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

15 **Amed Mullins**, individually and on behalf of
16 all similarly situated individuals,

17 Plaintiff,

18 vs.

19 **Harmonium, Inc.**, a California Corporation;
20 **Rosa Ana Lozada**, an individual; and **Does 1-**
21 **10**, inclusive;

22 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/18/2023 at 11:23:40 AM
Clerk of the Superior Court
By Christopher Metoyer, Deputy Clerk

CASE NO. 37-2023-00040472-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

- 1) Failure to Pay Minimum Wages;
- 2) Failure to Pay Overtime Wages;
- 3) Failure to Provide Meal Periods;
- 4) Failure to Provide Rest Periods;
- 5) Failure to Provide and Maintain Complete and Accurate Wage Statements;
- 6) Failure to Provide Wages When Due;
- 7) Failure to Reimburse Necessary Business Expenses;
- 8) PAGA Penalties; and
- 9) Violation of California Business & Professions Code §§ 17200, et seq.

Jury Trial Requested

1 Plaintiff hereby brings this action on behalf of herself and all other similarly situated current and
2 former employees, by and through her counsel of record, alleges as follows:

3 **PARTIES**

4 1. At all relevant times for this Complaint, Plaintiff **Amed Mullins**, (“Plaintiff”) has been a
5 resident of San Diego, California. Plaintiff was employed as an hourly, non-exempt employee of Defend-
6 ants from in or around May 3, 2023 to on or around August 28, 2023. Plaintiff was subject to the policies
7 and practices described in this complaint at all times during her employment at Defendants.

8 2. Defendant **Harmonium, Inc.** (“Harmonium, Inc.”), is a youth development agency spe-
9 cializing in maintaining different before and after school programs. On information and belief, employs at
10 least 100 hourly, non-exempt employees. Upon information and belief, Harmonium, Inc. operates a facility
11 in California in San Diego, California.

12 3. Defendant **Rosa Ana Lozada** (“Lozada” or hereinafter “Defendants” with Defendant
13 Harmonium, Inc.) is the Chief Executive Officer at Harmonium, Inc. Upon information and belief, she is
14 a resident of the County of San Diego in the State of California. Since Ms. Lozada is a managing agent,
15 director, and/or officer of Defendants and because she caused or directed the acts described herein, she is
16 personally liable for the Labor Code violations set forth in this Complaint under Labor Code section 558.1.

17 4. Plaintiff is not currently aware of the names and true identities of defendants Does 1-10.
18 Plaintiff reserves the right to amend this complaint to allege their true names and capacities when this
19 information is available. Each Doe defendant is responsible for the damages alleged pursuant to each of
20 the causes of action asserted, either through its own conduct, or vicariously through the conduct of others.
21 All further references in this complaint to any of the named Defendants includes the fictitiously named
22 defendants.

23 5. At all times alleged herein, each Defendant was an agent, servant, joint employer, em-
24 ployee, partner, and/or joint venture of every other Defendant and was acting within the scope of the
25 Defendants’ relationship. Moreover, the conduct of every Defendant was ratified by each other Defend-
26 ant.

27 **VENUE AND JURISDICTION**

28 6. The court has jurisdiction over all causes of action in this complaint pursuant to Article VI,

§ 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely on California statutes and law, including the Labor Code and the Business & Professions Code. Because putative class members were employed by Defendants, the policies and practices complained of herein were implemented in San Diego, and Defendants transact business within San Diego County, Defendant is within the jurisdiction of the court for service of process. Moreover, Business & Professions Code § 17204 provides that any person acting on their own behalf may bring an action in any court of competent jurisdiction.

7. Venue as to Defendant is proper in this Superior Court pursuant to California Code of Civil Procedure § 395. Defendants transact business and/or have offices in this county, employ putative class members in this County, and the acts and omissions alleged herein took place in this county. Moreover, this action is brought on behalf of the State of California as a private attorney general and has jurisdiction in this venue.

