

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Karen I. Gold (State Bar No. 258360)
kgold@blackstonepc.com
Marissa A. Mayhood (State Bar No. 334376)
mmayhood@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Telephone: (310) 622-4278

Attorneys for Plaintiff SITARA NAYABKHIL,
individually, and on behalf of other members of
the general public similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

SITARA NAYABKHIL, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiffs,

vs.

SAN FRANCISCO SPCA, dba, SFSPCA, a
California 501(c)(3) non-profit organization;
DOES 1 through 25, inclusive,

Defendants.

Case No.

CGC-23-609950

**CLASS & COLLECTIVE ACTION
COMPLAINT:**

1. Violation of 29 U.S.C. §§ 2101, et seq. (Federal WARN Act);
2. Violation of Cal. Labor Code §§ 1400, et seq. (California WARN Act);
3. Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime Wages);
4. Violation of Cal. Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
5. Violation of Cal. Labor Code §§ 226.7 and 512(a) (Meal Break Violations);
6. Violation of Cal. Labor Code § 226.7 (Rest Break Violations);
7. Violation of Cal. Labor Code §§ 204 and 210 (Wages Not Timely Paid)
8. Violation of Cal. Labor Code § 226(a) (Wage Statement Violations);
9. Violation of Cal. Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid);
10. Violation of Cal. Labor Code §§ 2800 and

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
10/24/2023
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

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2802 (Failure to Reimburse Expenses);
11. Violation of Cal. Business and Professions
Code §§ 17200 *et seq.* (Unfair and Unlawful
Business Practices)
12. Violation of Cal. Labor Code §§ 2698 *et. seq.*
("Private Attorneys General Act")
DEMAND FOR JURY TRIAL

1 Plaintiff SITARA NAYABKHIL (“Plaintiff”), individually and on behalf of all others similarly
2 situated and aggrieved, brings this action against Defendant SAN FRANCISCO SPCA, dba SFSPCA;
3 and DOES 1- 25 (hereinafter collectively referred to as “Defendants”) and alleges as follow:

4 **INTRODUCTION**

5 1. This action seeks relief against Defendants for their knowingly wrongful conduct with
6 respect to current and former employees. Plaintiff alleges causes of action against Defendants for: (1)
7 failure to provide sixty (60) days advance notice prior to the mass layoff taking effect and failure to
8 pay all wages vested during that notice period and owed upon separation; (2) failure to pay certain
9 wages at the statutorily required rate(s), including but not limited to overtime wages, minimum
10 wages, meal break premium wages, and rest break period premium wages; (3) failure to provide meal
11 breaks and missed meal break premiums to their current and former employees; (4) failure to provide
12 rest breaks and missed rest break premiums to their current and former employees; (5) failure to
13 provide complete and accurate wage statements to their current and former employees; (6) failure to
14 provide timely wages during employment and after termination; (7) failure to reimburse current and
15 former employees for necessary business related expenses; (8) unfair business practices based on the
16 foregoing; and (8) civil penalties under The Private Attorney General Act of 2004 (“PAGA”) and
17 derivative or related claims for violations of the Labor Code and the Industrial Welfare Commission
18 Wage Orders.

19 2. Additionally, this is an enforcement action under the California Labor Code Private
20 Attorneys General Act of 2004, California Labor Code sections 2698, et seq. (“PAGA”) to recover
21 civil penalties on behalf of Plaintiff, the State of California, and all individuals who worked for
22 Defendants in the State of California as hourly-paid and/or non-exempt employees at any time during
23 the period from June 2022 to final judgment (“Aggrieved Employees”). As a result, Defendants
24 violated among other things, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510,
25 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 1400 *et seq.*, 2800, and 2802, and the applicable Industrial
26 Welfare Commission (“IWC”) Wage Order. Through this action, Plaintiff seeks to recover all
27 available remedies under PAGA, including, but not limited to, civil penalties and attorney’s fees and
28 costs.

3. The systematic policies, practices, and customs of Defendants violated and continue to violate California law and have injured Plaintiff and other similarly aggrieved employees and putative class members.

JURISDICTION AND VENUE

4. This action is brought pursuant to California Code of Civil Procedure section 382 and California Labor Code sections 2698, *et seq.*

5. The monetary damages, restitution, statutory penalties, and other applicable legal and equitable relief sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

6. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

7. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. Further, no federal question is at issue because the claims asserted herein are based solely on California law.

8. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of San Francisco. The majority of the acts, events, and violations alleged herein relating to Plaintiff occurred throughout the state of California, including in the County of San Francisco.

THE PARTIES

9. At all times herein mentioned, Plaintiff SITARA NAYABKHIL was and is a resident of San Francisco County in the State of California.

10. At all times herein mentioned, Defendant SAN FRANCISCO SPCA, dba SFSPCA, was and is, upon information and belief, a California 501(c)(3) non-profit organization, and at all times

hereinafter mentioned, an employer whose employees are engaged throughout San Francisco County and the State of California.

11. At all times herein mentioned, Defendants were and are, employers who do business in California, with locations throughout the state of California, and whose employees are engaged throughout San Francisco County and the State of California, including at 201 Alabama Street, San Francisco, California, 91403.

12. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

13. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to Defendants and/or DOES 1 through 25, each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants represent and were in accordance with Defendants' official policies.

14. At all relevant times, Defendants were the employers of Plaintiff within the meaning of all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff so as to make each of said Defendants employers and employers liable under the statutory provisions set forth herein.

15. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff and the other class members' employment, and to supervise their daily employment activities.

16. Defendants exercised sufficient authority over the terms and conditions of Plaintiff and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

17. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

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18. Defendants continue to employ hourly paid and/or non-exempt employees within the State of California.

19. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

20. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

21. Plaintiff worked for Defendants from approximately March 2019 through approximately October 2022. Defendants jointly and severally employed Plaintiff at their location at 201 Alabama Street, San Francisco, California, 94103. Plaintiff performed various duties for Defendants including, among other things, answering customers questions and working in triage.

22. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in a pattern and practice of wage abuse against their hourly-paid and/or non-exempt employees. As set forth in more detail below, this pattern and practice of wage abuse involved, *inter alia*, requiring Plaintiff and similarly situated current and former employees to work off-the-clock without compensation, failing to properly pay overtime wages and minimum wages for all hours worked, failing to provide all meal and rest breaks to which they were entitled and failing to pay meal and rest break premiums when due, failing to timely pay wages during employment and upon termination of employment, failing to provide accurate wage statements, failing to reimburse necessary business-related expenses and failing to adhere to other related protections afforded by the California Labor Code and the applicable Industrial Welfare Commission Wage Order.

23. Defendants knew or should have known that they had a duty to compensate Plaintiff and the class pursuant to California law, and had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so to increase Defendants' profits.

24. As early as August 2022 and throughout September 2022 and October 2022,

Defendants engaged in a process of consolidating and eliminating multiple positions at their 201 Alabama Street, San Francisco, California, 91403 location without providing at least sixty (60) days advance notice of the mass layoff to Plaintiff, class members, and aggrieved employees.

