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David W. Slayton,
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7 Attorneys for Plaintiff KAYRI JOHNSON

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 KAYRI JOHNSON,

11 Plaintiff,

12 vs.

13 O'NEIL DIGITAL SOLUTIONS, LLC;
14 TAYLOR NICOLE PROFESSIONALS,
INC.; and DOES 1 to 25, inclusive,

15 Defendants.

) CASE NO.: **24STCV00390**

) **COMPLAINT FOR DAMAGES FOR:**

-) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**
) **3) FAILURE TO PAY OVERTIME;**
) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**
) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) **6) FAILURE TO GIVE REST BREAKS**
) **7) FAILURE TO GIVE MEAL BREAKS**
) **8) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**
) **9) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS**
) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **11) FAILURE TO PROVIDE**
) **PERSONNEL RECORDS;**
) **12) FAILURE TO PROVIDE PAY**
) **RECORDS;**
) **13) RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 1102.5;**
) **14) RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 98.6;**
) **15) WRONGFUL TERMINATION IN**
) **VIOLATION OF PUBLIC POLICY**
) **16) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200**

1)
2) **DEMAND FOR JURY TRIAL**

3 COMES NOW Plaintiff, KAYRI JOHNSON (hereinafter "Plaintiff"), and alleges as
4 follows:

5 **PARTIES, JURISDICTION, VENUE**

6 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
7 County of Los Angeles in this judicial district because Defendants O'NEIL DIGITAL
8 SOLUTIONS, LLC; TAYLOR NICOLE PROFESSIONALS, INC.; and DOES 1 to 25,
9 inclusive, (hereinafter collectively known as "Defendant(s)" or "O'NEIL DIGITAL"), do
10 business in the County of Los Angeles and because Defendants' obligations and liabilities arise
11 therein. Moreover, Plaintiff's damages sought herein exceed \$25,000.
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13 2. Plaintiff is a male resident of the State of California.

14 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
15 O'NEIL DIGITAL SOLUTIONS, LLC is and was a Delaware Limited Liability Company,
16 doing business in Los Angeles County, California, and which employed Plaintiff. Plaintiff is
17 informed and believes that at all times herein mentioned, Defendant TAYLOR NICOLE
18 PROFESSIONALS, INC. is and was a California Corporation, doing business in Los Angeles
19 County, California, and which employed Plaintiff. Defendants O'NEIL DIGITAL
20 SOLUTIONS, LLC and TAYLOR NICOLE PROFESSIONALS, INC. are considered "joint
21 employers" of Plaintiff in that they each controlled the wages, hours, and/or working
22 conditions of Plaintiff and other hourly, non-exempt employees.
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24 4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
25 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
26 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
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1 defendants, numbers 1 to 25, reside in the State of California and are in some manner
2 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
3 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
4 and capacities of these fictitiously named defendants.

5 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
6 that information and belief, alleges that at all times herein mentioned, each of the remaining
7 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
8 under the authority of their agency, employment, or representative capacity, with the consent
9 of his/her codefendants.
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11 **GENERAL ALLEGATIONS**

12 6. Plaintiff started working for O'NEIL DIGITAL in or around October 2022. During
13 his employment, Plaintiff was classified as an hourly, non-exempt employee. Plaintiff's
14 employment ended on or around February 2023.
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16 7. It is Plaintiff's position that O'NEIL DIGITAL has committed the following labor code
17 violations against Plaintiff and other hourly, non-exempt employees who worked for O'NEIL
18 DIGITAL at any of their California locations during the relevant PAGA period.
19

20 8. O'NEIL DIGITAL did not provide Plaintiff and other similarly situated aggrieved
21 employees with the minimum wages to which they were entitled for all work performed and
22 did not compensate him and others for all hours worked pursuant to California Labor Code
23 sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and
24 were not paid for time that they worked "off the clock". This is so because the company had a
25 policy and practice of rounding down hours worked and "time shaving", which led to the
26 employees not being paid for all hours worked, which would include the minimum wage. In
27 fact, O'NEIL DIGITAL would round down any time that was less than 15 minutes. Moreover,
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1 to the extent employees worked through their meal periods and those meal periods were
2 interrupted, they were not compensated for that time, which would be akin to a minimum wage
3 violation.

