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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

NYESHA PALMER,

Plaintiff,

vs.

VICTORY STARTS NOW, INC. and
DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: 24STCV01775

) **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 PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**
) **7) FAILURE TO PROVIDE REST**
) **BREAKS;**
) **8) FAILURE TO PROVIDE MEAL**
) **BREAKS;**
) **9) FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES;**
) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA")**
) **11) FAILURE TO PROVIDE**
) **PERSONNEL RECORDS;**
) **12) FAILURE TO PROVIDE PAY**
) **RECORDS;**
) **13) VIOLATION OF BUSINESS AND**
) **PROFESSIONS CODE SECTION**
) **17200**

) **JURY TRIAL DEMANDED**

COMES NOW Plaintiff, NYESHA PALMER (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants VICTORY STARTS NOW, INC.; and DOES 1 to 25, inclusive (hereinafter collectively "VICTORY STARTS NOW" or "Defendant(s)") do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$35,000.

2. Plaintiff is a female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant VICTORY STARTS NOW, INC. is a California corporation, doing business in the County of Los Angeles, State of California, and which employed Plaintiff.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and

1 under the authority of their agency, employment, or representative capacity, with the consent of
2 his/her codefendants.

3 **GENERAL ALLEGATIONS**

4 6. Plaintiff started working for VICTORY STARTS NOW in or around 2020 as an
5 Inspiration Manager. During her employment, Plaintiff was classified as an hourly, non-exempt
6 employee and her latest rate of pay was \$18/hour.

7 7. It is Plaintiff's position that VICTORY STARTS NOW has committed the following
8 labor code violations against Plaintiff and other hourly, non-exempt employees who worked for
9 VICTORY STARTS NOW at any of their California locations during the relevant PAGA
10 period:
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12 8. VICTORY STARTS NOW did not provide Plaintiff and other similarly situated
13 aggrieved employees with the minimum wages to which they were entitled for all work
14 performed and did not compensate her and others for all hours worked pursuant to California
15 Labor Code sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours
16 worked and were not paid for time that they worked "off the clock". This is so because the
17 company had a policy and practice of rounding down hours worked and "time shaving", which
18 led to the employees not being paid for all hours worked, which would include the minimum
19 wage. Moreover, to the extent employees worked through their meal periods and those meal
20 periods were interrupted, they were not compensated for that time, which would be akin to a
21 minimum wage violation. Moreover, Plaintiff and others would engage in work-related tasks
22 before clocking in or after clocking out for which Plaintiff was not compensated at all in violation
23 of California's minimum wage laws.
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26 9. Due to the above "off the clock" violations and as a matter of company policy, VICTORY
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1 STARTS NOW violated Labor Code §510 because it failed to pay Plaintiff and other similarly
2 situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12
3 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and others'
4 actual work hours, which included the "off the clock" work as described above, entitled them to
5 overtime, however, it was not company policy to keep accurate track of all hours worked and to
6 pay employees all due overtime. In addition, VICTORY STARTS NOW did not include bonuses
7 and/or incentive payments in calculating employees' true regular rate of pay for purposes of
8 deciphering their correct overtime rate of pay. Additionally, the incentive and bonus payments
9 were also not factored into employees' regular rate for purposes of receiving meal and rest break
10 premiums per the Ferra v. Loews case.

12 10. VICTORY STARTS NOW violated Labor Code § 226.7 along with Industrial Welfare
13 Commission Wage Order no. 4/5 because it failed to provide Plaintiff and other similarly situated
14 aggrieved employees 10-minute rest periods for every four hours of work, or majority portion
15 thereof, throughout their employment. VICTORY STARTS NOW did not completely relieve
16 Plaintiff of all duty during said rest periods. VICTORY STARTS NOW did not pay to Plaintiff
17 one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one
18 or more statutory rest periods was not provided. Rest breaks were not authorized or enforced at
19 the workplace. In fact, it was not part of VICTORY STARTS NOW's culture for employees
20 such as Plaintiff and others to take two 10 minute rest breaks every day wherein they are relieved
21 of all work duties. The latter was due to understaffing of employees and an overall company
22 culture wherein rest breaks were ignored. As such, rest breaks were not enforced and not a policy
23 or practice of the company.