CLASS ACTION ALLEGATIONS

8. At all times relevant to this Complaint, Defendants required non-exempt employees to continue working during their meal or rest periods. Upon information and believe, Class Members, including Plaintiff, were required to interrupt their meal and/or rest periods oversee and supervise the students and children in the Defendants' before and/or after school programs, answer phone calls, otherwise interrupt or cut short their meal and/or rest periods, or remain on duty and under Defendants' control during their meal and/or rest periods to perform other tasks at Defendants' directions due to Defendants' policies and practices, including their scheduling and staffing practices and policies. Accordingly, Defendants failed to pay Plaintiff or Class Members for all hours worked where they were under the control of Defendants.

9. Upon information and belief, Defendants required Plaintiff and Class Members to work split shifts, whereby their days were interrupted by non-paid non-working periods established by Defendants. However, upon information and belief, Defendants failed to pay the premium pay as required by law.

10. At all times relevant to this Complaint, Defendants employed Plaintiff or Class Members to oversee childcare programs before and/or after school. However, Plaintiff or Class Members were not paid for all hours worked, including 1.5-times her hourly rate for her work performed over 8 hours in a day, and/or 40 hours in a week. Defendants were aware of these violations as they willfully failed to pay Plaintiff or Class Members.

11. As a matter of uniform and systemic policy, Defendants failed to authorize and/or permit non-exempt employees to take bona fide meal and rest breaks pursuant to Labor Code § 226.7.

12. Defendants have consistently denied their non-exempt employees the opportunities to take compliant 30-minute meal periods in accordance with California's Labor Code. Upon information and believe, Class Members, including Plaintiff, were required to interrupt their meal periods oversee and supervise the students and children in the Defendants' before and/or after school programs, answer phone calls, otherwise interrupt or cut short their meal periods, or remain on duty and under Defendants' control during their meal periods to perform other tasks at Defendants' directions due to Defendants' policies and practices, including their scheduling and staffing practices and policies.

13. As a matter of uniform and systemic policy, Defendants requires non-exempt employees to remain on-premises and under Defendants' control during their meal and rest periods, in part due to their dual requirements that a certain ratio of staff to children exist at all times and their failure to insure sufficient staffing to meet these ratios. These policies prohibited employees from using meal and rest periods in the manner of their choosing, free from their employer's dominion and control. Accordingly, Defendants failed to authorize and permit compliant meal and rest periods as required by law.

14. Furthermore, as a matter of uniform and systemic policy, Defendants authorizes non-exempt employees working a shift in excess of 6 hours to receive only one (1) ten (10) minute break rather than the two they are entitled to under law. Accordingly, Defendants failed to authorize and permit compliant second rest periods as required by law.

15. In failing to authorize and/or permit meal and rest periods, Defendants have also implemented a uniform policy of denying compensation in lieu of meal and rest periods to its non-exempt employees, notwithstanding its actual knowledge that such employees were uniformly denied compliant meal and rest periods.

16. As a matter of uniform and systemic policy, Defendants required non-exempt employees to utilize their personal cell phones for work-related purposes, including answering texts and calls from their supervisors while at work or on a break, being assigned tasks, and general administrative matters. Defendants further failed to compensate their non-exempt employees for reasonable costs associated with utilizing their personal cell phones for work-related purposes.

17. As a matter of uniform and systemic policy, Defendants required non-exempt employees to purchase work-related equipment, including school supplies, necessary for performance of their work duties without reimbursing those employees for the costs associated with their equipment purchases.

18. As a matter of uniform and systemic policy, Defendants required non-exempt employees to use their personal vehicles for work-related purposes without receiving reimbursements for gas or mileage.

19. Plaintiff therefore brings this action on behalf of herself and as a class action on behalf of the following defined Class:

Non-Exempt Employee Class:

All persons who worked at least one 3.5-hour shift as a non-exempt employee in the State of California from the period four years prior to the filing of the Action and the date of trial ("Class").

20. Common methods of proof exist for determining these issues on a class-wide basis, including but not limited to, Defendants' employment records, payroll records, timesheets, policies, and disciplinary records.

21. **Numerosity.** Plaintiff is informed and believes that, during the class period, at least 100 Class Members have been employed as non-exempt employees by Defendants within the state of California. The number of Class Members is sufficiently numerous such that joinder of all members is impossible or impracticable.

22. **Typicality.** Plaintiff's claims are typical of all Class Members. Plaintiff, like all other Class Members, was subjected to the policies and practices set forth above. Plaintiff's job duties were typical of Class Members in all relevant respects.