4 9. Due to the above “off the clock” violations and as a matter of company policy, O’NEIL
5 DIGITAL violated Labor Code §510 because it failed to pay Plaintiff and other similarly
6 situated aggrieved employees overtime, even though they worked more than 8 hours per day,
7 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff’s and
8 others’ actual work hours, which included the “off the clock” work and “time shaving” as
9 described above, entitled them to overtime, however, it was not company policy to keep
10 accurate track of all hours worked and to pay employees all due overtime. In fact, based on the
11 time shaving and not counting all hours worked, Plaintiff would have been entitled to double
12 time as his shifts would’ve been over 12 hours long. In addition, O’NEIL DIGITAL did not
13 include bonuses and/or incentive payments in calculating employees’ true regular rate of pay
14 for purposes of deciphering their correct overtime rate of pay. Additionally, the incentive and
15 bonus payments were also not factored into employees’ regular rate for purposes of receiving
16 meal and rest break premiums per the Ferra v. Loews case. Furthermore, Plaintiff did work 15
17 days straight during his employment tenure, without getting the proper overtime compensation
18 for the 7th consecutive day worked.
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21 10. O’NEIL DIGITAL violated Labor Code § 226.7 along with Industrial Welfare
22 Commission Wage Order no. 4/7 because it failed to provide Plaintiff and other similarly
23 situated aggrieved employees 10-minute rest periods for every four hours of work, or majority
24 portion thereof, throughout their employment. O’NEIL DIGITAL did not completely relieve
25 Plaintiff of all duty during said rest periods. O’NEIL DIGITAL did not pay to Plaintiff one
26 additional hour of pay at Plaintiff’s regular rate of compensation for each workday that one or
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1 more statutory rest periods was not provided. Rest breaks were not consistently authorized or
2 enforced at the workplace. In fact, it was not part of O'NEIL DIGITAL's culture for
3 employees such as Plaintiff and others to take two 10 rest breaks every day wherein they are
4 relieved of all work duties. The latter was due to understaffing of employees and an overall
5 company culture wherein rest breaks were ignored. As such, rest breaks were not enforced and
6 not a policy or practice of the company.

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8 11. O'NEIL DIGITAL also violated Labor Code §§ 512 and 226.7 along with Industrial
9 Welfare Commission Wage Order No. 4/7 because it failed to provide Plaintiff and other
10 similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for
11 every five (5) hours of work throughout their employment, and Plaintiff did not validly waive
12 said meal periods. O'NEIL DIGITAL did not completely relieve Plaintiff of all duties during
13 said meal periods. O'NEIL DIGITAL did not pay to Plaintiff one additional hour of pay at
14 Plaintiff's regular rate of compensation for each workday that one or more statutory meal
15 periods was not provided. If O'NEIL DIGITAL had Plaintiff sign a meal period waiver, it
16 would not be valid and enforceable since Plaintiff and others generally worked more than a 6-
17 hour shift. If O'NEIL DIGITAL had Plaintiff sign an on-duty meal period agreement wherein
18 Plaintiff agreed to work through his meal period, it would also be invalid and unenforceable
19 because the nature of Plaintiff's job does not prevent him from taking a meal period. As such,
20 Plaintiff and others did not receive statutory, timely meal periods during their employment. In
21 other words, employees did not receive an uninterrupted 30-minute meal period that was taken
22 **before** the 5th hour worked. In fact, no matter when you reported for work at O'NEIL
23 DIGITAL, your meal break was taken at 11am. In the case of Plaintiff, he reported to work at
24 230am and as such, he would always wait approximately 8.5 before being able to take a meal
25 break. Plaintiff did in fact complain about the lack of timely, statutory meal breaks. As was the
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1 case with rest periods, meal breaks were definitively not part of O'NEIL DIGITAL's culture.
2 The meal periods were not always authorized and were not enforced. Furthermore, even if
3 O'NEIL DIGITAL did in fact provide meal period penalties to Plaintiff and others for late,
4 short, interrupted, or no meal periods, that does not absolve O'NEIL DIGITAL of PAGA
5 penalties. In Kirby v. Immoos Fire Protection, Inc. (2012) 53 Cal.4th 1244, 1256, the Court
6 stated that "section 226.7 does not give employers a lawful choice between
7 providing *either* meal and rest breaks *or* an additional hour of pay" (emphasis in original).
8 Thus, the extra hour of pay does not excuse the violation; the employer has still committed a
9 violation even if the remedy for the violation has been paid. *See also Wert v. U.S.*
10 Bancorp (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). Moreover, any meal or rest break
11 premiums paid were not compensated at the weighted average regular rate, inclusive of
12 bonuses and/or incentive payments as well as overtime compensation. It is also important to
13 note that Plaintiff and others did not ever receive a second meal period for shifts that were over
14 10 hours long, which was often the case.