25. During that time period, Defendants decided to eliminate certain positions, including, but not limited to, inpatient coordinators, medical liaisons, call center associates, and client service representatives because they wanted to consolidate those several positions into a single position called “CES.”

26. Upon information and belief, Defendants presented to some of those employees a choice that amounted to constructive discharge: either take the new CES position, which would effectively triple their current duties and without a promise for additional compensation, or to be terminated.

27. Upon information and belief, some of Defendants’ employees who worked as either inpatient coordinators, medical liaisons, call center associates, and/or client service representatives were simply terminated and not offered the CES position or any other position.

28. Upon information and belief, Defendants collectively terminated over a period of two or three months at least fifty (50) employees in that State of California, without providing adequate notice.

CLASS ACTION ALLEGATIONS

29. Plaintiff brings this lawsuit as a class action on behalf of herself and all others similarly situated, as members of a proposed class pursuant to California Code of Civil Procedure section 382. The class satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements under California Code of Civil Procedure section 382.

30. The proposed class is defined as follows:

All current and former hourly-paid and/or non-exempt employees who worked for Defendants in the State of California at any time during the period from four years prior to the date of the filing of this Complaint until final judgment.

31. The proposed subclass is defined as follows:

1 **Mass Layoff Sub-Class**

2 **All persons who worked for Defendants in California as inpatient coordinators,**
3 **medical liaisons, call center associates, and client service representatives who were**
4 **not provided at least sixty (60) days' advance notice before Defendants' closing**
5 **and/or conducting a mass layoff.**

6 32. Plaintiff reserves the right to establish additional subclasses as appropriate or modify
7 the class definitions above.

8 33. There is a well-defined community of interest in the litigation and the Class is easily
9 ascertainable.

10 34. The Class is so numerous that the individual joinder of all its members is impracticable.
11 While the exact number and identities of class members are unknown to Plaintiff at this time, the exact
12 numbers of class members and their identities can be ascertained through appropriate discovery from
13 records maintained by Defendants and their agents.

14 35. Common questions of fact and law exist as to all class members, which predominate
15 over any questions affecting only individual members of the Class. The common legal and factual
16 questions which do not vary from class member to class member and which may be determined
17 without reference to the individual circumstances of any class member include, but are not limited to,
18 the following:

- 19 i. Whether Defendants failed to provide sixty (60) days advance notice before conducting
20 a closing and/or mass layoff;
- 21 ii. Whether offering the new CES position to some employees in the Mass Layoff subclass
22 was equivalent to constructive discharge;
- 23 iii. Whether Defendants failed to pay the class members wages and to provide other
24 employee benefits for the sixty (60) day period following their respective terminations;
- 25 iv. Whether Defendants had a policy and practice of failing to pay minimum wages to
26 Plaintiff and the other class members for all hours worked;
- 27 v. Whether Defendants had a policy and practice of failing to pay overtime wages to
28 Plaintiff and the other class members for all overtime hours worked;

- 1 vi. Whether Defendants had a policy and practice of failing to provide meal periods to
2 Plaintiff and the other class members;
- 3 vii. Whether Defendants had a policy and practice of failing to provide rest periods to
4 Plaintiff and the other class members;
- 5 viii. Whether Defendants failed to pay their hourly-paid and/or non-exempt employees in
6 the State of California for all hours worked, and for all missed, short, late, and/or
7 interrupted meal periods and rest breaks;
- 8 ix. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class
9 members during their employment;
- 10 x. Whether Defendants' failure to pay wages, without abatement or reduction, in
11 accordance with the California Labor Code, was willful;
- 12 xi. Whether Defendants failed to pay all wages due to Plaintiff and the other class members
13 within the required time upon their discharge or resignation;
- 14 xii. Whether Defendants failed to comply with wage reporting as required by the California
15 Labor Code; including, *inter alia*, section 226;
- 16 xiii. Whether Defendants failed to reimburse Plaintiff and the other class members for
17 necessary business-related expenses and costs;
- 18 xiv. Whether Defendants' conduct was willful or reckless;
- 19 xv. Whether Defendants engaged in unfair business practices in violation of California
20 Business & Professions Code section 17200, *et seq.*;
- 21 xvi. The appropriate amount of damages, restitution, and/or monetary penalties resulting
22 from Defendants' violation of California law; and
- 23 xvii. Whether Plaintiff and the other class members are entitled to compensatory damages
24 pursuant to the California Labor Code.

25 36. Plaintiff's claims are typical of the claims of the Class, and Plaintiff's interests are
26 coincident with and not antagonistic to those of the other class members they seek to
27 represent. Plaintiff will fairly and adequately protect the interests of the members of
28 the Class. Plaintiff has retained attorneys experienced in the prosecution of class actions and Plaintiff

1 intends to prosecute this action vigorously.

2 37. A class action is superior to other available methods for the fair and efficient
3 adjudication of this controversy since individual litigation of the claims of all class members is
4 impracticable. Even if every class member could afford individual litigation, the court system could
5 not. It would be unduly burdensome on the courts in which individual litigation of numerous cases
6 would proceed. Individualized litigation would also present the potential for varying, inconsistent or
7 contradictory judgments and would magnify the delay and expense to all parties and to the court
8 system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of
9 this action as a class action, with respect to some or all of the issues presented in this Complaint,
10 presents fewer management difficulties, conserves the resources of the parties and of the court system,
11 and protects the rights of each class member.

12 38. Certification of this lawsuit as a class action will advance public policy
13 objectives. Employers of this great state violate employment and labor laws every day. Current
14 employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However,
15 class actions provide the class members who are not named in the complaint anonymity that allows
16 for the vindication of their rights.

17 **PAGA ALLEGATIONS**

18 39. At all times set forth herein, PAGA applied to Plaintiff's employment by Defendants.

19 40. PAGA provides that any provision of law under the California Labor Code that
20 provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected
21 by the California Labor & Workforce Development Agency ("LWDA") for violations of the California
22 Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved
23 employee on behalf of himself or herself and other current or former employees pursuant to procedures
24 outlined in California Labor Code section 2699.3.

25 41. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who is
26 any person employed by the alleged violator and against whom one or more of the alleged violations
27 was committed.

28 42. Plaintiff and the other employees are "Aggrieved Employees" as defined by California

1 Labor Code section 2699(c) because they are current or former employees of Defendants against
2 whom one of more of the alleged violations were committed.

3 43. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,
4 including Plaintiff, may pursue a civil action arising under PAGA after the following requirements
5 have been met:

6 (a) The Aggrieved Employee shall give written notice by certified mail (hereinafter
7 “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the
8 Labor Code alleged to have been violated, including the facts and theories to support the
9 alleged violations.

10 (b) The LWDA shall provide notice (hereinafter “LWDA Response”) to the employer and the
11 aggrieved employee by certified mail that it does not intend to investigate the alleged
12 violation within sixty (60) calendar days of the postmark date of the Employee’s Notice.
13 Upon receipt of the LWDA Response, or if the LWDA Response is not provided within
14 sixty five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved
15 employee may commence a civil action pursuant to California Labor Code section 2699
16 to recover civil penalties in addition to any other penalties to which the employee may be
17 entitled.

