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

LARISSA ALCARAZ and SAMSON
PEDROZA, individually, and on behalf of
other members of the general public
similarly situated;

Plaintiffs,

v.

MOTIVATIONAL SYSTEMS, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

10/16/2023 at 04:05:00 PM

Clerk of the Superior Court
By Angelika Cazares, Deputy Clerk

Case No.: 37-2022-00045734-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code § 2698, *et seq.* (Private Attorneys General Act of 2004);
- (9) Violation of California Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

COME NOW, Plaintiffs LARISSA ALCARAZ and SAMSON PEDROZA (“Plaintiffs,” “Plaintiff Alcaraz,” and “Plaintiff Pedroza”), individually, and on behalf of other members of the general public similarly situated, and allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

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

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of San Diego. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California. Defendants employed Plaintiffs within the State of California.

PARTIES

5. Plaintiffs LARISSA ALCARAZ and SAMSON PEDROZA are individuals residing in the State of California.

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1 6. Defendant MOTIVATIONAL SYSTEMS, INC., at all times herein mentioned,
2 was and is, upon information and belief, a California corporation headquartered in the State
3 of California, and at all times herein mentioned, was and is, an employer whose employees
4 are engaged throughout the State of California, including the County of San Diego.

5 7. At all relevant times, Defendant MOTIVATIONAL SYSTEMS, INC. was the
6 “employer” of Plaintiffs within the meaning of all applicable laws and statutes.

7 8. At all times herein relevant, Defendant MOTIVATIONAL SYSTEMS, INC. and
8 DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint
9 employers, representatives, servants, employees, successors-in-interest, co-conspirators and
10 assigns, each of the other, and at all times relevant hereto were acting within the course and
11 scope of their authority as such agents, partners, joint venturers, joint employers,
12 representatives, servants, employees, successors, co-conspirators and assigns, and all acts or
13 omissions alleged herein were duly committed with the ratification, knowledge, permission,
14 encouragement, authorization, and consent of each defendant designated herein.

15 9. The true names and capacities, whether corporate, associate, individual or
16 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sue
17 said defendants by such fictitious names. Plaintiffs are informed and believe, and based on
18 that information and belief allege, that each of the Defendants designated as a DOE is legally
19 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
20 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
21 Plaintiffs will seek leave of court to amend this Complaint to show the true names and
22 capacities when the same have been ascertained.

23 10. Defendant MOTIVATIONAL SYSTEMS, INC. and DOES 1 through 100 will
24 hereinafter collectively be referred to as “Defendants.”

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11. Plaintiffs further allege that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs and the other class members so as to make each of said Defendants employers and employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

12. Plaintiffs bring this action individually and on behalf of all other members of the general public similarly situated, and, thus, seek class certification under Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees of Defendants within the State of California at any time during the period from November 10, 2018, through Judgment.

14. Plaintiffs reserve the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs at this time. However, the class is estimated to be greater than nine hundred (900) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiffs' claims are typical of all other class members' claims as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other class members with whom Plaintiffs have a well-defined community of interest.

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1 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
2 each class member, with whom Plaintiffs have a well-defined community
3 of interest and typicality of claims, as demonstrated herein. Plaintiffs
4 have no interest that is antagonistic to the other class members. Plaintiffs'
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiffs have
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.

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

21 16. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the Labor Code, was willful;

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- b. Whether Defendants failed to pay their hourly-paid or non-exempt employees within the State of California for all hours worked, missed meal periods and rest breaks in violation of the law;
- c. Whether Defendants required the class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to class members;
- d. Whether Defendants properly calculated the regular rate for purposes of overtime compensation for Plaintiffs and the other class members;
- e. Whether Defendants deprived Plaintiffs and the other class members of meal and/or rest periods or required Plaintiffs and the other class members to work during meal and/or rest periods without compensation;
- f. Whether Defendants failed to pay minimum wages to Plaintiffs and the other class members for all hours worked;
- g. Whether Defendants failed to pay all wages due to Plaintiffs and the other class members within the required time upon their discharge or resignation;
- h. Whether Defendants failed to timely pay all wages due to Plaintiffs and the other class members during their employment;
- i. Whether Defendants complied with wage reporting as required by the Labor Code, including, inter alia, section 226;
- j. Whether Defendants failed to reimburse Plaintiffs and the other class members for necessary business-related expenses and costs;
- k. Whether Defendants' conduct was willful or reckless;
- l. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code section 17200, *et seq.*;
- m. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of the law; and

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n. Whether Plaintiffs and the other class members are entitled to compensatory damages pursuant to the Labor Code.

GENERAL ALLEGATIONS

17. During the relevant time period set forth herein, Defendants employed Plaintiffs and other persons as hourly-paid or non-exempt employees within the State of California.