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17 12. Furthermore, during the relevant time period and due to the above-mentioned labor
18 code violations, O'NEIL DIGITAL failed to pay Plaintiff and other similarly situated
19 aggrieved employees all wages due to them within any time period specified by California
20 Labor Code section 204, including the minimum wages and overtime as described above as
21 well as meal/rest break premiums. O'NEIL DIGITAL was also in violation of California Labor
22 Code section 226(a) by failing to include pertinent information on the wage statements,
23 including but not limited to, all hours worked, gross wages earned, net wages earned, all
24 deductions, premium payments for meal and rest breaks, the correct legal name and address of
25 the employer, the correct beginning and end of the pay period, all applicable hourly rates, and
26 all identifying employee information, among other items. As such, O'NEIL DIGITAL did not
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1 provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
2 itemized wage statements.

3 13. O'NEIL DIGITAL violated Labor Code § 203 because it willfully failed to pay
4 Plaintiff and other similarly situated aggrieved employees earned and due wages upon
5 separation of employment, either immediately upon involuntary termination, or within 72
6 hours of resignation. These earned but unpaid wages include compensation for all hours
7 worked including minimum wages and overtime compensation, and premiums for the missed
8 meal and rest breaks.

10 14. During the relevant time period, O'NEIL DIGITAL also failed to keep accurate and
11 complete payroll records showing the actual hours worked per day (including the time for meal
12 periods) and the wages paid to Plaintiff and other aggrieved employees pursuant to California
13 Labor Code sections 1174(d).

15 15. Additionally, during the relevant time period, Plaintiff and others incurred
16 necessary, business-related expenses and costs that were not reimbursed by O'NEIL DIGITAL.
17 These costs include, but are not limited to, use of personal cell phones for work purposes and
18 uniforms. Accordingly, O'NEIL DIGITAL was in violation of California Labor Code sections
19 2800 and 2802.

20 16. Additionally, Plaintiff would have individual claims against O'NEIL DIGITAL for
21 retaliation pursuant to Labor Code sections 98.6 and 1102.5 and wrongful termination in
22 violation of public policy in that Plaintiff was terminated after verbally voicing complaints
23 about the lack of proper meal periods throughout his employment tenure.

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

27 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of**
28 **Regulations Title 8 Section 11040/11070, and California Labor Code Section 1198)**

1 **(Plaintiff against all named defendants and all DOE defendants)**

2 17. Plaintiff re-alleges and incorporates by reference each and every allegation in
3 paragraphs 1 through 16, inclusive, of this Complaint as though fully set forth herein.

4 18. At all times relevant herein, Defendants were required to compensate its employees for
5 all hours worked upon reporting for work at the appointed time stated by the employer
6 pursuant to Industrial Welfare Commission Order 4-2001/7-2001, California Code of
7 Regulations, Title 8, Section 11040/11070.

8 19. For the three (3) years preceding filing of this action, Defendants failed to compensate
9 Plaintiff for all hours worked.

10 20. Under the aforementioned wage order and regulations, Plaintiff is to recover
11 compensation for all hours worked but not paid by Defendants for the three (3) years
12 preceding the filing of this Complaint.

13 21. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
14 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
15 this Court.

16 22. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
17 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
18 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
19 reasonable attorney's fees and costs of suit.

20 23. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
21 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
22 amount known to Plaintiff once he has obtained all of his payroll records from
23 Defendants.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY MINIMUM WAGES**

26 **(California Labor Code Sections 1194, 1194.2, 1197)**

27 **(Plaintiff against all named defendants and all DOE defendants)**
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1 24. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 23, inclusive, of this Complaint as though fully set forth herein.

3 25. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
4 to suffer or permit a California employee to work without paying wages at the minimum wage
5 rate for all hours worked as required by the applicable Industrial Welfare Commission
6 (hereinafter "IWC") Wage Order No. 4-2001/7-2001, codified at California Code of
7 Regulations, Title 8, Section 11040/11070, subdivision 4.

8 26. Pursuant to IWC Wage Order no. 4-2001/7-2001, subdivision 2, at all
9 relevant times, "hours worked" included "the time during which an employee is subject to the
10 control of an employer, and includes all the time the employee is suffered or permitted to work,
11 whether or not required to do so..."

12 27. During his employment, Plaintiff was regularly required as a matter of uniform
13 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
14 was paid less than the minimum wage rate by Defendants for hours worked in violation of
15 California Labor Code Section 1197 and the applicable California Industrial Wage
16 Commission wage order(s).

17 28. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
18 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
19 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
20 to believe that their acts or omissions were not contrary to California law.

21 29. For all hours worked by Plaintiff for which he was paid less than the minimum wage
22 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
23 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
24 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
25 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

26 30. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
27 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
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trial.

THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of Regulations Title 8 Section 11040/11070)

(Plaintiff against all named defendants and all DOE defendants)

31. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 30, inclusive, of this Complaint as though fully set forth herein. This cause of action is brought by Plaintiff against all Defendants jointly and individually.

32. Pursuant to Industrial Welfare Commission Orders No. 4-2001/7-2001, California Code of Regulations, Title 8, Section 11040/11070, for the period of Plaintiff's employment, Defendants were required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

33. Plaintiff was a non-exempt employee entitled to the protections of the California Industrial Welfare Commission Order No. 4-2001/7-2001, California Code of Regulations, Title 8, Section 11040/11070.

34. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a single workweek on numerous occasions.

35. Plaintiff worked more than twelve (12) hours in a single workday.

36. Plaintiff was entitled to the above overtime premiums.

37. Defendants did not pay Plaintiff premium wages of at least one and one-half times Plaintiff's correct regular rate of pay for hours worked past eight (8) in a day.

38. Defendants did not pay Plaintiff premium wages of at least one and one-half times Plaintiff's correct regular rate of pay for hours worked past forty (40) in a week.

1 39. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's correct
2 regular rate of pay for hours worked past twelve (12) in a day.

3 40. Plaintiff worked at least one pay period in which he was not properly paid the correct
4 amount of overtime within the three (3) years prior to the initiation of this lawsuit.

5 41. Defendants know or should know the actual dates of overtime worked, the amount of
6 overtime worked, and the amount of unpaid overtime due.

7 42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
8 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
9 Court.

10 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
11 Regulations, Title 8, Section 11040/11070, Plaintiff is entitled to recover damages for the
12 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
13 reasonable attorney's fees and costs of suit.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

16 **(California Labor Code Section 226)**

17 **(Plaintiff against all named defendants and all DOE defendants)**

18 44. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 43, inclusive, of this Complaint as though fully set forth herein. This
20 cause of action is brought by Plaintiff against all Defendants jointly and individually.

21 45. Labor Code section 226(a) requires employers provide employees with itemized wage
22 statements.

23 46. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked
24 and the applicable hourly rates.

25 47. Labor Code section 226(a)(9) requires pay stubs to accurately reflect all applicable
26 hourly rates in effect during the pay period and the corresponding number of hours worked at
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1 each hourly rate.

2 48. Pursuant to California Labor Code Section 226, every employer must furnish each
3 employee an itemized statement of wages and deductions at the time of payment of wages.

4 49. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs
5 that accurately reflected all information required by Labor Code Section 226, including but not
6 limited to, gross wages earned, net wages earned, total hours worked by the employee, all
7 deductions, overtime hours and pay, premium pay for rest break and meal break violations, and
8 business expense reimbursement, among others. Therefore, Defendants failed to maintain and
9 provide accurate itemized wage statements to Plaintiff in accordance with California Labor
10 Code Section 226(a).

11 50. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
12 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
13 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
14 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
15 reasonable attorney's fees.

16 51. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
17 sustained damages, including loss of earnings, in an amount to be established at trial. As a
18 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
19 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
20 and attorney's fees pursuant to statute.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

23 **(California Labor Code Section 204)**

24 **(Plaintiff against all named defendants and all DOE defendants)**

25 52. Plaintiff re-alleges and incorporates by reference each and every allegation in
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1 paragraphs 1 through 51, inclusive, of this Complaint as though fully set forth herein. This
2 cause of action is brought by Plaintiff against all Defendants jointly and individually.

3 53. California Labor Code Section 204 establishes the fundamental right of all employees
4 in the State of California to be paid wages in a timely fashion for their work.

5 54. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
6 full amount of all owed wages when due as required by California Labor Code Section 204.

7 55. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
8 informed, believes, and thereon alleges, that all times relevant during the liability period,
9 Defendants maintained a policy or practice of not paying Plaintiff the minimum wage for all
10 hours worked, not paying Plaintiff for all overtime hours worked, and not compensating
11 Plaintiff with premium pay for missed rest and meal breaks.

12 56. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
13 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
14 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
15 from Defendants' records or indirectly based on information from Defendants' records.

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO GIVE REST BREAKS**

18 **(Plaintiff against all named defendants and all DOE defendants)**

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20 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein. This
22 cause of action is brought by Plaintiff against all Defendants jointly and individually.