18 44. On August 7, 2023, Plaintiff provided notice by electronic submission to the LWDA
19 and by certified mail to Defendants regarding the specific provisions of the Labor Code alleged to
20 have been violated, including the facts and theories to support the alleged violations, pursuant to Labor
21 Code section 2699.3. **A true and correct copy of the Plaintiff’s Notice is attached hereto as**
22 **Exhibit A.**

23 45. On September 8, 2023, Plaintiff’s counsel received a cure letter from Defendants’
24 counsel that alleged that Defendants cured their violation of California Labor Code section 226(a)(8).
25 On September 8, 2023, Plaintiff’s counsel promptly responded to this letter and disputed that that any
26 of the other alleged allegations, previously asserted in Plaintiff’s LWDA Notice Letter were cured.

27 46. On September 20, 2023, the LWDA provided written notice of its decision, wherein it
28 stated that only Defendants’ alleged violation of California Labor Code section 226(a)(8) was cured,

1 but took “no position on the merits of any alleged violation.” **A true and correct copy of the LWDA’s**
2 **Written Decision Regarding Disputed Cure is attached hereto as Exhibit B.**

3 47. Plaintiff did not receive a LWDA Response within sixty-five calendar days of
4 providing the Employee’s Notice as to the other allegations and may proceed with the civil action for
5 the other alleged violations since they have not been cured.

6 48. On October 18, 2023, Plaintiff provided notice by electronic submission to the LWDA
7 and by certified mail to Defendants a supplemental notice letter that explained that Defendants also
8 violated California Labor Code section 227.3, pursuant to Labor Code section 2699.3. **A true and**
9 **correct copy of the Plaintiff’s Supplemental Notice is attached hereto as Exhibit C.**

10 49. Plaintiff intends to seek leave to amend the complaint to add the violation alleged in
11 Exhibit C once the sixty-five (65) day notice period expires.

12 50. Therefore, the administrative prerequisites under California Labor Code section
13 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations of
14 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197,
15 1197.1, 1198, 1400 *et seq.*, 2800 and 2802 have been satisfied.

16 **FIRST CAUSE OF ACTION**

17 **VIOLATION OF 29 U.S.C. SECTION 2101, *et seq.***

18 **Federal WARN Act**

19 **(Against SAN FRANCISCO SPCA and DOES 1-25)**

20 51. Plaintiff incorporates herein by specific reference, as though fully set forth, the
21 allegations in all preceding paragraphs.

22 52. At all relevant times, the Defendants employed more than 100 employees at their 201
23 Alabama Street, San Francisco, California, 91403 location.

24 53. At all relevant times, each Defendants were “employers” as that term is defined in 29
25 U.S.C. § 2101(a)(1) and 20 C.F.R. § 639(a) and continued to operate as a business until determining
26 to order a mass layoff at the above location.

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1 54. From August 2022 through October 2022, Defendants ordered a “mass layoff”, as that
2 term is defined in 29 U.S.C. § 2101(a)(2) by eliminating several positions, including but not limited
3 to, inpatient coordinators, medical liaisons, call center associates, and client service representatives.

4 55. As defined in 29 U.S.C. § 2102(d), employment losses for 2 or more groups at a single
5 site of employment, each of which is less than the minimum number of employees specified in
6 section 2101(a)(2) or (3) of this title but which in the aggregate exceed that minimum number, and
7 which occur within any 90-day period shall be considered to be a plant closing or mass layoff unless
8 the employer demonstrates that the employment losses are the result of separate and distinct actions
9 and causes and are not an attempt by the employer to evade the requirements of this chapter.

10 56. The mass layoff and/or plant closing at their 201 Alabama Street, San Francisco,
11 California, 91403 resulted in “employment losses,” as that term is defined by 29 U.S.C. § 2101(a)(2)
12 for at least fifty (50) of Defendants' employees as well as 33% of Defendants' workforce at that
13 location, excluding part-time employees as that term is defined by 29 U.S.C. § 2101(a)(8).

14 57. Plaintiff and each of the other putative members of the Mass Layoff Class were
15 discharged by Defendants without cause on their part, as part of or as the reasonable foreseeable
16 result of the mass layoff ordered by Defendants.

17 58. Plaintiff and the other putative members of the Mass Layoff Class are “affected
18 employees” of Defendants within the meaning of 29 U.S.C. §2101(a)(5).

19 59. Defendants failed to give Plaintiff and other putative members of the Mass Layoff
20 Class written notice that complied with the requirements of the Federal WARN act.

21 60. Plaintiff and each of the other putative members of the Mass Layoff Class are
22 “aggrieved employees” of the Defendants as that term is defined in 29 U.S.C. §2104(a)(7).

23 61. Defendants failed to pay Plaintiff and each of the other putative members of the Mass
24 Layoff Class their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued
25 vacation for 60 days following notice of their terminations and failed to make the pension and 401(k)
26 contributions and provide employee benefits, for 60 days following notice of their respective
27 terminations.

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1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE SECTIONS 1400, *et seq.***

3 **California WARN Act**

4 **(Against SAN FRANCISCO SPCA and DOES 1-25)**

5 62. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in all preceding paragraphs.

7 63. Plaintiff and others similarly situated were employees of Defendants, and Defendants
8 were their employers, as those terms are defined in California Labor Code section 1400 and Wage
9 Order 4.

10 64. Defendants' 201 Alabama Street, San Francisco, California, 91403 location is a
11 "covered establishment(s)" as the term is defined in California Labor Code section 1400 because they
12 employed 75 or more persons there in the 12 months preceding the mass layoff.

13 65. Plaintiff and others similarly situated were subjected to a "mass layoff" or
14 "termination" as those terms as defined in Section 1400, *et seq.*, in or around September 2022.

15 66. Defendants failed to provide Plaintiff and others similarly situated with the proper
16 notice required by California Labor Code section 1401 prior to the mass layoff or termination.

17 67. Defendants failed to provide Plaintiff and others similarly situated with sixty (60)
18 days' wages and benefits as required by California Labor Code section 1402.

19 68. Defendants are therefore liable to the Mass Layoff Class for back pay and benefits for
20 sixty (60) days, as outlined in California Labor Code section 1402, as well as attorneys' fees and
21 costs under California Labor Code section 1404.

22 **THIRD CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

24 **Failure to Provide Overtime Wage**

25 **(Against SAN FRANCISCO SPCA and DOES 1-25)**

26 69. Plaintiff incorporates herein by specific reference, as though fully set forth, the
27 allegations in all preceding paragraphs. California Labor Code section 1198 and the applicable
28 Industrial Welfare Commission ("IWC") Wage Order provide that it is unlawful to employ persons

1 for extended periods of time without compensating them at a rate of pay either time-and-one-half or
2 two-times that person's regular rate of pay, depending on the number of hours worked by the person
3 on a daily or weekly basis.

4 70. Specifically, the applicable IWC Wage Order provides that Defendants were required
5 to pay Plaintiff and the other class members at the rate of time-and-one-half for all hours worked in
6 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and/or the first eight
7 (8) hours worked on the seventh consecutive day in a workweek.