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

3 12. Furthermore, during the relevant time period and due to the above-mentioned labor code
4 violations, VICTORY STARTS NOW failed to pay Plaintiff and other similarly situated
5 aggrieved employees all wages due to them within any time period specified by California Labor
6 Code section 204, including the minimum wages and overtime as described above as well as
7 meal/rest break premiums. VICTORY STARTS NOW was also in violation of California Labor
8 Code section 226(a) by failing to include pertinent information on the wage statements, including
9 but not limited to, all hours worked, gross wages earned, net wages earned, all deductions,
10 premium payments for meal and rest breaks, the correct legal name and address of the employer,
11 the correct beginning and end of the pay period, all applicable hourly rates, and all identifying
12 employee information, among other items. As such, VICTORY STARTS NOW did not provide
13 Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized
14 wage statements.
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17 13. VICTORY STARTS NOW violated Labor Code § 203 because it willfully failed to pay
18 Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation
19 of employment, either immediately upon involuntary termination, or within 72 hours of
20 resignation. These earned but unpaid wages include compensation for all hours worked including
21 minimum wages and overtime compensation, and premiums for the missed meal and rest breaks.
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23 14. During the relevant time period, VICTORY STARTS NOW also failed to keep accurate
24 and complete payroll records showing the actual hours worked per day (including the time for
25 meal periods) and the wages paid to Plaintiff and other aggrieved employees pursuant to
26 California Labor Code sections 1174(d).
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28 15. Additionally, during the relevant time period, Plaintiff and others incurred necessary,

1 business-related expenses and costs that were not reimbursed by VICTORY STARTS NOW.
2 These costs include, but are not limited to, use of personal cell phones for work purposes and
3 uniforms as well as items to effectuate their job duties. Accordingly, VICTORY STARTS NOW
4 was in violation of California Labor Code sections 2800 and 2802.

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6 **FIRST CAUSE OF ACTION**

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

8 **(California Industrial Welfare Commission Order 4-2001/5-2001, California Code of**
9 **Regulations Title 8 Section 11040/11050, and California Labor Code Section 1198)**

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

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

13 17. At all times relevant herein, Defendants were required to compensate its employees for
14 all hours worked upon reporting for work at the appointed time stated by the employer
15 pursuant to Industrial Welfare Commission Order 4-2001/5-2001, California Code of
16 Regulations, Title 8, Section 11040/11050.

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

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

22 20. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
23 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
24 this Court.

25 21. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
26 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
27 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
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reasonable attorney's fees and costs of suit.

22. 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 which will equal an amount known to Plaintiff once she has obtained all of her payroll records from Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiff against all named defendants and all DOE defendants)

23. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 22, inclusive, of this Complaint as though fully set forth herein.

24. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage rate for all hours worked as required by the applicable Industrial Welfare Commission (hereinafter "IWC") Wage Order No. 4-2001/5-2001, codified at California Code of Regulations, Title 8, Section 11040/11050, subdivision 4.

25. Pursuant to IWC Wage Order no. 4-2001/5-2001, subdivision 2(K)/(H), at all relevant times, "hours worked" included "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so..."

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

27. Plaintiff was, at all relevant times, under the control of Defendants and suffered or permitted to work by Defendants. Defendants' acts or omissions in failing to adequately

1 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
2 to believe that their acts or omissions were not contrary to California law.

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

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

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME**

13 **(California Industrial Welfare Commission Order 4-2001/5-2001, California Code of**
14 **Regulations Title 8 Section 11040/11050; California Labor Code Section 510)**

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

16 30. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 29, inclusive, of this Complaint as though fully set forth herein.

18 31. Pursuant to Industrial Welfare Commission Order No. 4-2001/5-2001, Cal. Code of
19 Regs., Title 8, Section 11040/11050, for the period of Plaintiff's employment, Defendants were
20 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
21 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
22 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
23 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
24 week.