23 58. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 24 a. Title 8 of the California Code of Regulations Section 11040/11070(11)(A), which
25 provides that every employer shall authorize and permit all employees to take rest
26 periods, which insofar as practicable shall be in the middle of each work period.
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1 The authorized rest period time shall be based on the total hours worked daily at the
2 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

3 b. Title 8 of the California Code of Regulations Section 11040/11070(11)(B), which
4 provides that if an employer fails to provide an employee a rest period in
5 accordance with the applicable provisions of this order, the employer shall pay the
6 employee one (1) hour of pay at employee's regular rate of compensation for each
7 workday that the rest period is not provided;

8 c. Title 8 of the California Code of Regulations section 11040/11070(18)(A), which
9 penalizes the employer \$50.00 for each initial violation, per employee, of any
10 provision of the Wage Order, and \$100.00 for each additional violation thereafter
11 per employee; and
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13 d. California Labor Code section 226.7, which states that (a) no employer shall require
14 any employee to work during any rest period mandated by an applicable order of
15 the Industrial Welfare Commission, and (b) if an employer fails to provide an
16 employee a rest period in accordance with an applicable order of the Industrial
17 Welfare Commission, the employer shall pay the employee one (1) additional hour
18 of pay at employee's regular rate of compensation for each work day that the rest
19 period is not provided.
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21 59. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
22 break after every four (4) hours of work or major fraction thereof, as required by California
23 law.
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25 60. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
26 regulations, and wage orders alleged in this cause of action along with any allowable interest,
27 penalties, attorney's fees and costs, in an amount to be proven at trial. Specifically, Plaintiff
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1 prays for the foregoing moneys calculated from 3 years immediately preceding the filing of
2 this lawsuit.

3 61. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees
4 as well as interest under Labor Code section 218.6.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO GIVE MEAL BREAKS**

7 **(Plaintiff against all named defendants and all DOE defendants)**

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9 62. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 61, inclusive, of this Complaint as though fully set forth herein.

11 63. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 12 a. California Labor Code section 512(a), which requires that employees be given a 30-
13 minute uninterrupted meal break after five (5) hours of work, and a second
14 uninterrupted meal break after ten (10) hours of work;
- 15 b. California Labor Code section 226.7, which states that (a) no employer shall require
16 any employee to work during any meal period mandated by an applicable order of
17 the Industrial Welfare Commission, and (b) if any employer fails to provide an
18 employee a meal period in accordance with an applicable order of the Industrial
19 Welfare Commission, the employer shall pay the employee one (1) additional hour
20 of pay at the employee's regular rate of compensation for each workday that the
21 meal period is not provided;
- 22 c. California Industrial Welfare Commission Order No. 4/7 section 11(B)/10(B), as
23 codified under Title 8 of the California Code of Regulations Section 11040/11070,
24 which state that if an employer fails to provide an employee a meal period in
25 accordance with the applicable provisions of the Wage Order, the employer shall
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1 pay the employee one (1) hour of pay at the employee's regular rate of
2 compensation for each workday that the meal period is not provided;

- 3 d. California Industrial Welfare Commission Wage Order No. 4/7 Section
4 7(A)(3)/6(A)(3), as codified under Title 8 of the California Code of Regulations
5 Section 11040/11070, which require an employer to maintain records documenting
6 its employees' meal periods;
- 7 e. California Industrial Welfare Commission wage order No. 4/7 Section 20(A)/18(A),
8 as codified under California Code of Regulations Section 11040/11070, which
9 penalizes the employer \$50.00 for each initial violation, per employee, of any
10 provision of the Wage Order, and \$100.00 for each additional violation thereafter
11 per employee; and
- 12 f. California Labor Code section 1171 and 1173, which have given the California
13 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4)
14 as enforceable law.
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17 64. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
18 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
19 take a second relieved meal break after ten (10) hours of work, as required by California law.
20 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
21 4/7, as codified under California Code of Regulations Sections 11040/11070 et. seq., require
22 that employees receive uninterrupted meal periods every five (5) hours of consecutive work,
23 and that the meal period be at least 30 minutes in length, wherein employee is relieved of all
24 work duty. California Labor Code section 226.7 provides that employers may not require their
25 employees to work through their meal periods. California Labor Code section 226.7 and
26 California Code of Regulations section 11040/11070 require that if the employer fails to
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1 provide the employee with an uninterrupted meal period, the employer must pay the employee
2 one (1) hour of pay for each work day that the meal period is not given.

3 65. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
4 regulations, and wage orders alleged in this cause of action along with any allowable interest,
5 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
6 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

7 66. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
8 fees as well as interest under Labor Code section 218.6.

9 67. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
10 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
11 trial.

12 **EIGHTH CAUSE OF ACTION**

13 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

14 **(Plaintiff against all Defendants and DOE Defendants, and each of them)**

15 68. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 67, inclusive, of this Complaint as thought fully set forth herein.