8 71. California Labor Code section 510 codifies the right to overtime compensation at one-
9 and-one half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
10 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to
11 overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12)
12 hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

13 72. Plaintiff and the other class members regularly worked in excess of eight (8) hours in a
14 day, in excess of twelve (12) hours in a day, in excess of forty (40) hours in a week and/or seven (7)
15 consecutive days in a workweek. However, Defendants did not record Plaintiff and the other class
16 members' actual hours worked and intentionally and willfully failed to pay all overtime wages owed
17 to Plaintiff and the other class members. Defendants' failure to pay correct overtime wages included,
18 *inter alia*: (a) when the combined total of the off-the-clock work and the on-the-clock work exceed
19 the number of hours that trigger the payment of overtime wages under Labor Code sections 510 and
20 1198 and/or the applicable Wage Order; (b) when Defendants intentionally, willfully and/or
21 negligently mischaracterized overtime as straight time; (c) when Defendants assigned more work
22 than could reasonably be completed in a workday or workweek to Plaintiff and class members, but
23 refused to authorize the overtime necessary for them to complete the assigned work; and (d) when
24 Defendants failed to include all required wages and remuneration when calculating setting the
25 overtime rate.

26 73. Defendants' failure to pay Plaintiff and the other class members as outlined above
27 violates California Labor Code sections 510 and 1198 the applicable Wage Order and is therefore
28 unlawful.

1 74. Pursuant to California Labor Code section 1194, Plaintiff and the other class members
2 are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys'
3 fees.

4 **FOURTH CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE SECTIONS 1194, 1197, AND 1197.1**

6 **Failure to Pay Minimum Wage**

7 **(Against SAN FRANCISCO SPCA and DOES 1-25)**

8 75. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in all preceding paragraphs.

10 76. California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage
11 for employees fixed by the Industrial Welfare Commission is the minimum wage to be paid to
12 employees, and the payment of a wage less than the minimum so fixed is unlawful. Plaintiff and the
13 other class members were not paid the appropriate minimum wage for all of the hours they worked.

14 77. Such "off-the-clock" work that Plaintiff and class members were suffered and/or
15 permitted to work, and for which Plaintiff and class members did not receive minimum wage include
16 *inter alia*:

- 17 a. suffering or permitting Plaintiff and class members to perform work for the benefit
18 of Defendants prior to clocking-in for their shift(s) including *inter alia* pre-opening
19 inspections and picking up employees for shifts;
- 20 b. suffering or permitting Plaintiff and class members to perform work for the benefit
21 of Defendants after clocking-out from their shift(s) including *inter alia* performing
22 lock up procedures and commuting employees off the base;
- 23 c. contacting Plaintiff and class members via email, text and/or phone calls outside
24 of work hours and/or during meal breaks to discuss work matters;

25 78. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiff
26 and the other class members for all hours worked and violated California Labor Code sections 1194,
27 1197 and 1197.1.

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79. Defendants knew or should have known that Plaintiff and class members were performing such work “off-the-clock” because, among other things, Defendants witnessed, authorized, was made aware of, and/or required Plaintiff and class members to perform such work.

80. Defendants' failure to pay Plaintiff and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197 and 1197.1. Pursuant to those sections, Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage compensation, as well as interest, costs, and attorney's fees.

81. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTIONS 226.7 AND 512

Meal Break Violations

(Against SAN FRANCISCO SPCA and DOES 1-25)

82. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

83. California Labor Code sections 226.7 and 512(a), and the applicable IWC Wage Order govern Plaintiff and the other class members' employment by Defendants.

84. California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable IWC Order.

85. The applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

86. The applicable IWC Wage Order and California Labor Code section 512(a) further provides that an employer may not require, cause, or permit an employee to work a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal

1 period of not less than thirty (30) minutes, except if the total hours worked is no more than twelve (12)
2 hours, the second meal period may be waived by mutual consent of the employer and the employee
3 only if the first meal period was not waived.

4 87. Plaintiff and the other class members who were scheduled to work for shifts no longer
5 than six (6) hours, and who did not waive their legally mandated meal periods by mutual consent, were
6 required to work for periods longer than five (5) hours without an uninterrupted meal period of not
7 less than thirty (30) minutes.

8 88. Defendants intentionally and willfully required Plaintiff and the other class members
9 to work during meal periods and failed to compensate Plaintiff and the other class members for work
10 performed during meal periods. This includes, among other things, requiring Plaintiff and class
11 members to work through their lunch breaks, permitting and/or requiring Plaintiff and class members
12 to take late lunch breaks, permitting and/or requiring Plaintiff and class members to take short lunch
13 breaks, interrupting and/or allowing others to interrupt Plaintiff and class members during their lunch
14 breaks, and failing to relieve Plaintiff and class members of all duties during their lunch breaks.

15 89. During the relevant time period, Defendants failed to pay Plaintiff and the other class
16 members all meal period premiums due pursuant to California Labor Code section 226.7 and 512 and
17 the applicable Wage Order.

18 90. Defendants' conduct violates the applicable IWC Wage Order(s), and California Labor
19 Code sections 226.7 and 512(a).

20 91. Pursuant to the applicable IWC Wage Order and California Labor Code section
21 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional
22 hour of pay at their regular rate of compensation for each workday that a compliant meal
23 period was not provided.

24 **SIXTH CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE SECTION 226.7**

26 **Rest Break Violations**

27 **(Against SAN FRANCISCO SPCA and DOES 1-25)**

28 92. Plaintiff incorporates herein by specific reference, as though fully set forth, the

1 allegations in all preceding paragraphs.

2 93. California Labor Code section 226.7 and the applicable IWC Wage Order govern
3 Plaintiff and the other class members' employment by Defendants.

4 94. California Labor Code section 226.7 provides that no employer shall require an
5 employee to work during any rest period mandated by an applicable order of the California IWC.

6 95. The applicable IWC Wage Order provides that "[e]very employer shall authorize and
7 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
8 work period" and that the "rest period time shall be based on the total hours worked daily at the rate
9 of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily
10 work time is less than three and one-half (3½) hours.

11 96. Defendants regularly required Plaintiff and the other class members to work three and
12 one-half (3 ½) or more hours without authorizing or permitting a ten (10) minute rest period per each
13 four (4) hour period, or major fraction thereof, worked.

14 97. Moreover, Defendants willfully required Plaintiff and the other class members to work
15 during what should have been their rest periods. Defendants also failed to relieve Plaintiff and the
16 other class members of all duties for ten (10) minutes as required for compliant rest breaks.

17 98. As a result, Plaintiff worked through rest periods, took late rest periods, took
18 interrupted rest periods, and/or took short rest periods, if at all.

19 99. Pursuant to the applicable IWC Wage Order and California Labor Code section
20 226.7(b), Plaintiff and the other class members were entitled to recover from Defendants one (1)
21 additional hour of pay at their regular hourly rate of compensation for each workday that compliant
22 rest period(s) were not provided.

