meal and rest
2 period premium wages, and deprived them of the information necessary to identify the
3 discrepancies in Defendants' reported data.

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

8 **SIXTH CAUSE OF ACTION**

9 **WAITING TIME PENALTIES**

10 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

26 54. Defendants' failure to pay all final wages was willful within the meaning of Labor
27 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
28 Time Class their earned wages upon separation from employment results in a continued payment

1 of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the
2 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
3 attorneys' fees and costs of suit.

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 **(AGAINST ALL DEFENDANTS)**

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

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

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

17 58. Due to Defendants' unlawful policy and practice of requiring employees to use
18 their personal cellular phones for work purposes, and their failure to reimburse Plaintiff and
19 members of the Employee Expense Class, Defendants have violated Labor Code § 2802.

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

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

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

1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 63. Defendants have engaged, and continue to engage, in unfair and/or unlawful
6 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay
7 Plaintiff and the Classes all minimum wages and overtime wages due, failing to provide meal
8 periods or pay meal period premium wages, failure to authorize and permit rest periods or pay
9 rest period premium wages, failing to furnish accurate and complete itemized wage statements,
10 failing to reimburse business expenses, and failing to pay all earned wages at separation of
11 employment.

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

17 65. 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, seeks full restitution of
19 monies as necessary and according to proof, to restore all monies withheld, acquired, and/or
20 converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

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

23 67. Plaintiff was 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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NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

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

69. 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 at least the minimum wage for all hours worked, in violation of Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. 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;
- c. 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;

d. 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;

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;

g. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses, in violation of Labor Code §§ 2802, 2804, and 1198; and

h. Failing to timely pay wages to Plaintiff and other aggrieved employees during their employment, in violation of Labor Code §§ 204 and 204b.

70. On or about July 25, 2023, Plaintiff notified Defendant Zipfizz Corporation, 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 69 (a)-(h) 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.

71. Based on the foregoing, Plaintiff seeks to represent herself, the State of California, and all aggrieved employees as defined by Labor Code § 2699(c), which includes all current and former employees who worked for Defendants in California at any time from one year prior to the submission of Plaintiff's PAGA notice to the present.

72. 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 payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 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;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
10. Upon the Seventh Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200, *et seq.*;

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1 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
2 employees, and the State of California according to proof pursuant to Labor Code § 2699,
3 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
4 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
5 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
6 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
7 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
8 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
9 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
10 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
11 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
12 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
13 Labor Code § 2699(f);

14 13. Prejudgment interest on all due and unpaid wages and other damages pursuant to
15 California Labor Code §§ 218.6, 1194(a), 1194.2(a), and 2802(b); Civil Code § 3287; and Art.
16 XV, § 1 of the California Constitution;

17 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 226(e), 1194 *et seq.*, 2802(c), 2699(g) and Code of Civil Procedure § 1021.5; and

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

20
21 Date: September 29, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

22
23 By:



Tuvia Korobkin
Attorneys for Plaintiff

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1 **DEMAND FOR JURY TRIAL**

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

3
4 Dated: September 29, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

5
6 By: _____



Tuvia Korobkin
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the
3 age of 18 and not a party to the within action. My business address is 11846 Ventura
4 Blvd., Suite 100, Studio City, CA 91604. On the below date, I served a true copy of the
5 foregoing documents described as:

6 **FIRST AMENDED COMPLAINT**

7 on all interested parties in this action directed as follows:

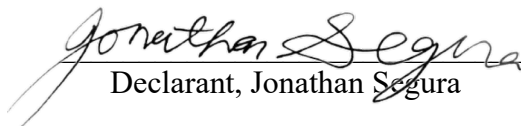
8 Christin A. Lawler, Esq. 9 Fox Rothschild LLP 345 California Street, Suite 2200 San Francisco, California 94104-2670	Attorneys for Defendant Email Address: calawler@foxrothschild.com
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10
11 / / (BY OVERNIGHT MAIL): I am readily familiar with the firm's practice of
12 collection and processing for overnight delivery. Under such practice, I caused the
13 aforementioned document(s) to be delivered to an overnight courier service, carrier fees
14 paid and deposited in an overnight delivery drop-box and/or delivered to an overnight
15 carrier.

16 /X / (BY ELECTRONIC SERVICE): BY ELECTRONIC TRANSMISSION) I served the
17 foregoing by electronic transmission to the email addresses listed above, pursuant to Cal. Code
18 Civ. Proc. § 1010.6 and Cal. Rules of Court Rule 2.251.

19 I declare under penalty of perjury under the laws of the State of California and the
20 United States of America that the foregoing is true and correct.

21 Executed on September 6, 2023, at Studio City, California.

22 
Declarant, Jonathan Segura