18. Defendants, jointly and severally, employed Plaintiffs as hourly-paid non-exempt employees during the relevant time period in the State of California.

19. Defendants had the authority to hire and terminate Plaintiffs and the other class members; to set work rules and conditions governing Plaintiffs' and other class members' employment; and to supervise their daily employment activities.

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

21. Defendants directly hired and paid wages and benefits to Plaintiffs and the other class members.

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

23. Plaintiffs and the other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants. Plaintiffs and the other class members were paid bonuses from Defendants that were non-discretionary.

24. Plaintiffs are informed and believe, and based thereon allege, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, *inter alia*, failing to pay them for all hours worked, missed meal periods, and missed rest breaks in violation of the law.

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1 25. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Plaintiffs and the other class members were entitled to receive
3 certain wages for overtime compensation and that Plaintiffs and the other class members were
4 not receiving wages for overtime compensation. Similarly, Plaintiffs are informed and believe,
5 and based thereon allege, that Defendants knew or should have known that the non-
6 discretionary bonuses paid to Plaintiffs and the other class members should have been factored
7 into their regular rate of pay for purposes of overtime compensation and that non-discretionary
8 bonuses were not factored into their regular rate of pay for overtime compensation purposes.

9 26. Plaintiffs are informed and believe, and based thereon allege, that Defendants
10 failed to provide Plaintiffs and the other class members the required rest and meal periods
11 during the relevant time period as required under the Industrial Welfare Commission Wage
12 Orders and thus they are entitled to any and all applicable penalties.

13 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants
14 knew or should have known that Plaintiffs and the other class members were entitled to receive
15 all timely and complete meal periods or payment of one additional hour of pay at Plaintiffs'
16 and the other class members' regular rate of pay when a meal period was missed, late or
17 interrupted, and that Plaintiffs and the other class members did not receive all timely and
18 proper meal periods or payment of one additional hour of pay at their regular rate of pay when
19 a meal period was missed.

20 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants
21 knew or should have known that Plaintiffs and other class members were entitled to receive
22 all timely rest periods without interruption or payment of one additional hour of pay at
23 Plaintiffs and the other class members' regular rate of pay when a rest period was missed, late
24 or interrupted, and that Plaintiffs and the other class members did not receive all rest periods
25 or payment of one additional hour of pay at their regular rate of pay when a rest period was
26 missed.

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1 29. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Plaintiffs and the other class members were entitled to receive
3 at least minimum wages for compensation and that Plaintiffs and the other class members were
4 not receiving at least minimum wages for all hours worked.

5 30. Plaintiffs are informed and believe, and based thereon allege, that Defendants
6 knew or should have known that Plaintiffs and the other class members were entitled to receive
7 the wages owed to them upon discharge or resignation, including overtime and minimum
8 wages and meal and rest period premiums, and that Plaintiffs and the other class members did
9 not, in fact, receive such wages owed to them at the time of their discharge or resignation.

10 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
11 knew or should have known that Plaintiffs and the other class members were entitled to receive
12 complete and accurate wage statements in accordance with the law, but, in fact, Plaintiffs and
13 the other class members did not receive complete and accurate wage statements from
14 Defendants. The deficiencies included, *inter alia*, the failure to include the total number of
15 hours worked by Plaintiffs and the other class members.

16 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants
17 knew or should have known that Plaintiffs and the other class members were entitled to
18 reimbursement for necessary business-related expenses.

19 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 knew or should have known that Defendants had to keep complete and accurate payroll records
21 for Plaintiffs and the other class members in accordance with the law, but, in fact, did not keep
22 complete and accurate payroll records for Plaintiffs and the other class members.

23 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
24 knew or should have known that they had a duty to compensate Plaintiffs and the other class
25 members pursuant to the law, and that Defendants had the financial ability to pay such
26 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
27 represented to Plaintiffs and the other class members that they were properly denied wages,
28 all in order to increase Defendants' profits.

1 35. During the relevant time period set forth herein, Defendants failed to pay
2 overtime wages to Plaintiffs and the other class members for all hours worked. Plaintiffs and
3 other class members were required to work more than eight (8) hours per day and/or forty (40)
4 hours per week without overtime compensation. Moreover, Defendants failed to factor non-
5 discretionary bonuses into Plaintiffs and the other class members' regular rate of pay for
6 purposes of overtime compensation.

7 36. During the relevant time period set forth herein, Defendants failed to provide the
8 requisite uninterrupted and timely meal and rest periods to Plaintiffs and the other class
9 members.

10 37. During the relevant time period set forth herein, Defendants failed to pay
11 Plaintiffs and the other class members at least minimum wages for all hours worked.

12 38. During the relevant time period set forth herein, Defendants failed to pay
13 Plaintiffs and the other class members the wages owed to them upon discharge or resignation.