17 69. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
18 employee for all necessary expenditures or losses incurred by the employee in direct
19 consequence of the discharge of his or her duties."
20

21 70. Beginning at most 3 years prior to the filing of this complaint, in order to discharge
22 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
23 of completing his job duties, which were not reimbursed by Defendants. These expenses
24 include, but are not limited to, uniforms and use of personal cell phones for work purposes.

25 71. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
26 and attorney's fees and costs, under Labor Code section 2802.

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1
2 **NINTH CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

4 **(California Labor Code Sections 201, 202, 203)**

5 **(Plaintiff against all named defendants and all DOE defendants)**

6 72. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 71, inclusive, of this Complaint as though fully set forth herein.

8 73. Pursuant to California Labor Code Section 201(a), an employer who discharges an
9 employee must immediately pay for all compensation due and owing.

10 74. Pursuant to California Labor Code Section 202, when an employee resigns, the
11 employer must pay all compensation due and owing within 72 hours of resignation, or on the
12 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

13 75. Pursuant to California Labor Code Section 203, if an employer willfully fails to
14 pay, without abatement or reduction, any wages of an employee whose employment ends, the
15 wages of the employee shall continue as a penalty from the due date at the same rate until paid
16 or until an action is commenced; however, the wages shall not continue for more than 30 days
17 for failure to pay an employee owed wages.

18 76. After Plaintiff's employment with Defendants ended, Defendants willfully
19 refused and continue to refuse to pay him unpaid wages as required by Labor Code Section
20 203.

21 77. Under this cause of action, Plaintiff prays for penalties due under the statutes
22 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
23 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 1 year
24 immediately preceding the filing of this lawsuit.

25 78. Under this cause of action, Plaintiff also prays for attorney's fees and costs
26 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
27
28

as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

79. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

TENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2800, 2802)

(Plaintiff Against all Named Defendants and all DOE Defendants)

80. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

81. Pursuant to law, Plaintiff provided the required written notice to the LWDA and Defendants of the specific violations of the California Labor Code that Defendants and DOE defendants have violated and continue to violate.

82. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

83. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

84. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

1 85. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
2 violators and had one or more of the alleged violations committed against him, and therefore is
3 properly suited to represent the interests of other current and former hourly, non-exempt
4 employees who worked for O’NEIL DIGITAL SOLUTIONS, LLC and TAYLOR NICOLE
5 PROFESSIONALS, INC. at all locations in the state of California during the relevant PAGA
6 period.

7 86. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties under
8 California Labor Code sections 2698 and 2699 because of Defendants’ violations of numerous
9 provisions of the California Labor Code as alleged in this Complaint.

10 87. Plaintiff therefore has exhausted all administrative remedies required of him under
11 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
12 cause of action and pursue penalties in a representative action for Defendants’ violations of the
13 Labor Code.

14 88. California Labor Code section 2699 et seq. imposes penalties upon culpable
15 Defendants for violating the Labor Code.

16 89. California Labor Code section 558 establishes a civil penalty as follows: Any
17 employer or other person action on behalf of an employer who violates, or causes to be
18 violated, a section of this chapter or any provision regulating hours and days of work in any
19 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
20 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
21 dollars (\$50) for each underpaid employee for each pay period for which the employee was
22 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
23 employee for each pay period for which the employee was underpaid...

24 90. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
25 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
26 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
27 employees in this specific cause of action under the Private Attorneys General Act.

28 91. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for

1 the following:

2 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
3 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
4 2800, 2802, via 2698 and 2699 and any other Labor Codes and Industrial Welfare
5 Commission Wage Order Provisions (no.4/7) violated based on the facts alleged in this
6 Complaint.

7 92. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
8 costs, and civil penalties on behalf of other current and former aggrieved employees as alleged
9 herein in an amount to be shown according to proof at trial and within the jurisdictional limits
10 of this Court.

11 **ELEVENTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE PERSONNEL RECORDS**

13 **(Plaintiff against all named Defendants and all DOE Defendants)**

14 93. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 92, inclusive, of this Complaint as though fully set forth herein.

16 94. Labor Code section 1198.5 dictates "every current and former employee, or his
17 or her representative, has the right to inspect and receive a copy of the personnel records that
18 the employer maintains relating to the employee's performance or to any grievance concerning
19 the employee."

20 95. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the
21 employer shall make the contents of those personnel records available for inspection to the
22 current or former employee, or his or her representative, at reasonable intervals and at reasonable
23 times..." On information and belief, Defendants intentionally failed to provide Plaintiff with
24 personnel records when requested by Plaintiff via letter on September 26, 2023, as required by
25 law. Plaintiff requested his personnel records in accordance with California Labor Code section
26 1198.5(k) on September 26, 2023, via U.S. certified mail, return receipt requested.