23. **Adequacy.** There are no material conflicts between the claims of the representative Plaintiff and Class Members that would make class certification inappropriate. Plaintiff understands her obligation to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is invested in redressing Defendants' illegal practices on behalf of all Class Members. Moreover, Plaintiff has retained competent counsel experienced in both class action and employment litigation. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement, and

will vigorously assert the claims of all Class Members. Plaintiff have incurred, and will continue to incur, costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

24. **Existence and Predominance of Common Issues.** Common questions of law and fact exist as to all Class Members and predominate over issues affecting individual Class Members, including, but not limited to:

- a. Whether Defendants had a common policy and/or practice of depriving Plaintiff and Class Members of required minimum and overtime wages;
- b. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and Class Members required minimum and overtime wages;
- c. Whether Defendants had a common policy and/or practice of depriving Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;
- d. Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;
- e. Whether Defendants have a common policy and/or practice of failing to maintain accurate payroll records in the State of California;
- f. Whether Defendants unlawfully and/or willfully failed to maintain accurate payroll records in the State of California;
- g. Whether Defendants have a common policy and/or practice of failing to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;
- h. Whether Defendants unlawfully and/or willfully failed to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;
- i. Whether Defendants have a common policy and/or practice of failing to reimburse Plaintiff and Class Members for reasonable business expenses;
- j. Whether Defendants unlawfully and/or willfully failed to reimburse Plaintiff and Class Members for reasonable business expenses;

- 1 k. Whether Defendants has a policy and/or practice of failing to pay Plaintiff and Class
2 Members final wages owed upon termination;
- 3 l. Whether Defendants unlawfully and/or willfully failed to promptly pay compensa-
4 tion due to Plaintiff and Class Members upon termination of employment in viola-
5 tion of Labor Code §§ 201, 202, and 203;
- 6 m. Whether Plaintiff and Class Members sustained damages as a result of any of the
7 aforementioned violations, and, if so, the proper measure of those damages, includ-
8 ing interest, penalties, costs, attorneys' fees, and equitable relief; and
- 9 n. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code
10 § 17200, et seq., by violating the above provisions of law.

11 25. **Superiority.** A class action is superior to other available means for the fair and efficient
12 adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are
13 small compared to the burden and expense of individual prosecution of the complex and expensive litiga-
14 tion necessary to address Defendants' conduct. Even if Class Members themselves could afford individual
15 litigation, the court system would be overwhelmed by individual lawsuits if all Class Members sought re-
16 dress. In addition, individualized litigation increases the delay and expense to all parties and to the court
17 system resulting from the complex legal and factual issues of this case. Individualized litigation also pre-
18 sents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents
19 far fewer management difficulties; it allows the hearing of claims which might otherwise go unaddressed
20 because of the relative expense of bringing individual lawsuits, and it provides the benefits of single adju-
21 dication, economies of scale, and comprehensive supervision by a single court. Plaintiff contemplates
22 providing individual notice to members of the class defined above as identified through Defendants' rec-
23 ords.

24 **CAUSES OF ACTION**

25 **FIRST CAUSE OF ACTION**

26 ***California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198***

27 ***Failure to Pay Minimum Wages for All Hours Worked***

28 **(Plaintiff and Class Against Defendants)**

1 26. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
2 paragraphs as if fully set forth herein.

3 27. California law requires employers to compensate employees for all time that an employee
4 is “suffered or permitted to work,” which includes all time “when any employer ‘directs, commands or
5 restrains’ an employee.” See, e.g., *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 583 (2000), as modified
6 (May 10, 2000); see also Code Regs. tit. 8, § 11070 (“‘Hours worked’ means the time during which an
7 employee is subject to the control of an employer and includes all the time the employee is suffered or
8 permitted to work, whether or not required to do so.”).

9 28. Defendants consistently and as a matter of common policy and practice failed to pay Class
10 Members at least minimum wages for all hours worked. Additionally, Defendants’ time policies were not
11 fair and neutral on their face because Defendants’ written policies subjected employees to discipline for
12 showing up late to the start of their shift or after a break but not for arriving early, thus penalizing employ-
13 ees when rounding worked to their favor but not when it worked against them.