14 39. During the relevant time period set forth herein, Defendants failed to provide
15 complete or accurate wage statements to Plaintiffs and the other class members.

16 40. During the relevant time period set forth herein, Defendants failed to keep
17 complete or accurate payroll records for Plaintiffs and the other class members.

18 41. During the relevant time period set forth herein, Defendants failed to properly
19 compensate Plaintiffs and the other class members pursuant to the law in order to increase
20 Defendants' profits.

21 42. Labor Code section 218 states that nothing in Article 1 of the Labor Code shall
22 limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him
23 [or her] under this article."

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 510 and 1198)**

3 **(Against MOTIVATIONAL SYSTEMS, INC. and DOES 1 through 100)**

4 43. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1
5 through 42, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 44. Labor Code section 1198 and the applicable Industrial Welfare Commission
8 (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating
9 them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay,
10 depending on the number of hours worked by the person on a daily or weekly basis.

11 45. The applicable IWC Wage Order provides that Defendants are and were required
12 to pay Plaintiffs and the other class members employed by Defendants, who work(ed) more
13 than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-
14 and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40)
15 hours in a workweek.

16 46. The applicable IWC Wage Order further provides that Defendants are and were
17 required to pay Plaintiffs and the other class members overtime compensation at a rate of two
18 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

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

24 48. During the relevant time period set forth herein, Plaintiffs and the other class
25 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in
26 a week.

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49. During the relevant time period set forth herein, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiffs and the other class members. Similarly, Defendants also intentionally and willfully underpaid the overtime wages owed to Plaintiffs and other class members by not factoring non-discretionary bonuses into their regular rate of pay for overtime compensation purposes.

50. Defendants' failure to pay Plaintiffs and the other class members the unpaid balance of overtime compensation, as required by the laws, violates the provisions of Labor Code sections 510 and 1198 and is unlawful.

51. Pursuant to Labor Code section 1194, Plaintiffs and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against MOTIVATIONAL SYSTEMS, INC. and DOES 1 through 100)

52. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 51, and each and every part thereof with the same force and effect as though fully set forth herein.

53. During the relevant time period set forth herein, the IWC Wage Order and Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and the other class members' employment by Defendants.

54. During the relevant time period set forth herein, Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the IWC Wage Order.

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1 55. During the relevant time period set forth herein, the applicable IWC Wage Order
2 and Labor Code section 512(a) provide that an employer may not require, cause or permit an
3 employee to work for a work period of more than five (5) hours per day without providing the
4 employee with a meal period of not less than thirty (30) minutes, except that if the total work
5 period per day of the employee is no more than six (6) hours, the meal period may be waived
6 by mutual consent of both the employer and employee.

7 56. During the relevant time period set forth herein, the applicable IWC Wage Order
8 and Labor Code section 512(a) further provide that an employer may not require, cause, or
9 permit an employee to work for a work period of more than ten (10) hours per day without
10 providing the employee with a second uninterrupted meal period of not less than thirty (30)
11 minutes, except that if the total hours worked is no more than twelve (12) hours, the second
12 meal period may be waived by mutual consent of the employer and the employee only if the
13 first meal period was not waived.

14 57. During the relevant time period set forth herein, Plaintiffs and the other class
15 members who were scheduled to work for a period of time no longer than six (6) hours, and
16 who did not waive their legally-mandated meal periods by mutual consent, were required to
17 work for periods longer than five (5) hours without an uninterrupted meal period of not less
18 than thirty (30) minutes and/or without a rest period.

19 58. During the relevant time period set forth herein, the class members who were
20 scheduled to work for a period of time no longer than twelve (12) hours, and who did not
21 waive their legally mandated meal periods by mutual consent, were required to work for
22 periods longer than ten (10) hours without an uninterrupted meal period of not less than thirty
23 (30) minutes and/or without a rest period.

24 59. During the relevant time period set forth herein, Plaintiffs and the other class
25 members who were scheduled to work for a period of time in excess of six (6) hours were
26 required to work for periods longer than five (5) hours without an uninterrupted meal period
27 of not less than thirty (30) minutes and/or without a rest period.

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60. During the relevant time period set forth herein, the class members who were scheduled to work for a period of time in excess of twelve (12) hours were required to work for periods longer than ten (10) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

61. During the relevant time period set forth herein, Defendants intentionally and willfully required Plaintiffs and the other class members to work during meal periods and failed to compensate Plaintiffs and the other class members the full meal period premium for work performed during meal periods.

62. During the relevant time period set forth herein, Defendants failed to pay Plaintiffs and the other class members the full meal period premium due pursuant to Labor Code section 226.7.

63. Defendants' conduct violates applicable IWC Wage Order and Labor Code sections 226.7 and 512(a).

64. Pursuant to the applicable IWC Wage Order and Labor Code section 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against MOTIVATIONAL SYSTEMS, INC. and DOES 1 through 100)

65. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 64, and each and every part thereof with the same force and effect as though fully set forth herein.