23 100. Defendants had no policy and/or practice to pay a premium when rest periods were
24 missed, short, late, and/or interrupted, or otherwise failed to comply with California law, and thus
25 Defendants failed to pay Plaintiff and the other class members the full rest period premium due to
26 them in violation of California Labor Code section 226.7 and the applicable IWC Wage Orders.

27 101. Pursuant to the applicable IWC Wage Orders and California Labor Code section
28 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional

1 hour of pay at their regular rate of compensation for each workday that a complaint rest period was
2 not provided.

3 **SEVENTH CAUSE OF ACTION**

4 **VIOLATION OF CALIFORNIA LABOR CODE §§ 204 AND 210**

5 **Failure to Timely Pay Wages During Employment**

6 **(Against All Defendants and DOES 1 – 25)**

7 102. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in all preceding paragraphs.

9 103. California Labor Code section 204 provides that all wages earned by any person in any
10 employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages
11 due upon termination of an employee, are due and payable between the 16th and 26th day of the month
12 during which the labor was performed.

13 104. California Labor Code section 204 provides that all wages earned by any person in any
14 employment between the 16th and the last day, inclusive, of any calendar month, other than those
15 wages due upon termination of an employee, are due and payable between the 1st and the 10th day of
16 the following month.

17 105. California Labor Code section 204 provides that all wages earned for labor in excess
18 of the normal work period shall be paid no later than the payday for the next regular payroll period.

19 106. As a result of the violations set forth in detail above (failure to pay overtime, failure to
20 pay minimum wages, meal break violations and rest break violations), Defendants intentionally and
21 willfully failed to timely pay Plaintiff and other class members all wages due to them, within the period
22 permissible under California Labor Code section 204.

23 107. Plaintiff and other class members are entitled to recover all available remedies for
24 Defendant's violations of California Labor Code section 204, including statutory penalties pursuant to
25 Labor Code section 210(b).

26 ///

27 ///

28 ///

EIGHTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 226(a)

Failure to Provide Accurate Wage Statements

(Against SAN FRANCISCO SPCA and DOES 1-25)

108. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

109. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, total hours worked, and all applicable hourly rates.

110. As a result of the violations set forth in detail above (failure to pay overtime, failure to pay minimum wages, meal break violations and rest break violations), Defendants intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include, among other things, the failure to state all hours worked, the failure to state the actual gross wages earned, the failure to include meal and rest break premiums, and the failure to include correct rates of pay. Accordingly, Defendants violated California Labor Code 226(a).

111. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and the other class members have suffered injury and damage to their statutorily protected rights.

112. Specifically, Plaintiff and the other class members have been injured by Defendants' intentional violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code section 226(a). In addition, because Defendants failed to provide the accurate number of total hours worked on wage statements, Plaintiff and the other class members been prevented by Defendants from determining if all hours worked were paid and the extent of the underpayment. Plaintiff had to file this lawsuit, and will further have to conduct discovery, reconstruct time records, and perform computations in order to analyze whether in fact Plaintiff and the other class members were paid correctly and the extent of the underpayment, thereby causing Plaintiff to incur

1 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these costs
2 had Defendants provided the accurate number of total hours worked. This has also delayed Plaintiff's
3 ability to demand and recover the underpayment of wages from Defendants.

4 113. Plaintiff and the other class members are entitled to recover from Defendants the
5 greater of their actual damages caused by Defendants' failure to comply with California Labor Code
6 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

7 **NINTH CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

9 **Final Wages Not Timely Paid**

10 **(Against SAN FRANCISCO SPCA and DOES 1-25)**

11 114. Plaintiff incorporates herein by specific reference, as though fully set forth, the
12 allegations in all preceding paragraphs.

13 115. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required
14 to timely pay all earned and unpaid wages to an employee who is discharged. California Labor Code
15 section 201 mandates that if an employer discharges an employee, the employee's wages accrued and
16 unpaid at the time of discharge are due and payable immediately. California Labor Code section 202
17 mandates that if an employee quits, his or her wages shall become due and payable not later than
18 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of
19 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
20 quitting.

21 116. California Labor Code section 203 provides that if an employer willfully fails to pay,
22 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
23 discharged or who quits, the wages of the employee shall continue as a penalty from the due date
24 thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not
25 continue for more than thirty (30) days.

26 117. As a result of the violations set forth in detail above (failure to pay overtime, failure to
27 pay minimum wages, meal break violations and rest break violations), at the time that Plaintiff and the
28 other class members' employment with Defendants ended, Defendants knowingly and willfully failed

1 to pay Plaintiff and the other class members all wages owed to them pursuant to California Labor Code
2 sections 201 and 202, including, without limitation, overtime wages, minimum wages, meal period
3 premium wages, and rest period premium wages, and all wages due to Plaintiff and class members as
4 they became due, as required per California Labor Code sections 204.

5 118. As a result, Plaintiff and the other class members are entitled to all available
6 statutory penalties, including the waiting time penalties provided in California Labor Code section
7 203, together with interest thereon, as well as other available remedies.

8 **TENTH CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE SECTIONS 2800 AND 2802**

10 **Failure to Reimburse Necessary Business Expenses**

11 **(Against SAN FRANCISCO SPCA and DOES 1-25)**

12 119. Plaintiff incorporates herein by specific reference, as though fully set forth, the
13 allegations in all preceding paragraphs.

14 120. Pursuant to California Labor Code sections 2800 and 2802, an employer must
15 reimburse its employees for all necessary expenditures incurred by the employee in direct consequence
16 of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct
17 consequence of his or her obedience to the directions of the employer.

18 121. Plaintiff and the other class members incurred necessary business-related expenses and
19 costs that were not fully reimbursed by Defendants, including, but not limited to the purchase of
20 uniforms and the usage of personal cell phones.

21 122. Defendants intentionally and willfully failed to reimburse Plaintiff and the other class
22 members for all necessary business-related expenses and costs. Plaintiff and the other class members
23 are entitled to recover these expenses and costs from Defendants, plus interest accrued from the date
24 on which Plaintiff and the other class members incurred the necessary expenditures at the same rate
25 as judgments in civil actions in the State of California.

26 **ELEVENTH CAUSE OF ACTION**

27 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES IN**

28 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 ET. SEQ.**

(Against SAN FRANCISCO SPCA and DOES 1-25)

123. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

124. Each and every one of Defendants' acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to Defendant's failure and refusal to pay overtime compensation, Defendant's failure and refusal to pay minimum wages, Defendants' failure and refusal to provide required meal periods and/or pay meal period premiums, Defendants' failure and refusal to provide required rest periods and/or pay the required rest break premiums, Defendants' failure to timely pay wages at the correct rate during employment, Defendants' failure and refusal to furnish accurate itemized wage statements, Defendants' failure and refusal to reimburse business-related expenses, and Defendants' failure to timely pay wages upon termination constitutes an unfair and unlawful business practice under California Business and Professions Code § 17200 *et seq.*

125. Defendants' violations of California wage and hour laws constitute an unfair and unlawful business practice because Defendants' aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff and the other class members.