14 29. Furthermore, Defendants required its non-exempt employees to work through their legally
15 mandated meal and/or rest period or remain on duty and under Defendants’ control during their meal
16 and/or rest periods to perform other tasks at Defendants’ directions due to Defendants’ policies and prac-
17 tices, including their scheduling and staffing practices and policies. Accordingly, Defendants failed to pay
18 Plaintiff or Class Members for all hours worked where they were under the control of Defendants.

19
20 30. As a result of Defendants’ failure and refusal to comply with California law, Plaintiff and
21 Class Members are entitled to recover actual and liquidated damages for the unpaid time, plus injunctive
22 relief and reasonable attorney’s fees and costs. Lab. Code §§ 1194, 1197.1.

23 **SECOND CAUSE OF ACTION**

24 ***California Labor Code §§ 510 and 1198***

25 ***Unpaid Overtime***

26 **(Plaintiff and Class Against Defendants)**

27 31. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth
28 herein.

32. California Labor Code §§ 510 and 1198 provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

33. Plaintiff and Class Members who work more than eight hours in a day or more than forty hours in a workweek are to be paid at the rate of time and one-half (1½) for all hours worked in excess of eight hours in a day or more than forty hours in a workweek. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including commissions, non-discretionary bonuses and incentive pay. *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 573 (2018), as modified (Apr. 25, 2018).

34. Throughout the Class Period, Plaintiff and other Class Members were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of eight hours on the seventh consecutive day of work in a workweek, and in excess of forty hours in a week.

35. Defendants knew or should have known that Plaintiff and Class Members did not receive overtime compensation. Because Plaintiff and Class Members sometimes worked shifts of more than eight hours a day or forty hours a week, they should have been adequately compensated at their appropriate overtime rate of pay. Accordingly, Defendants' failure to pay overtime compensation resulted in Plaintiff and Class Members being deprived of earned overtime wages.

36. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

California Labor Code §§ 226.7, 512(a), and 1198

Meal Period Violations

(Plaintiff and Class Against Defendants)

37. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth herein.

38. At all times relevant to this complaint, Defendants knew they were obligated to provide legally-compliant meal breaks to its non-exempt employees pursuant to Labor Code §§ 512 and 226.7.

1 Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work
2 period of more than five hours per day without providing the employee with a meal period of not less than
3 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day
4 without providing the employee with a second meal period of not less than 30 minutes.”

5 39. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an em-
6 ployee to work during any meal period mandated by an applicable order of the IWC. “An off-duty meal
7 period, therefore, is one in which the employee is relieved of all duty during the 30-minute meal period . .
8 .an employer’s obligation is to provide an off-duty meal period: an uninterrupted 30-minute period during
9 which the employee is relieved of all duty.” *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035
10 (2012).

11 40. Defendants’ policies and practices served to deprive the Class of a full 30-minute break
12 period free of employer control or relieved of all duties. Upon information and belief, employees were
13 required to skip breaks, take breaks after the fifth hour of work, work through them or remain under De-
14 fendant’s control during breaks due to Defendants’ policies and practices.

15 41. Accordingly, Plaintiff and Class Members were uniformly denied meal periods as a result
16 of Defendants’ formal policies and practices. By failing to consistently provide uninterrupted, off-duty 30-
17 minute meal periods, Defendants violated the Labor Code as to Plaintiff and Class Members.

18 42. Pursuant to Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover
19 from Defendants an additional hour of pay at their regular rates of pay for each shift in which a required
20 meal period was not provided.

21 **FOURTH CAUSE OF ACTION**

22 ***Labor Code §§ 226.7 and 1198***

23 ***Failure to Provide Rest Periods or Premium Pay in Lieu Thereof***

24 **(Plaintiff and Class Against Defendants)**

25 43. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth
26 herein.

27 44. At all times relevant to this complaint, Defendants knew they were obligated to provide
28 compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

1 45. Labor Code § 226.7 provides:

2 (a) No employer shall require any employee to work during any meal or rest
3 period mandated by an applicable order of the Industrial Welfare Commission.

4 (b) If any employer fails to provide an employee a meal period or rest period
5 in accordance with an applicable order of the Industrial Welfare Commission, the
6 employer shall pay the employee one additional hour of pay at the employee's reg-
7 ular rate of compensation for each work day that the meal or rest period is not
8 provided.