66. During the relevant time period set forth herein, the applicable IWC Wage Order and Labor Code section 226.7 were applicable to Plaintiffs' and the other class members' employment by Defendants.

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1 67. During the relevant time period set forth herein, Labor Code section 226.7
2 provides that no employer shall require an employee to work during any rest period mandated
3 by an applicable order of the IWC Wage Order.

4 68. During the relevant time period set forth herein, the applicable IWC Wage Order
5 provides that “[e]very employer shall authorize and permit all employees to take rest periods,
6 which insofar as practicable shall be in the middle of each work period” and that the “rest
7 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
8 rest time per four (4) hours or major fraction thereof” unless the total daily work time is less
9 than three and one-half (3 ½) hours.

10 69. During the relevant time period set forth herein, Defendants required Plaintiffs
11 and the other class members to work four (4) or more hours without authorizing or permitting
12 a ten (10) minute rest period per each four (4) hour period worked.

13 70. During the relevant time period set forth herein, Defendants willfully required
14 Plaintiffs and the other class members to work during rest periods and failed to pay Plaintiffs
15 and the other class members the full rest period premium for work performed during rest
16 periods.

17 71. During the relevant time period set forth herein, Defendants failed to pay
18 Plaintiffs and the other class members the full rest period premium due pursuant to Labor
19 Code section 226.7.

20 72. Defendants’ conduct violates applicable IWC Wage Orders and Labor Code
21 section 226.7.

22 73. Pursuant to the applicable IWC Wage Orders and Labor Code section 226.7(b),
23 Plaintiffs and the other class members are entitled to recover from Defendants one additional
24 hour of pay at the employees’ regular hourly rate of compensation for each workday that the
25 rest period was not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 1194 and 1197)**

3 **(Against MOTIVATIONAL SYSTEMS, INC. and DOES 1 through 100)**

4 74. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
5 through 73 and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 75. During the relevant time period set forth herein, Labor Code sections 1194 and
8 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser
9 wage than the minimum so fixed, is unlawful. Moreover, during the relevant time period set
10 forth herein, Labor Code section 226.2 outlines the methods in which employees who are
11 compensated on a piece-rate basis for any work performed during a pay period are to be
12 compensated by the employer.

13 76. During the relevant time period set forth herein, Defendants failed to pay
14 minimum wages to Plaintiffs and the other class members as required, pursuant to Labor Code
15 sections 1194 and 1197. Similarly, Defendants also failed to pay Plaintiffs and the other class
16 members compensated on a piece-rate basis for any work performed during a pay period using
17 the methods outlined in Labor Code section 226.2.

18 77. Defendants' failure to pay Plaintiffs and the other class members the minimum
19 wage as required violates Labor Code sections 1194 and 1197. Pursuant to those sections,
20 Plaintiffs and other class members are entitled to recover the unpaid balance of their minimum
21 wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in
22 an amount equal to the wages unlawfully unpaid and interest thereon.

23 78. Pursuant to Labor Code section 1194.2, Plaintiffs and the other class members
24 are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
25 and interest thereon.

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1 **FIFTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 201 and 202)**

3 **(Against MOTIVATIONAL SYSTEMS, INC. and DOES 1 through 100)**

4 79. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
5 through 78, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 80. During the relevant time period set forth herein, Labor Code sections 201 and
8 202 provide that if an employer discharges an employee, the wages earned and unpaid at the
9 time of discharge are due and payable immediately, and if an employee quits his or her
10 employment, his or her wages shall become due and payable not later than seventy-two (72)
11 hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her
12 intention to quit, in which case the employee is entitled to his or her wages at the time of
13 quitting.

14 81. During the relevant time period set forth herein, Defendants intentionally and
15 willfully failed to pay Plaintiffs and the other class members who are no longer employed by
16 Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving
17 Defendants' employ.

18 82. Defendants' failure to pay Plaintiffs and the other class members who are no
19 longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours
20 of their leaving Defendants' employ, is in violation of Labor Code sections 201 and 202.

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

25 84. Plaintiffs and the other class members are entitled to recover from Defendants
26 the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum
27 as provided by Labor Code section 203.

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1 **SIXTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226(a))**

3 **(Against MOTIVATIONAL SYSTEMS, INC. and DOES 1 through 100)**

4 85. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
5 through 84, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 86. During the relevant time period set forth herein, Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate itemized
9 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
10 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
11 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders
12 of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
13 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
14 his or her social security number, (8) the name and address of the legal entity that is the
15 employer, and (9) all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee. The deductions
17 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
18 showing the month, day, and year, and a copy of the statement or a record of the deductions
19 shall be kept on file by the employer for at least three years at the place of employment or at
20 a central location within the State of California.