126. Defendants have avoided payment of overtime wages, minimum wages, meal period premiums, rest period premiums, timely wages at the correct rate of pay, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Order. Further, Defendants have failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

127. As a result of Defendants' unfair and unlawful business practices, Defendants have reaped unfair and illegal profits during Plaintiff and the other class members' tenure at the expense of Plaintiff, the other class members, and members of the public. Defendants should be made to disgorge its ill-gotten gains and to restore them to Plaintiff and the other class members.

128. Defendants' unfair and unlawful business practices entitle Plaintiff and the other class members to seek preliminary and permanent injunctive relief, including but not limited to orders that

1 Defendants account for, disgorge, and restore to Plaintiff and the other class members the wages and
2 other compensation unlawfully withheld from them. Plaintiff and the other class members are entitled
3 to restitution of all monies to be disgorged from Defendants in an amount according to proof at the
4 time of trial.

5 **TWELFTH CAUSE OF ACTION**

6 **VIOLATION OF CALIFORNIA LABOR CODE §§ 2699, *ET SEQ.***

7 **Private Attorney General Action**

8 **(Against All Defendants and DOES 1-25)**

9 129. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations and applicable law in all preceding paragraphs.

11 130. Plaintiff brings this action on an individual basis and on a representative basis on behalf
12 of other Aggrieved Employees and the State of California, in Plaintiff's capacity as a private attorney
13 general pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.*

14 131. PAGA expressly provides for a private right of action to recover civil penalties for
15 violations of the Labor Code as follows: "Notwithstanding any other provision of law, any provision
16 of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
17 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
18 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
19 brought by an aggrieved employee on behalf of himself or herself and other current or former
20 employees pursuant to the procedures specified in Section 2699.3." Cal. Lab. Code § 2699(a).

21 132. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
22 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to
23 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

24 133. Plaintiff and the other hourly-paid, non-exempt employees are "Aggrieved Employees"
25 as defined by California Labor Code section 2699(c) in that they are all current or former employees
26 of Defendants, and one or more of the alleged violations were committed against them.

27 134. Defendants' conduct, as alleged herein, violates numerous sections of the California
28 Labor Code, including, but not limited to, the following:

- (a) Violation of California Labor Code sections 510 and 1198 for failure to pay overtime wages, as set forth more fully below;
- (b) Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to pay minimum wages, as set forth more fully below;
- (c) Violation of California Labor Code sections 226.7 and 512(a) for failure to provide legally required meal periods, as set forth more fully below;
- (d) Violation of California Labor Code sections 226.7 and 512(a) for failure to pay required meal period premiums, as set forth more fully below;
- (e) Violation of California Labor Code section 226.7 for failure to provide legally required rest periods, as set forth more fully below;
- (f) Violation of California Labor Code section 226.7 for failure to pay required rest period premiums, as set forth more fully below;
- (g) Violation of California Labor Code section 204 for failure to timely pay wages to Plaintiff and Aggrieved Employees during employment, as set forth more fully before;
- (h) Violation of California Labor Code sections 201, 202, and 203 for failure to pay all wages at time of discharge from employment, as set forth more fully below;
- (i) Violation of California Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and Aggrieved Employees, as set forth more fully below;
- (j) Violation of California Labor Code section 1174(d) for failure to keep complete and accurate payroll records relating to Plaintiff and Aggrieved Employees, as set forth more fully below; and
- (k) Violation of California Labor Code sections 2800 and 2802 for failure to reimburse Plaintiff and Aggrieved Employees for necessary business-related expenses, as set forth more fully below.

135. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seek assessment and collection of

1 civil penalties for Plaintiff, all Aggrieved Employees, and the State of California against Defendants
2 for violations of Labor Code sections set forth herein, including penalties under California Labor Code
3 sections 2699, 558, 210, 1197.1, 226, 226.3, 1174.5, and 1197.1, penalties under the applicable IWC
4 Wage Order, and any and all additional penalties and remedies as provided by the California Labor
5 Code and/or other statutes.

6 136. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
7 Aggrieved Employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for
8 the enforcement of labor laws and education of employers and employees about their rights and
9 responsibilities and twenty-five (25%) to the Aggrieved Employees.

10 137. Plaintiff retained counsel to file this court action, and to assess and collect the civil
11 penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorney's fees and
12 costs pursuant to Labor Code §§ 210, 218.5, 2699(g)(1), and any other applicable statute.

13 **DEMAND FOR JURY TRIAL**

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

15 **PRAYER FOR RELIEF**

16 Plaintiff, on behalf of herself and all others similarly situated, prays for relief and judgment
17 against Defendants, jointly and severally, as follows:

18 **Class Certification**

- 19 1. That this action be certified as a class action;
20 2. That Plaintiff be appointed as the representative of the Class;
21 3. That counsel for Plaintiff be appointed as Class Counsel; and
22 4. That Defendants provide to Class Counsel immediately the names and most current/last
23 known contact information (address, e-mail and telephone numbers) of all class members.

24 **As to the First Cause of Action**

- 25 5. That the Court declare, adjudge and decree that Defendants violated the provisions of
26 the Federal WARN Act by failing to provide adequate notice regarding the mass layoff;

- 27 6. Plaintiff and Class Members seek all damages available for Defendants' violations of
28 the Federal WARN Act, including back pay, penalties, benefits, attorneys' fees, costs, and interest;

1 7. For such other and further relief as the Court may deem just and proper.

2 **As to the Second Cause of Action**

3 8. That the Court declare, adjudge and decree that Defendants violated the provisions of
4 the California WARN Act by failing to provide adequate notice regarding the mass layoff;

5 9. Plaintiff and Class Members seek all damages available for Defendants' violations of
6 the California WARN Act, including back pay, penalties, benefits, attorneys' fees, costs, and interest;

7 10. For such other and further relief as the Court may deem just and proper.

8 **As to the Third Cause of Action**

9 11. That the Court declare, adjudge and decree that Defendants violated California Labor
10 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime
11 wages due to Plaintiff and the other class members;

12 12. For general unpaid wages at overtime wage rates and such general and special damages
13 as may be appropriate;

14 13. For pre-judgment interest on any unpaid overtime compensation commencing from the
15 date such amounts were due;

16 14. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
17 Labor Code section 1194;

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

19 **As to the Fourth Cause of Action**

20 16. That the Court declare, adjudge and decree that Defendants violated California Labor
21 Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the
22 other class members;

23 17. For general unpaid wages and such general and special damages as may be appropriate;

24 18. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
25 Plaintiff and the other class members in the amount as may be established according to proof at trial;

26 19. For pre-judgment interest on any unpaid compensation from the date such amounts
27 were due;

28 20. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California

Labor Code section 1194(a);

21. For liquidated damages pursuant to California Labor Code section 1194.2;

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

As to the Fifth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods, (including second meal periods, to Plaintiff and the other class members;

24. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premium wages pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid wages from the date such amounts were due;

28. For reasonable attorneys' fees and costs of suit incurred herein;

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

As to the Sixth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

31. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

32. For all actual, consequential, and incidental losses and damages, according to proof;

33. For premium wages pursuant to California Labor Code section 226.7(c);

34. For pre-judgment interest on any unpaid wages from the date such amounts were due;

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

As to the Seventh Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor

Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the Class;