9 46. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee
10 to work during any rest or meal period mandated by an applicable order of the IWC, including Wage Order
11 No. 1. Employers must authorize and permit employees to be relieved of all duty during their rest and meal
12 periods: "A rest period, in short, must be a period of rest."¹ *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d
13 823, 834 (2016).

14 47. Employees must also be free to leave the employer's premises during their rest period. *See*
15 *id.* at 270 ("In the context of a 10-minute break that employers must provide during the work period, a
16 broad and intrusive degree of control exists when an employer requires employees to remain on call and
17 respond during breaks. An employee on call cannot take a brief walk—five minutes out, five minutes
18 back—if at the farthest extent of the walk he or she is not in a position to respond. Employees similarly
19 cannot use their 10 minutes to take care of other personal matters that require truly uninterrupted time.");
20 *see also* Department of Industrial Relations, "Rest Periods," *available at*
21 https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm ("Q. Can my employer require that I stay on the work
22 premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the
23 rest period requirement itself.").

24 48. Defendants failed to authorize or permit all required compliant paid rest periods for shifts
25 between 3.5 and ten hours, or subjected employees to interrupted or shortened rest periods. Defendants

26 ¹ Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; *see also* Depart-
27 ment of Industrial Relations, "Rest Periods/Lactation Accommodations," *available at*
28 https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm ("Q. Can my employer require that I stay on the work
 premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the
 rest period requirement itself.")

1 further failed to authorize or permit a compliant second and third rest period for shifts in excess of 6 and
2 10 hours, respectively.

3 49. Pursuant to Wage Order No. 4 and Labor Code § 226.7(b), Plaintiff and Class Members
4 are entitled to recover from Defendants an additional hour of pay at their regular rates of pay for each shift
5 that a compliant rest period was not provided. Defendants were aware that their actions were a violation
6 of applicable law but consistently refused to pay premium pay as required by law.

7 **FIFTH CAUSE OF ACTION**

8 ***Labor Code §§ 226. 226.3, and 1174***

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

10 **(Plaintiff and Class Against Defendants)**

11 50. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
12 paragraphs as if fully set forth herein.

13 51. Labor Code § 226 requires employers to furnish employees with an accurate, itemized
14 statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the
15 employee (for hourly-paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5) the in-
16 clusive dates of the period for which the employee is paid; (6) the name of the employee and the last four
17 digits of her or her social security number; (7) the name and address of the legal entity that is the employer;
18 and (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours
19 worked at each hourly rate by the employee.

20 52. At all times relevant to this complaint, Defendants' failure to pay premium wages for
21 missed meal and/or rest periods further ensured that Class Members' wage statements inaccurately re-
22 flected gross and net wages earned. Defendants' failure to compensate all hours worked and/or pay all
23 required overtime rates further left the wage statements they provided to employees to be inaccurate.

24 53. Defendants have also failed to keep accurate payroll records for Plaintiff and Class Mem-
25 bers in accordance with Labor Code § 1174. Defendants' failure to keep and maintain accurate payroll
26 records reflecting hours worked and wages earned has impeded Plaintiff and Class Members' ability to
27 calculate unpaid wages earned.

28 54. Injury. Defendants knowingly and intentionally failed to comply with Labor Code § 226,

causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly situated were injured by these failures because, among other things, they were confused about whether they were paid properly and/or they were misinformed about how much compensation was owed. These damages include, but are not limited to, costs incurred calculating the correct net wages for each pay period and the amount of employment taxes that were not paid to state and federal tax authorities.

55. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result of not being provided with an accurate itemized wage statement is entitled to recover the greater of all actual damages suffered or fifty (\$50) dollars for the initial violation and one hundred (\$100) dollars for each subsequent violation, up to \$4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others similarly situated are entitled to injunctive relief to ensure Defendant's compliance with Labor Code § 226, as well as attorney's fees and costs of suit.

SIXTH CAUSE OF ACTION

Labor Code §§ 201, 202, 203, and 204

Failure to Pay Wages When Due

(Plaintiff and Class Against Defendants)

56. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

57. Labor Code § 201 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits her or her employment, her or her wages² shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of her or her intention to quit, in which case the employee is entitled to her or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of quitting.