21 87. Defendants have intentionally and willfully failed to provide Plaintiffs and the
22 other class members with complete and accurate wage statements. The deficiencies include
23 but are not limited to: the failure to include the total number of hours worked by Plaintiffs and
24 other class members.

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

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1 89. More specifically, Plaintiffs and the other class members have been injured by
2 Defendants' intentional and willful violation of Labor Code section 226(a) because they were
3 denied both their legal right to receive, and their protected interest in receiving, accurate and
4 itemized wage statements pursuant to Labor Code section 226(a).

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

8 91. Plaintiffs and the other class members are also entitled to injunctive relief to
9 ensure compliance with this section, pursuant to Labor Code section 226(g).

10 **SEVENTH CAUSE OF ACTION**

11 **(Violation of California Labor Code §§ 2800 and 2802)**

12 **(Against MOTIVATIONAL SYSTEMS, INC. and DOES 1 through 100)**

13 92. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
14 through 91, and each and every part thereof with the same force and effect as though fully set
15 forth herein.

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

20 94. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the
21 other class members for all necessary business-related expenses and costs. Plaintiffs and the
22 other class members are entitled to recover from Defendants their business-related expenses and
23 costs incurred during the course and scope of their employment, plus interest accrued from the
24 date on which the employee incurred the necessary expenditures at the same rate as judgments
25 in civil actions in the State of California.

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1 **EIGHTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 2698, *et seq.*)**

3 **(Against MOTIVATIONAL SYSTEMS, INC. and DOES 1 through 100)**

4 95. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
5 through 94, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 96. The Private Attorneys General Act of 2004 (“PAGA”) expressly establishes that
8 any provision of the Labor Code which provides for a civil penalty to be assessed and collected
9 by the California Labor and Workforce Development Agency (“LWDA”), or any of its
10 departments, divisions, commissions, boards, agencies, or employees for a violation of the
11 Labor Code, may be recovered through a civil action brought by an aggrieved employee on
12 behalf of himself or herself, and other current or former employees.

13 97. On September 18, 2023 Plaintiff Alcaraz provided written notice to the LWDA
14 and Defendants of the specific provisions of the Labor Code she contends were violated and
15 the theories supporting her contentions. Attached hereto as **Exhibit 1** and incorporated by
16 reference is a copy of the September 18, 2023 written notice to the LWDA. Plaintiff Alcaraz
17 believes that on or about November 22, 2023, the sixty-five (65) day notice period will expire,
18 and the LWDA will not take any action to investigate or prosecute this matter. Thus, Plaintiff
19 Alcaraz exhausted the statutory time period to bring this action.

20 98. Plaintiff Alcaraz and the other hourly-paid or non-exempt employees are
21 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are of all current
22 and former hourly-paid or non-exempt employees of Defendants within the State of California
23 at any time during the period from September 18, 2022, through Judgment, and one or more
24 of the alleged violations was committed against them.

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1 **Failure to Pay Minimum and Overtime Wages**

2 99. At all times relevant herein, Defendants were required to compensate their non-
3 exempt employees minimum wages for all hours worked and overtime wages for all hours
4 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
5 mandate of Labor Code sections 510, 1194, 1197, and 1198.

6 100. As a policy and practice, Defendants failed to compensate Plaintiff Alcaraz and
7 the other aggrieved current and former employees for all hours worked, resulting in a failure
8 to pay all minimum wages and overtime wages, where applicable. Similarly, Defendants also
9 underpaid the overtime wages owed to Plaintiff Alcaraz and the other aggrieved employees
10 by failing to factor non-discretionary bonuses into their regular rate of pay for purposes of
11 overtime compensation.

12 **Failure to Provide Meal Periods and Rest Breaks**

13 101. In accordance with the mandates of Labor Code sections 226.7 and 512,
14 Defendants were required to authorize and permit their non-exempt employees to take a 10-
15 minute rest break for every four (4) hours worked or major fraction thereof and were further
16 required to provide their non-exempt employees with a 30-minute meal period for every five
17 (5) hours worked.

18 102. As a policy and practice, Defendants failed to provide Plaintiff Alcaraz and the
19 other aggrieved current and former employees with legally mandated meal periods and rest
20 breaks and failed to pay proper compensation for this failure.

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

22 103. At all times relevant herein, Defendants were required to pay their employees
23 within a specified time period pursuant to the mandate of Labor Code section 204.

24 104. As a policy and practice, Defendants failed to pay Plaintiff Alcaraz and the other
25 aggrieved current and former employees all wages due and owing them within the required
26 time period.

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1 **Failure to Timely Pay Wages Upon Termination**

2 105. At all times relevant herein, Defendants were required to pay their employees
3 all wages owed in a timely fashion at the end of employment pursuant to Labor Code sections
4 201 to 204.