37. For statutory penalties pursuant to California Labor Code section 210;

38. For such other and further relief as the Court deems just and proper.

As to the Eighth Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For statutory penalties pursuant to California Labor Code section 226(e);

42. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g);

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

As to the Ninth Cause of Action

44. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;

45. For all actual, consequential, and incidental losses and damages, according to proof;

46. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

47. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

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

As to the Tenth Cause of Action

49. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and

2802;

50. For actual, consequential and incidental losses and damages, according to proof;

51. For the imposition of civil penalties and/or statutory penalties;

52. For reasonable attorneys' fees and costs of suit incurred herein; and

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

As to the Eleventh Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code sections as to Plaintiff and the other class members: 510 and 1198 (by failing to pay overtime wages); 1194, 1197, and 1197.1 (by failing to pay minimum wages); 226.7 and 512(a) (by failing to provide meal and rest periods or compensation in lieu thereof); 226(a) (by failing to provide accurate wage statements); and 201, 202, and 203 (by failing to pay all wages owed upon termination); and 2800 and 2802 (by failing to reimburse business-related expenses).

55. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

56. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, et seq.;

57. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

58. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, et seq.

As to the Twelfth Cause of Action

59. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210, 558, 226, 226.3, 1174.5, 1197.1 and all other penalties allowed by the California Labor Code and/or other applicable statutes;

60. For statutory attorneys' fees and costs pursuant to sections 210, 218.5 and 2699(g)(1) of California Labor Code; and

///

1 61. For such other and further relief as the Court may deem proper.

2
3 DATED: October 23, 2023

BLACKSTONE LAW, APC

4
5 By:



Jonathan M. Genish, Esq.

6
7 Attorneys for Plaintiff
8 SITARA NAYABKHIL individually,
9 and on behalf of all similarly aggrieved
10 employees and the putative class
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EXHIBIT A

August 7, 2023

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, CA 95814

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *San Francisco Society for the Prevention of Cruelty to Animals*

To Whom It May Concern:

This office represents Sitara Nayabkhil (“Claimant”) with respect to her claims under the California Labor Code against San Francisco Society for the Prevention of Cruelty to Animals (including any and all affiliates, subsidiaries, parents, directors, and officers thereof) (collectively referred to herein as “Employers”). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Claimant from approximately March 2019 to October 2022 as a non-exempt, hourly-paid employee. During her employment with Employers, Claimant was employed as a Customer Service Representative at Employer’s location at 201 Alabama Street, California, 91403.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”). Claimant is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3, and shall serve as Claimant’s notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California’s wage and hour laws during Claimant’s employment, including but not limited to California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 1401 *et seq.*, 2800, 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Order”) including, *inter alia*, IWC Wage Order No. 4-2001. The claims made on behalf of Claimant and Aggrieved Employees are

based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Claimant and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and IWC Wage Order No. 4-2001 require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and IWC Wage Order No. 4-2001 further require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time period, Employers regularly required Claimant and other Aggrieved Employees to perform work off-the-clock. This off-the-clock work included, amongst other things, requiring Claimant and other Aggrieved Employees to address customer concerns and work in triage while off-the-clock. Employers failed to compensate Claimant and other Aggrieved Employees for any of this off-the-clock work, in violation of California law.

In addition, Employers utilized time rounding practices that resulted in the systematic underpayment of wages (including minimum wages, straight time wages and overtime wages) to Claimant and Aggrieved Employees.

Employers also failed to accurately record the actual time worked by Claimant and Aggrieved Employees. Moreover, the uncompensated work described herein was often performed when Claimant and other Aggrieved Employees had already worked eight (8) hours in a day and/or forty (40) hours in week resulting in a failure to pay overtime compensation. Finally, Employers failed to pay overtime to Claimant and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay.

As a result of the foregoing practices, Employers have failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order No. 4-2001 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to

California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 4-2001; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

During the relevant time period, Employers failed to provide Claimant and other Aggrieved Employees with legally-compliant 30-minute meal periods. Claimant and other Aggrieved Employees were required by Employers to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal periods, when provided, were oftentimes interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their

regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 4-2001 and California Labor Code sections 226.7, 512(a) and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 4-2001; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes must for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to authorize and permit a rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimant and other Aggrieved Employees to take legally-compliant 10-minute rest periods. Employers required Claimant and other Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers

required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 4-2001 and California Labor Code sections 226.7, and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 4-2001; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employers have failed to timely pay all wages earned because Claimant and other Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is

paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described herein, the wage statements provided to Claimant and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the clock and meal and rest period premiums), and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Employers have failed to maintain accurate records relating to Claimant and other Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated IWC Wage Order No. 4-2001 and California Labor Code sections 1198.5 and 1174(d).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 4-2001; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 4-2001 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the purchase of uniforms, including but not limited to scrubs and reimbursement for use of personal phones.

Accordingly, Employers violated IWC Order No. 4-2001 and California Labor Code sections

2800 and 2802. Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 4-2001; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

9. FAILURE TO PROVIDE NOTICE OF MASS LAYOFF TO AFFECTED EMPLOYEES AND THE EMPLOYMENT DEVELOPMENT DEPARTMENT

California Labor Code sections 1401 *et seq.* or California's The Worker Adjustment and Retraining Notification Act ("WARN Act") requires an employer to provide 60 days notice to all affected employees and the Employment Development Department before ordering a mass layoff, relocation, or termination of 50 or more employees within a 30 day period. On or around September 2022, Employers eliminated multiple positions, including a call center. On information and belief, the notice provided to those employees was less than 60 days and there was no WARN notice filed with the Employment Development Department.

Claimant and Aggrieved Employees will therefore seek all permitted remedies, such as back pay (California Labor Code section 1402); PAGA civil penalties (California Labor Code sections 1403 and 2699); and attorneys' fees and costs (California Labor Code section 1404).

Employers are in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. We hereby provide notice under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, et seq., and specifically ask for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that we may allege a cause of action under PAGA against Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, et seq., by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimant's intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of themselves, the State of California and all Aggrieved Employees should your office not address Employers' alleged violations within this time.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW



Karen I. Gold, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

San Francisco Society for the Prevention of Cruelty to Animals
ATTN: Jennifer Scarlett
201 Alabama Street
San Francisco, California, 94103

EXHIBIT B



STATE OF CALIFORNIA
Labor & Workforce Development Agency

GOVERNOR Gavin Newsom – SECRETARY Stewart Knox

Agricultural Labor Relations Board – California Unemployment Insurance Appeals Board
California Workforce Investment Board – Department of Industrial Relations
Employment Development Department – Employment Training Panel – Public Employment Relations Board

September 20, 2023

CERTIFIED MAIL

Karen I. Gold
BLACKSTONE LAW PC
8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211

Cer#: 7020 1810 0001 9079 4290

Hieu T. Williams
Jenna M. Rogenski
HIRSCHFELD KRAEMER
456 Montgomery Street, Suite 2200
San Francisco, California 94104

Cer#: 7020 1810 0001 9079 4283

Re: *Sitara Nayabkhil v. San Francisco Society for Prevention of Cruelty to Animals*
LWDA Case No.: LWDA-CM-973459-23

Decision on Cure Dispute

PLEASE TAKE NOTICE that the Labor & Workforce Development Agency (“LWDA”), through one or more of its departments, divisions, commissions, boards, or agencies, has reviewed Sitara Nayabkhil’s (“Claimant’s”) August 7, 2023 Private Attorneys General Act (“PAGA”) Notice against San Francisco Society for Prevention of Cruelty to Animals, including any and all affiliates, subsidiaries, parents, directors, and officers thereof (collectively referred to as “Respondents”); Respondents’ September 7, 2023 cure notice; and Claimant’s September 8, 2023, cure dispute notice; and has determined as follows.