25 32. Plaintiff was a non-exempt employee entitled to the protections of the California
26 Industrial Welfare Commission Order No. 4-2001/5-2001, California Code of Regulations,
27 Title 8, Section 11040/11050.
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1 33. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
2 single workday or forty (40) hours in a single workweek on numerous occasions.

3 34. Plaintiff was entitled to the above overtime premiums.

4 35. Defendants did not pay Plaintiff premium wages of at least one and one-half times
5 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
6 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
7 twelve (12) in a day.

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

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

12 38. Defendants know or should know the actual dates of overtime worked, the amount of
13 overtime worked, and the amount of unpaid overtime due.

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

17 40. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
18 Regulations, Title 8, Sections 11040/11050, Plaintiff is entitled to recover damages for the
19 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
20 reasonable attorney's fees and costs of suit.

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

24 **FOURTH CAUSE OF ACTION**

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

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

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

1 42. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 41, inclusive, of this Complaint as though fully set forth herein.

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

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

11 45. 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 46. 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 47. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
22 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
23 trial.

24 **FIFTH CAUSE OF ACTION**

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

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

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

1 48. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 47, inclusive, of this Complaint as though fully set forth herein.

3 49. 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 50. 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 51. 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 wages for all hours worked,
10 including overtime hours, the minimum wage, and premium pay for missed meal and rest
11 breaks.

12 52. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
13 amount, subject to proof, to the extent she 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 53. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
17 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
18 trial.

19 **SIXTH CAUSE OF ACTION**

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

21 **(California Labor Code Sections 201, 203)**

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

23 54. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 53, inclusive, of this Complaint as though fully set forth herein.

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

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

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

8 58. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
9 continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

10 59. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
11 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
12 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
13 preceding the filing of this lawsuit.

14 60. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
15 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
16 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

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

20 **SEVENTH CAUSE OF ACTION**

21 **FAILURE TO GIVE REST BREAKS**

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

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

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

- 26 a. Title 8 of the California Code of Regulations Sections 11040/11050(12)(A), which
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1 provides that every employer shall authorize and permit all employees to take rest
2 periods, which insofar as practicable shall be in the middle of each work period.

3 The authorized rest period time shall be based on the total hours worked daily at the
4 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

5 b. Title 8 of the California Code of Regulations Sections 11040/11050(12)(B), which
6 provides that if an employer fails to provide an employee a rest period in
7 accordance with the applicable provisions of this order, the employer shall pay the
8 employee one (1) hour of pay at employee's regular rate of compensation for each
9 workday that the rest period is not provided;

10 c. Title 8 of the California Code of Regulations sections 11040/11050(20)(A), which
11 penalizes the employer \$50.00 for each initial violation, per employee, of any
12 provision of the Wage Order, and \$100.00 for each additional violation thereafter
13 per employee; and

14 d. California Labor Code section 226.7, which states that (a) no employer shall require
15 any employee to work during any rest period mandated by an applicable order of
16 the Industrial Welfare Commission, and (b) if an employer fails to provide an
17 employee a rest period in accordance with an applicable order of the Industrial
18 Welfare Commission, the employer shall pay the employee one (1) additional hour
19 of pay at employee's regular rate of compensation for each work day that the rest
20 period is not provided.

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22 64. Plaintiff alleges that she was not authorized and permitted to take a ten (10) minute
23 rest break after every four (4) hours of work or major fraction thereof, as required by California
24 law.
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1 65. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
2 regulations, and wage orders alleged in this cause of action along with any allowable interest,
3 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
4 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