5 106. As a result of Defendants' Labor Code violations alleged above, Defendants
6 failed to pay Plaintiff Alcaraz and the other aggrieved former employees their final wages
7 pursuant to Labor Code sections 201 to 204 and accordingly owe waiting time penalties
8 pursuant to Labor Code section 203.

9 **Failure to Provide Complete and Accurate Wage Statements**

10 107. At all times relevant herein, Defendants were required to keep accurate records
11 regarding their California employees pursuant to the mandate of Labor Code sections 226,
12 1174, and 1776.

13 108. As a result of Defendants' various Labor Code violations, Defendants failed to
14 keep accurate records regarding Plaintiff Alcaraz and the other aggrieved current and former
15 employees. For example, Defendants failed in their affirmative obligation to keep accurate
16 records regarding Plaintiff Alcaraz and the other aggrieved current and former employees'
17 gross wages earned, total hours worked, all deductions, net wages earned, and all applicable
18 hourly rates and the number of hours worked at each hourly rate.

19 **Failure to Reimburse Business Expenses**

20 109. At all times relevant herein, Defendants were required to reimburse its
21 employees for any and all necessary expenditures or losses incurred by the employees in direct
22 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code
23 sections 2800 and 2802.

24 110. As a policy and practice, Defendants failed to reimburse Plaintiff Alcaraz and
25 the other aggrieved current and former employees for all business expenses incurred and
26 owing them within the required time period.

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Penalties

111. Pursuant to Labor Code section 2699, Plaintiff Alcaraz, individually, and on behalf of the other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs, including but not limited to:

- a. Penalties under Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under Code of Regulations Title 8 section 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- d. Penalties under Labor Code section 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;
- e. Any and all additional penalties as provided by the Labor Code and/or other statutes; and
- f. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194, and 2699, and any other applicable statute.

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1 **NINTH CAUSE OF ACTION**

2 **(Violation of California Business & Professions Code §§ 17200, *et seq.*)**

3 **(Against MOTIVATIONAL SYSTEMS, INC. and DOES 1 through 100)**

4 112. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
5 through 111, and each and every part thereof with the same force and effect as though fully
6 set forth herein.

7 113. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
8 unlawful and harmful to Plaintiffs, the other class members, to the general public, and
9 Defendants' competitors. Accordingly, Plaintiffs seek to enforce important rights affecting
10 the public interest within the meaning of Code of Civil Procedure section 1021.5.

11 114. Defendants' activities as alleged herein are violations of the law, and constitute
12 unlawful business acts and practices in violation of Business & Professions Code section
13 17200, *et seq.*

14 115. A violation of Business & Professions Code section 17200, *et seq.* may be
15 predicated on the violation of any state or federal law. In this instant case, Defendants' policy
16 and practice of requiring Plaintiffs and the other class members work overtime hours without
17 paying them proper compensation violate Labor Code sections 510 and 1198. Defendants'
18 policy and practice of requiring Plaintiffs and the other class members, to work through their
19 meal and rest periods without paying them proper compensation violate Labor Code sections
20 226.7 and 512(a). Moreover, Defendants' policy and practice of failing to timely pay wages
21 to Plaintiffs and the other class members violate Labor Code sections 201 and 202. Defendants
22 also violated Labor Code sections 226(a), 510, 1194, 1197, 2800, and 2802.

23 116. As a result of the herein described violations of the law, Defendants unlawfully
24 gained an unfair advantage over other businesses.

25 117. Plaintiffs and the other class members have been personally injured by
26 Defendants' unlawful business acts and practices as alleged herein, including but not
27 necessarily limited to the loss of money and/or property.

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118. Pursuant to Business & Professions Code section 17200, *et seq.*, Plaintiffs and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

DEMAND FOR JURY TRIAL

Plaintiffs, individually, and on behalf of other members of the general public similarly situated, request a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other members of the general public similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as representatives of the Class;
3. That counsel for Plaintiffs be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current contact information (address, e-mail, and telephone numbers) of all class members.

As to the First Cause of Action

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

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

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

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8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Labor Code section 1194; and

9. For such other and further relief as the court may deem just and proper.

As to the Second Cause of Action

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

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

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

13. For premium wages pursuant to Labor Code section 226.7(b);

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

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

16. For such other and further relief as the court may deem just and proper.

As to the Third Cause of Action

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

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

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

20. For premium wages pursuant to Labor Code section 226.7(b);

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

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiffs and the other class members;

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

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

26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Labor Code section 1194(a);

27. For liquidated damages pursuant to Labor Code section 1194.2; and

28. For such other and further relief as the court may deem just and proper.

As to the Fifth Cause of Action

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

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

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

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

33. For such other and further relief as the court may deem just and proper.

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1 **As to the Sixth Cause of Action**

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

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

7 36. For statutory penalties pursuant to Labor Code section 226(e);

8 37. For injunctive relief to ensure compliance with this section, pursuant to Labor
9 Code section 226(g); and

10 38. For such other and further relief as the court may deem just and proper.