58. Defendants do not include definite periods of service in their contracts of employment for

² Labor Code § 200 defines "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." "Labor" is defined as "labor, work, or service . . . if the labor to be paid for is performed personally by the person demanding payment."

1 Class Members employed at their California facility. Plaintiff's contract of employment did not include a
2 definite term.

3 59. Labor Code § 203 provides:

4 If an employer willfully fails to pay, without abatement or reduction, in accordance
5 with § 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
6 who quits, the wages of the employee shall continue as a penalty from the due date
7 thereof at the same rate until paid or until an action therefor is commenced; but
8 the wages shall not continue for more than 30 days.

9 60. Labor Code § 204 provides that all wages, other than those mentioned in Section 201 and
10 202, are due and payable twice during each calendar month, on days designated in advance by the employer
11 as regular paydays.

12 61. Failure to Timely Pay Wages Due. As set forth above, Defendants failed to timely pay the
13 wages and meal and rest period premiums resulting from its deficient timekeeping and meal and rest period
14 policies.

15 62. Failure to Pay Upon Termination. Plaintiff and many Class Members have left Defend-
16 ants' employ during the Class Period. As discussed above, Defendants knowingly failed to pay Plaintiff
17 and Class Members all earned wages upon termination. Instead, Defendants willfully and intentionally
18 refused to pay the earned rest and/or meal period premiums and earned wages as alleged herein to Plaintiff
19 and Class Members in violation of Labor Code §§ 201 and 202.

20 63. Relief. Defendants' failure to pay Plaintiff and those Class Members who are no longer
21 employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two
22 (72) hours of their leaving Defendants' employment, violates Labor Code §§ 201 and 202. Plaintiff and
23 formerly employed Class Members are therefore entitled to recover from Defendants the statutory penalty
24 wages for each day they were not paid, at their regular rate of pay, up to a 30-day maximum penalty under
25 Labor Code § 203.

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1 **SEVENTH CAUSE OF ACTION**

2 ***California Labor Code § 2802***

3 ***Failure to Reimburse Necessary Business Expenses***

4 **(Plaintiff and Class Against Defendants)**

5 64. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in this
6 paragraph, all the allegations of this Complaint.

7 65. Labor Code section 2802 provides that “[a]n employer shall indemnify her or her employee
8 for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
9 of her or her duties, or of her or her obedience to the directions of the employer.” Lab. Code § 2802. The
10 purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business
11 and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App.
12 4th 1137, 1144 (2014).

13 66. Defendants required non-exempt employees to utilize their personal cell phones for work-
14 related purposes, including answering texts and calls from their supervisors while at work or on a break,
15 being assigned tasks, and general administrative matters. Defendants further failed to compensate their
16 non-exempt employees for reasonable costs associated with utilizing their personal cell phones for work-
17 related purposes.

18 67. Defendants required non-exempt employees to purchase work-related equipment, includ-
19 ing school supplies, necessary for performance of their work duties without reimbursing those employees
20 for the costs associated with their equipment purchases.

21 68. Defendants failed to reimburse a reasonable portion of the Class Members’ cellphone re-
22 lated expenses despite requiring the use of the device and/or applications that required a data plan. *See*
23 *Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (“We hold that when employees must
24 use their personal cell phones for work related calls, Labor Code section 2802 requires the employer to
25 reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes,
26 the reimbursement owed is a reasonable percentage of their cell phone bills.”). Defendant further failed
27 to reimburse Plaintiff and the Class Members for the purchase of work-related equipment.

28 69. By unlawfully failing to pay Plaintiff and Class Members, Defendants are liable for a

reasonable portion of the incurred expenses, to be determined upon trial, plus reasonable attorneys' fees and costs. Lab. Code § 2802.

EIGHTH CAUSE OF ACTION

Labor Code §§ 558, 2698, et seq.

Private Attorneys General Act ("PAGA") Penalties

(Plaintiff and Class Against Defendants)

70. Plaintiff incorporates by reference all the allegations of this Complaint as though fully set forth herein.

71. Entitlement to Penalties. Under the California Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as a private attorney general, on behalf of herself and other current or former employees as well as the general public, to recover penalties for an employer's violations of the Labor Code and IWC Wage Orders. These penalties are in addition to any other relief available under the Labor Code and are allocated seventy-five percent to the Labor and Workforce Development Agency and twenty-five percent to the affected employees.