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

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

10 **EIGHTH CAUSE OF ACTION**

11 **FAILURE TO GIVE MEAL BREAKS**

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

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

15 69. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 16 a. California Labor Code section 512(a), which requires that employees be given a 30-
17 minute uninterrupted meal break after five (5) hours of work, and a second
18 uninterrupted meal break after ten (10) hours of work;
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20 b. California Labor Code section 226.7, which states that (a) no employer shall require
21 any employee to work during any meal period mandated by an applicable order of
22 the Industrial Welfare Commission, and (b) if any employer fails to provide an
23 employee a meal period in accordance with an applicable order of the Industrial
24 Welfare Commission, the employer shall pay the employee one (1) additional hour
25 of pay at the employee's regular rate of compensation for each workday that the
26 meal period is not provided;
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- 1 c. California Industrial Welfare Commission Order No. 4/5 section 11(B), as codified
2 under Title 8 of the California Code of Regulations Section 11040/11050, which
3 states that if an employer fails to provide an employee a meal period in accordance
4 with the applicable provisions of the Wage Order, the employer shall pay the
5 employee one (1) hour of pay at the employee's regular rate of compensation for
6 each workday that the meal period is not provided;
- 7 d. California Industrial Welfare Commission Wage Order No. 4/5 Section 7(A)(3), as
8 codified under Title 8 of the California Code of Regulations Section 11040/11050,
9 which requires an employer to maintain records documenting its employees' meal
10 periods;
- 11 e. California Industrial Welfare Commission wage order No. 4/5 Section 20(A), as
12 codified under California Code of Regulations Section 11040/11050, which
13 penalizes the employer \$50.00 for each initial violation, per employee, of any
14 provision of the Wage Order, and \$100.00 for each additional violation thereafter
15 per employee; and
- 16 f. California Labor Code section 1171 and 1173, which have given the California
17 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4
18 and 5) as enforceable law.

19 70. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
20 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
21 to take a second relieved meal break after ten (10) hours of work, as required by California
22 law. California Labor Code section 512(a) and California Industrial Welfare Commission
23 Order No. 4/5, as codified under California Code of Regulations Sections 11040/11050 et. seq.
24 requires that employees receive uninterrupted meal periods every five (5) hours of consecutive
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1 work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of
2 all work duty. California Labor Code section 226.7 provides that employers may not require
3 their employees to work through their meal periods. California Labor Code section 226.7 and
4 California Code of Regulations section 11040/11050 requires that if the employer fails to
5 provide the employee with an uninterrupted meal period, the employer must pay the employee
6 one (1) hour of pay for each work day that the meal period is not given.

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

12 72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
13 fees as well as interest under Labor Code section 218.6.

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

17 **NINTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

20 74. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.

22 75. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
23 employee for all necessary expenditures or losses incurred by the employee in direct
24 consequence of the discharge of his or her duties."

25 76. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
26 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
27 of completing his job duties, which were not reimbursed by Defendant. These expenses
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1 include, but are not limited to, use of personal cell phones for work purposes and uniforms as
2 well as items to effectuate their job duties.

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

5 **TENTH CAUSE OF ACTION**

6 **PRIVATE ATTORNEYS GENERAL ACT**

7 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
8 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197,**
9 **1197.1, 1198, 2802)**

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

11 78. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 77, inclusive, of this Complaint as though fully set forth herein.

13 79. Plaintiff has complied with the procedures for bringing suit specified in California
14 Labor Code § 2699.3. By letter dated September 26, 2023, Plaintiff gave written notice by
15 certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of
16 the specific provisions of the California Labor Code alleged to have been violated, including the
17 facts and theories to support the alleged violations.

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

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

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

83. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged

1 violator and had one or more of the alleged violations committed against her, and therefore is
2 properly suited to represent the interests of other current and former employees, including all
3 current and former hourly, non-exempt employees who worked for VICTORY STARTS NOW
4 in the State of California during the applicable PAGA Period.

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

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

12 86. California Labor Code section 2699 et seq. imposes penalties upon culpable
13 Defendants for violating the Labor Code.

14 87. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
15 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
16 seeking individual penalties/victim specific relief or underpaid wages for herself or other
17 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in
18 this Complaint for individual wages but is not seeking wages through the PAGA action.

19 88. Specifically, Plaintiff seeks penalties under California Labor Code
20 section 2699, for the following:

21 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
22 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and any other
23 Labor Codes/Industrial Welfare Commission Order (No. 4/5) violated based on the facts
24 alleged in this Complaint.

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

1 **ELEVENTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE PERSONNEL RECORDS**

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

4 90. Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 89, inclusive, of this Complaint as though fully set forth herein.