27 96. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
28 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has

1 suffered and continues to suffer substantial losses related to Defendants' failure to provide
2 personnel records.

3 97. Plaintiff seeks all available remedies for Defendants' violations including, but not
4 limited penalties, and costs to the extent permitted by law and according to proof at trial.
5 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
6 amount of \$750.00, along with costs and attorney's fees.

7
8 **TWELFTH CAUSE OF ACTION**
9 **FAILURE TO PROVIDE PAY RECORDS**

10 **(Plaintiff against all named Defendants and all DOE Defendants)**

11 98. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 97, inclusive, of this Complaint as though fully set forth herein.

13 99. Labor Code section 226 sub-section (b) dictates "an employer...shall afford
14 current and former employees the right to inspect or copy records pertaining to their
15 employment, upon reasonable request to the employer..."

16 100. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
17 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
18 pertaining to a current or former employee shall comply with the request as soon as practicable,
19 but no later than 21 calendar days from the date of the request." On information and belief,
20 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
21 via certified letter, return receipt requested, on September 26, 2023, and as required by law.
22 Plaintiff requested his pay records in accordance with California Labor Code section 226 on
23 September 26, 2023, via certified mail. Defendants failed to provide Plaintiff with an opportunity
24 to inspect or copy his pay records within 21 days.

25 101. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
26 and continues to suffer substantial losses related to Defendants' failure to provide pay records.
27 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
28 amount of \$750.00, along with costs and attorney's fees.

102. Plaintiff seeks all available remedies for Defendants' violations including, but

1 not limited penalties, and costs to the extent permitted by law and according to proof at trial.

2 **THIRTEENTH CAUSE OF ACTION**

3 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

4 **(Plaintiff against All Named Defendants and all DOE Defendants)**

5
6 103. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 102, inclusive, of this Complaint as though fully set forth herein.

8 104. At all times material to this Complaint, California Labor Code § 1102.5 was in
9 effect and binding on Defendants. This section requires Defendants to refrain from retaliating
10 against an employee for refusing to participate in an activity that he/she reasonably believes
11 would result in a violation of state or federal statute, or a violation or noncompliance with a
12 state or federal rule or regulation. California Labor Code section 1102.5 also requires
13 Defendants to refrain from retaliating against an employee for disclosing information to a
14 person with authority over the employee if the employee has reasonable cause to believe that
15 the information discloses a violation of state or federal statute, or a violation of or
16 noncompliance with a local, state, or federal rule or regulation, regardless of whether
disclosing the information is part of the employee's job duties.

17 105. As mentioned above, Plaintiff complained to Defendants about wage and hour
18 violations at the workplace.

19 106. Defendants retaliated against Plaintiff for his whistleblowing, as alleged above,
20 all in violation of Labor Code § 1102.5.

21 107. As a direct and proximate result of the aforementioned acts and omissions of
22 Defendants, Plaintiff suffered general and compensatory damages, including but not limited
23 to, loss of income (past and future), loss of employment benefits (past and future), general and
24 compensatory damages (past and future), mental pain and anguish and emotional distress (past
25 and future), and will continue to suffer in the future, in an amount to be proved at trial.

26 108. Plaintiff requests all available relief under Labor Code § 1102.5 including
27 damages and the imposition of civil penalties of \$10,000 for each violation as well as
28 attorney's fees.

1 **FOURTEENTH CAUSE OF ACTION**

2 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6**

3 **(California Labor Code section 98.6)**

4 **(Plaintiff against All Named Defendants and All DOE Defendants, and each of them)**

5 109. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 108, inclusive, of this Complaint as though fully set forth herein.
7

8 110. California Labor Code section 98.6 provides, in pertinent part, as follows:

9 "A person shall not discharge an employee or in any manner discriminate, retaliate, or
10 take any adverse action against any employee or applicant for employment because the
11 employee or applicant engaged in any conduct delineated in this chapter...or because
the employee or applicant...made a written or oral complaint that he or she is owed
unpaid wages...

12 111. In doing the things herein alleged, Defendants violated Labor Code section 98.6 in
13 that they retaliated against Plaintiff for complaining about his wages and about the labor code
14 violations that were being committed by Defendants.

15 112. As a direct and proximate result of the aforementioned acts and omissions of
16 Defendants, Plaintiff suffered general and compensatory damages, including but not
17 limited to, loss of income (past and future), loss of employment benefits (past and future),
18 general and compensatory damages (past and future), mental pain and anguish and emotional
19 distress (past and future), and will continue to suffer in the future, in an amount to be proved at
20 trial. Moreover, pursuant to Labor Code section 98.6, an employer who violates this section is
21 liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each
22 violation of this section.