11 **As to the Seventh Cause of Action**

12 39. That the Court declare, adjudge, and decree that Defendants violated Labor Code
13 sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and the other class members
14 for all necessary business-related expenses as required by Labor Code sections 2800 and 2802;

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

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

17 42. For punitive damages and/or exemplary damages according to proof at trial;

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

19 44. For such other and further relief as the court may deem just and proper.

20 **As to the Eighth Cause of Action**

21 45. That the Court declare, adjudge, and decree that Defendants violated Labor Code
22 sections 2698, *et seq.*, the PAGA, for civil penalties pursuant to Defendants' violations of
23 Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.2, 226.3, 226.7, 229, 510,
24 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802;

25 46. Upon this Cause of Action, for costs and attorneys' fees pursuant to Labor Code
26 sections 210, 1194, and 2699, and any other applicable statute; and

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

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As to the Ninth Cause of Action

48. That the Court declare, adjudge, and decree that Defendants violated Business & Professions Code section 17200, *et seq.* by failing to provide Plaintiffs and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiffs and the other class members, failing to pay at least minimum wages to Plaintiffs and the other class members, failing to pay Plaintiffs' and the other class members' wages timely as required by Labor Code sections 201 and 202.

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

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

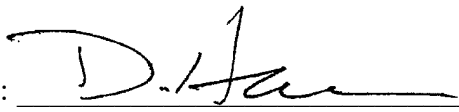
51. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Code of Civil Procedure section 1021.5;

52. For injunctive relief to ensure compliance with this section, pursuant to Business & Professions Code section 17200, *et seq.*; and

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

Dated: October 16, 2023

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Jason Rothman
Attorneys for Plaintiffs

EXHIBIT A

September 18, 2023

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: Motivational Systems, Inc.

Dear Representative:

We have been retained to represent Larissa Alcaraz against Motivational Systems, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, for violations of California wage-and-hour laws (collectively referred to as "MOTIVATIONAL SYSTEMS").

Ms. Alcaraz is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Alcaraz may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

MOTIVATIONAL SYSTEMS is a California corporation headquartered at 2200 Cleveland Avenue, National City, California 91950.

MOTIVATIONAL SYSTEMS employed Ms. Alcaraz as an hourly-paid, non-exempt Sign Holder during the applicable time period in the State of California. MOTIVATIONAL SYSTEMS directly controlled the wages, hours, and/or working conditions of Ms. Alcaraz and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Ms. Alcaraz may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees of MOTIVATIONAL SYSTEMS within the State of California.

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MOTIVATIONAL SYSTEMS failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum wages and overtime wages and for noncompliant meal and rest breaks, failed to issue compliant wage statements, failed to maintain all required records, and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751, an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Alcaraz has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at MOTIVATIONAL SYSTEMS, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

MOTIVATIONAL SYSTEMS has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.2, 226.3, 226.7, 229, 510, 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission ("IWC") Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than 8 hours in one day and/or over 40 hours in one week without paying the premium overtime rates.

During the relevant time period, Ms. Alcaraz and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. MOTIVATIONAL SYSTEMS only paid Ms. Alcaraz and other aggrieved employees for their shift schedule and not the time they were under its control. In other words, MOTIVATIONAL SYSTEMS failed to pay Ms. Alcaraz and other aggrieved employees for receiving instructions for daily tasks, picking up and returning work equipment, driving to shift locations, driving back to headquarters, waiting and other nonproductive time, and providing status updates. MOTIVATIONAL SYSTEMS also did not compensate Ms. Alcaraz and other aggrieved employees for booting up and down their computers, assisting individuals off-the-clock, and responding to emails and calls regarding work-related matters. MOTIVATIONAL SYSTEMS also required Ms. Alcaraz and other aggrieved employees to manually fill out their time sheets and return them to its headquarters but did not compensate them for this time either. Finally, despite paying Ms. Alcaraz and other aggrieved employees bonuses that were non-discretionary in nature and reimbursement for commute costs, MOTIVATIONAL SYSTEMS did not factor these payments into their regular rate of pay for overtime compensation purposes. Thus, Ms. Alcaraz and other aggrieved employees were entitled to receive certain wages for minimum and overtime compensation, but they were not paid for all hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee 1 additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided.