6 91. Labor Code section 1198.5 dictates “every current and former employee, or his
7 or her representative, has the right to inspect and receive a copy of the personnel records that
8 the employer maintains relating to the employee’s performance or to any grievance concerning
9 the employee.”

10 92. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the
11 employer shall make the contents of those personnel records available for inspection to the
12 current or former employee, or his or her representative, at reasonable intervals and at reasonable
13 times...” On information and belief, Defendants intentionally failed to provide Plaintiff with
14 personnel records when requested by Plaintiff via letter on September 26, 2023, as required by
15 law. Plaintiff requested her personnel records in accordance with California Labor Code section
16 1198.5(k) on September 26, 2023, via U.S. certified mail, return receipt requested.

17 93. Defendants failed to provide Plaintiff with an opportunity to inspect or copy her
18 records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has
19 suffered and continues to suffer substantial losses related to Defendants' failure to provide
20 personnel records.

21 94. Plaintiff seeks all available remedies for Defendants’ violations including, but not
22 limited penalties, and costs to the extent permitted by law and according to proof at trial.
23 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
24 amount of \$750.00, along with costs and attorney’s fees.

25 **TWELFTH CAUSE OF ACTION**

26 **FAILURE TO PROVIDE PAY RECORDS**

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

28 95. Plaintiff re-alleges and incorporates by reference each and every allegation in
paragraphs 1 through 94, inclusive, of this Complaint as though fully set forth herein.

1 96. Labor Code section 226 sub-section (b) dictates “an employer...shall afford
2 current and former employees the right to inspect or copy records pertaining to their
3 employment, upon reasonable request to the employer...”

4 97. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer
5 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
6 pertaining to a current or former employee shall comply with the request as soon as practicable,
7 but no later than 21 calendar days from the date of the request.” On information and belief,
8 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
9 via certified letter, return receipt requested, on September 26, 2023, and as required by law.
10 Plaintiff requested her pay records in accordance with California Labor Code section 226 on
11 September 26, 2023, via certified mail. Defendants failed to provide Plaintiff with an opportunity
12 to inspect or copy her pay records within 21 days.

13 98. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered
14 and continues to suffer substantial losses related to Defendants’ failure to provide pay records.
15 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
16 amount of \$750.00, along with costs and attorney’s fees.

17 99. Plaintiff seeks all available remedies for Defendants’ violations including, but
18 not limited penalties, and costs to the extent permitted by law and according to proof at trial.

19 **THIRTEENTH CAUSE OF ACTION**

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

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

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

23 100. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 99, inclusive, of this Complaint as though fully set forth herein.

25 101. By virtue of the foregoing statutes, regulations, and laws, the acts of
26 Defendants constitutes unfair and unlawful business practices under California Business and
27 Professions Code Section 17200, et seq.
28

102. Defendant's violations of the California labor laws and the Labor Code constitutes a business practice because it was done repeatedly over a significant period of time in a systematic manner that was detrimental to Plaintiff and other employees.

103. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically provided in California Code of Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et seq.

104. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to multiple damages as specifically provided in California Business and Professions Code section 17200 et seq.

105. For the four years preceding the filing of this action, Plaintiff requests restitution of all monies and profits to be disgorged from Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of this Court.

PRAYER FOR RELIEF

1. For compensatory damages including lost past and future wages, overtime, commissions, 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 special and consequential damages to the extent allowed by law;
3. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount according to proof;
4. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code section 17200, et seq.;
5. For damages and penalties against Defendants 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 203/204 against Defendants in an amount subject to proof at trial;

7. 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.
8. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
9. 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;
10. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
11. For the imposition of civil penalties and/or statutory penalties;
12. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, including section 2698, California Code of Civil Procedure section 1021.5 and/or other applicable laws; and
13. Costs and expenses of suit incurred herein;
14. For all interest as allowed by law;
15. For such other and further relief as the Court deems just and proper.

DATED: January 23, 2024

MESSRELIAN LAW INC.

By



Harout Messrelian, Esq.

Attorneys for Plaintiff Nyesha Palmer

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DATED: January 23, 2024

By 
Harout Messrelain, Esq.
Attorneys for Plaintiff Nyesha Palmer