I. Background

On August 7, 2023, Claimant submitted a PAGA Notice to the LWDA. In Claimant’s PAGA Notice, Claimant asserts that Respondents allegedly have violated several laws, including but not limited to, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 1401 *et seq.*, 2800 and 2802, and the Industrial Welfare

Commission Wage Orders (“IWC Wage Orders”), including, *inter alia*, IWC Wage Order No. 4-2001¹. In brief, the theories of liability are that Respondents have failed to pay for off-the-clock work, improperly rounded the hours worked, failed to keep an accurate record of all hours worked, failed to provide legally required meal periods and rest breaks and have not paid an additional one hour of pay, and failed to provide wage statements that accurately stated actual hours worked, actual gross wages earned, and the correct rates of pay, failed to reimburse employees for necessary business expenses, failed to timely pay all wages upon termination of employment, and failed to provide notice of mass layoff to affected employees and the Employment Development Department.

In their September 7, 2023, cure notice and response, Respondents state that within 33 calendar days of the postmark date of the PAGA Notice mailed to them, they reissued revised wage statements to all current and former California employees from August 7, 2019 to present that revise the employer’s name on the wage statements to “San Francisco SPCA,” which is the SF SPCA’s registered fictitious business name. They further allege that all current and former California employees were provided access to their revised wage statements in SF SPCA’s HRIS system, Paylocity, and provided notice of the revision via a letter mailed on September 6, 2023. They also state that on September 7, 2023, the SF SPCA provided written notice to Claimant’s counsel that the alleged violation was cured, including a description of the actions taken.

In Claimant’s cure dispute, Claimant acknowledges that on September 8, 2023, Claimant’s counsel’s office received a letter from Respondents’ counsel advising that they had revised all employees’ wage statements from August 7, 2019, to present to include their registered fictitious business name on the wage statements and provided them with access to their revised wage statements. Claimant does not dispute Respondents’ assertion that they have cured alleged violations of Labor Code section 226(a)(8).

II. Respondents Have Cured the Alleged Violations of Labor Code Section 226(a)(8)

Only violations of Labor Code sections *not* listed in section 2699.5 are curable. (See Labor Code §§ 2699.3, subdivision (c); 2699.5) Here, the alleged Labor Code violation alleged to have been cured is of section 226, subdivisions (a)(8), which mandates that a wage statement include the name and address of the legal entity that is the employer. Labor Code section 226(a)(8) is not listed in section 2699.5. Therefore, violations of Labor Code section 226(a)(8) are curable. In light of the parties’ submissions, the LWDA determines that Respondents have cured thier alleged violations of Labor Code section 226, subdivision (a)(8) in the above-captioned matter.

III. Conclusion

¹ Unless otherwise specified, all statutory references are to the Labor Code.

Re: *Sitara Nayabkhil v. San Francisco Society for Prevention of Cruelty to Animals*
LWDA Case No.: LWDA-CM-973459-23
September 20, 2023
Page 3

In light of the parties' submissions, the LWDA determines Respondents have cured their alleged violations of Labor Code section 226(a)(8). The LWDA takes no position on the merits of any other alleged violation.

If you have questions concerning this decision, please send an email to PAGA@dir.ca.gov or call the PAGA Unit at (510) 286-1340.

Sincerely,

/s/ Patricia M. Kelly

Patricia M. Kelly, Attorney
Division of Labor Standards Enforcement

EXHIBIT C



October 18, 2023

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, CA 95814

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *San Francisco Society for the Prevention of Cruelty to Animals, LWDA Case No. LWDA-CM-973459-23, Supplemental PAGA Notice*

To Whom It May Concern:

On August 7, 2023, pursuant to the Private Attorneys General Act of 2004 (“PAGA”) (California Labor Code § 2699.3), our office provided notice to the Labor and Workforce Development Agency (LWDA) and San Francisco Society for the Prevention of Cruelty to Animals on behalf of Sitara Nayabhil (“Claimant”) with respect to her claims under the California Labor Code against San Francisco Society for the Prevention of Cruelty to Animals (including any and all affiliates, subsidiaries, parents, directors, and officers thereof) (collectively referred to herein as “Employers”). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Claimant from approximately March 2019 to October 2022 as a non-exempt, hourly-paid employee. During her employment with Employers, Claimant was employed as a Customer Service Representative at Employer’s location at 201 Alabama Street, California, 91403.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are listed in Claimant’s August 7, 2023, LWDA Notice Letter and this Supplemental Notice Letter. The penalties listed therein are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, et seq. (“PAGA”). Claimant is seeking penalties on behalf of herself and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period (“Aggrieved Employees”). In addition to the claims asserted in Claimant’s August 7, 2023, LWDA Notice Letter, Claimant also believes Employers violated Cal. Lab. Code section 227.3. This supplemental letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimant’s notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof. The additional claim made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY OUT VESTED AND UNUSED VACATION PAY AT THEIR FINAL RATE OF PAY UPON THEIR RESIGNATION OR TERMINATION

According to Labor Code section 227.3, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off their vested vacation time, all vested vacation shall be paid to them as wages at their final rate in accordance with such contract of employment or employer policy respecting eligibility or time served.

Throughout the relevant time period, Employers implemented and maintained a uniform policy, practice, or procedure of providing for paid vacations, and that Claimant's and Aggrieved Employees' employment contracts with Defendants included paid vacations.

As discussed in detail in the original notice letters, Employers laid off fifty (50) or more employees, including Plaintiff, and failed to comply with the California and Federal WARN Act by not providing them with at least sixty (60) days advance notice of the mass layoff. As a result, Claimant and Aggrieved Employees are entitled to backpay. (*Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1155 [holding back pay included vacation pay]). Employers failed to pay Claimant and Aggrieved Employees for their vacation or paid time off that would have accrued during the sixty (60) day advance notice period. Claimant and other Aggrieved Employees are entitled to compensation at their final rate of pay for any unused vested paid vacation days.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW



Karen I. Gold, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested & Email
San Francisco Society for the Prevention of Cruelty to Animals' Counsel
Hirschfeld Kraemer LLP
Jenna Rogenski, Esq. (jrogenski@hkemploymentlaw.com)
Hieu Williams, Esq. (hwilliams@hkemploymentlaw.com)
456 Montgomery Street, Suite 2200
San Francisco, California, 94104