During the relevant time period, MOTIVATIONAL SYSTEMS frequently prevented employees from receiving compliant meal and rest breaks. Firstly, MOTIVATIONAL SYSTEMS expected Ms. Alcaraz and other aggrieved employees to remain on call if potential issues arose, thereby depriving them of duty-free meal breaks. Secondly, MOTIVATIONAL SYSTEMS' meal break policies failed to authorize and permit employees to take second meal breaks for working shifts exceeding 10 hours in length. In fact, even when Ms. Alcaraz and other aggrieved employees worked shifts exceeding 6 hours in length, MOTIVATIONAL SYSTEMS did not permit them to take their meal breaks. Thirdly, MOTIVATIONAL SYSTEMS did not have a policy or practice of providing employees with compliant and duty-free rest breaks nor did it try to encourage employees to take their rest breaks. Finally, despite these facts, MOTIVATIONAL SYSTEMS failed to compensate Ms. Alcaraz and other aggrieved employees all the premium wages they were owed.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced. But the wages shall not continue for more than 30 days.

During the relevant time period, MOTIVATIONAL SYSTEMS failed to pay Ms. Alcaraz and other aggrieved employees all wages, including as a result of uncompensated off-the-clock work, unpaid overtime wages, and unpaid premium wages for failing to provide legally mandated meal and rest breaks owed within any time period specified by California Labor Code sections 201 through 203. Therefore, MOTIVATIONAL SYSTEMS is liable under California Labor Code section 203.

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California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. California Labor Code section 204 also requires that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. In addition, California Labor Code section 204 requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

During the relevant time period, MOTIVATIONAL SYSTEMS failed to pay Ms. Alcaraz and other aggrieved employees all wages due to them, including as a result of uncompensated off-the-clock work, unpaid overtime wages, and unpaid premium wages owed for failing to provide legally mandated meal and rest breaks owed within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees.

During the relevant time period, MOTIVATIONAL SYSTEMS did not provide Ms. Alcaraz and other aggrieved employees with complete and accurate itemized wage statements. The wage statements Ms. Alcaraz and other aggrieved employees received from MOTIVATIONAL SYSTEMS were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include: (1) gross wages earned by Ms. Alcaraz and other aggrieved employees; (2) total hours worked by Ms. Alcaraz and other aggrieved employees; (3) all deductions for Ms. Alcaraz and other aggrieved employees; (4) net wages earned by Ms. Alcaraz and other aggrieved employees; and (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Ms. Alcaraz and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the IWC Wage Order shall be subject to a civil penalty. The civil penalty is as follows: (1) for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) wages recovered pursuant to this section shall be paid to the affected employee.

During the relevant time period, Ms. Alcaraz and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep at a central location in the state or at the plants or establishments at which employees are employed payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than 3 years.

During the relevant time period, MOTIVATIONAL SYSTEMS failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Ms. Alcaraz and other aggrieved employees.

California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

During the relevant time period, MOTIVATIONAL SYSTEMS did not provide Ms. Alcaraz and other aggrieved employees with the minimum wages to which they were entitled despite having constructive and actual knowledge of off-the-clock work, including pre-shift and post-shift work and work performed during meal and rest breaks and for waiting and other nonproductive time.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

During the relevant time period, Ms. Alcaraz and other aggrieved employees incurred various necessary business-related expenses that were not fully reimbursed by MOTIVATIONAL SYSTEMS. This included using their personal cell phones to communicate with supervisors about work-related matters and using their personal vehicles to travel to shift locations for which they were not reimbursed.

We believe that Ms. Alcaraz and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.2, 226.3, 226.7, 229, 510, 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802, and the IWC Wage Orders.

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California Labor Code section 2699.3 requires that a claimant must send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Alcaraz will seek these penalties on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of MOTIVATIONAL SYSTEMS within 1 year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a stylized flourish at the end.

Douglas Han, Esq.

CC: (By Email Only):

Alison Alpert

alison.alpert@bbklaw.com

Cecilia L. Martin

cecilia.martin@bbklaw.com

Minney Thind

minney.thind@bbklaw.com

Counsel for MOTIVATIONAL SYSTEMS, INC.

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103.

On October 16, 2023, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Alison Alpert (alison.alpert@bbklaw.com)
Cecilia L. Martin (cecilia.martin@bbklaw.com)
Megan Dell (megan.dell@bbklaw.com)
BEST BEST & KRIEGER LLP
655 West Broadway
San Diego, California 92101

Attorney(s) for Defendant Motivational Systems, Inc.

[X] BY U.S. MAIL

As follows: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 16, 2023, at Pasadena, California.



Heather Donnelly

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103.

On October 18, 2023, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Alcaraz adv. Motivational Systems, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-982223-23**
Court Case No.: 37-2022-00045734-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

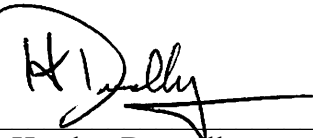
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 18, 2023, at Pasadena, California.



Heather Donnelly