23 **FIFTEENTH CAUSE OF ACTION**

24 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

25 **(Plaintiff against All Named Defendants and all DOE Defendants)**

26 113. Plaintiff re-alleges and incorporates by reference each and every allegation in
27
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1 paragraphs 1 through 112 inclusive, of this Complaint as though fully set forth herein.

2 114. At all times during his employment with Defendants, Plaintiff performed his duties
3 with the utmost diligence and competence.

4 115. Plaintiff is informed and believes and thereon alleges that Defendants' decision and
5 actions to treat him differently and terminate his employment as alleged herein, was motivated
6 by Plaintiff's whistleblowing and complaints about illegal activity at the workplace. Plaintiff is
7 further informed and believes and thereon alleges that any other reasons proffered by Defendants
8 were and are pretextual in nature.
9

10 116. The employment of Plaintiff was wrongfully terminated in or around February of 2023
11 in violation of the fundamental public policy of the State of California with respect to retaliating
12 against an employee on account of his whistleblowing. Plaintiff was forced to hire an attorney
13 to assist him to end these illegal activities. Said conduct violated statutory and constitutional
14 expressions of public policy including, but not limited to, California Labor Code sections 98.6
15 and 1102.5.
16

17 117. As set forth above, said actions by Defendants were wrongful and in violation of the
18 fundamental principles of the public policy of the State of California as reflected in its laws,
19 objectives and policies. Said statutes and constitutional expressions of public policy include,
20 but are not limited to, California Labor Code, and specifically sections 98.6 and 1102.5. These
21 laws inure to the benefit of the public at large, and not just the private interests of the employers
22 and employees whom they govern or protect.
23

24 118. As a direct and proximate result of the aforementioned acts and omissions of
25 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
26 loss of income (past and future), loss of employment benefits (past and future), general and
27 compensatory damages (past and future), mental pain and anguish and emotional distress (past
28

1 future), and will continue to suffer in the future, in an amount to be proved at trial.

2 119. The foregoing conduct engaged in by Defendants and each of their directors, officers
3 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
4 and carried on with a conscious and willful disregard of their workers' right to work in an
5 environment free of retaliation due to whistleblowing, so as to justify the imposition of punitive
6 damages to punish and set an example of said Defendants.

7
8 **SIXTEENTH CAUSE OF ACTION**

9 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

10 **(California Business and Professions Code Section 17200)**

11 **(Plaintiff against All Named Defendants and all DOE defendants)**

12 120. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 119, inclusive, of this Complaint as though fully set forth herein.

14 121. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
15 constitute unfair and unlawful business practices under California Business and Professions
16 Code Section 17200, et seq.

17 122. Defendants' violations of California labor laws constitutes a business practice because
18 it was done repeatedly over a significant period of time in a systematic manner that was
19 detrimental to Plaintiff and others.

20 123. For the four years preceding the filing of this action, Plaintiff has suffered damages
21 and request damages and/or restitution of all monies and profits to be disgorged from
22 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
23 this Court.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
26 follows:

- 27 1. For compensatory damages including lost past and future wages, regular wages,
28

- overtime, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;
2. For general damages according to proof;
 3. For punitive and exemplary damages against Defendants according to proof;
 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
 7. For restitution and disgorgement for all unfair business practices by Defendants against Plaintiff in an amount subject to proof at trial;
 8. For an order enjoining Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
 9. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
 10. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
 11. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant as described more particularly in the Complaint and Representative PAGA claim/action;
 12. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of attorney's fees, costs, interest, and penalties according to proof to the extent permitted by law;
 13. For restitution and/or damages for all amounts unlawfully withheld from the wages of Plaintiff, as may be proven;
 14. For the imposition of civil penalties and/or statutory penalties;
 15. For all interest as allowed by law;
 16. For all costs and disbursements incurred in this suit;

- 1 17. Reasonable attorney's fees where available by law, including but not limited to, pursuant
2 to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, the
3 California Labor Code, including section 1102.5; and/or other applicable laws; and
4 18. For such other and further relief as this Court may deem proper.

5
6 DATED: January 5, 2024

MESSRELIAN LAW INC.

7
8 By 
9 Harout Messrelian, Esq.
Attorneys for Plaintiff Kayri Johnson

10
11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

13
14 DATED: January 5, 2024

MESSRELIAN LAW INC.

15
16 By 
17 Harout Messrelian, Esq.
Attorneys for Plaintiff Kayri Johnson