72. These penalties may be "stacked" separately for each of Defendants' violations of the Labor Code. *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17 n.77 (C.D. Cal. June 22, 2012) ("[F]ederal courts applying California law have concluded that stacking is appropriate."); *see also O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal. June 30, 2016) ("Finally, Plaintiff ignore the potential for stacking of PAGA penalties related to wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest breaks, minimum wage and overtime, and workers' compensation.").

73. Plaintiff is an "aggrieved employee" under PAGA, as he was employed by Defendants during the applicable statutory period and suffered the Labor Code violations alleged herein. Accordingly, he seeks to recover, on behalf of herself and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA, including civil penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1182.12, , 1174, 1194, 1194.2, 1197, 1198, 1401, and 2802 and Industrial Wage Order No. 1, plus reasonable attorneys' fees and costs.

74. Representative Action. Plaintiff seeks to recover the PAGA civil penalties through a

representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims.

75. Labor Code § 2699(a), which is part of PAGA, provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves or themselves and other current or former employees pursuant to the procedures specified in § 2699(a).

76. Penalties. Labor Code § 2699(f), which is part of PAGA, provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one 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.

77. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to be paid by Defendants and allocated as required by PAGA in the following formula: (a) in an amount set forth as a civil penalty in the underlying statute; or (b) \$100 per initial violation per employee per pay period, and \$200 for each subsequent violation per employee per pay period. Plaintiff, the aggrieved employees, and the State of California are entitled to recover the maximum civil penalties allowed by law for the violations of the Labor Code and IWC Wage Order No. 4 as alleged in this Complaint.

78. Plaintiff is also entitled to recover for himself, other aggrieved employees, and the State of California, civil penalties pursuant to Labor Code § 210 (entirely independent and apart from, any other penalty provided in this article) in the amount of \$100 per employee per initial violation of the timely payment requirements of Labor Code § 240 (semimonthly payments) and \$200 per employee for each subsequent violation, plus 25% of the amount unlawfully withheld, and Labor Code § 558 in the amount \$50 per underpaid employee for each pay period for which the employee was underpaid and for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.

1 79. Procedural Requirements Met. Plaintiff electronically filed a notice of claims with the
2 LWDA contemporaneously with this Complaint and sent a copy to Defendants by certified mail. Plaintiff
3 has not received notice from the LWDA that it was exercising jurisdiction over the allegations set forth in
4 the notice. As of 65 days from date of electronic filing, all requirements for administrative exhaustion for
5 bringing these PAGA claims will have been met. Labor Code § 2699.3(a)(2).

6 **NINTH CAUSE OF ACTION**

7 ***California Business & Professions Code §§ 17200, et seq.***

8 ***Unlawful Business Practices***

9 **(Plaintiff and Class Against Defendants)**

10 80. Plaintiff repeats and incorporates by reference every allegation in this complaint as if fully
11 set forth herein.

12 81. Defendants Harmonium, Inc. and Lozada are “persons” as defined by California Business
13 & Professions Code § 17201, as they are a natural person, corporations, firms, partnerships, joint stock
14 companies, and/or associations.

15 82. Unlawful Business Practices. Defendants’ knowing violations of the Labor Code consti-
16 tutes an unlawful business practice as set forth in Business & Professions Code § 17200, et seq.

17 83. Defendants’ failure to abide by the laws discussed herein provided Defendants an unfair
18 advantage over their competitors at the expense of their workers. Instead, Defendants cuts corners in the
19 name of higher profits and at the expense of employee well-being. Defendants’ actions thereby constitute
20 an unfair, fraudulent, and/or unlawful business practice under Business & Professions Code § 17200, et
21 seq.

22 84. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to stop
23 Defendant’s willful and ongoing misconduct, and to seek restitution of the amounts Defendants acquired
24 through the unfair, unlawful, and fraudulent business practices described herein. In addition, Plaintiff
25 seeks an award of costs and attorneys’ fees pursuant to California Code of Civil Procedure § 1021.5.

26 **DEMAND FOR JURY TRIAL**

27 Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all issues
28 so triable.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff respectfully prays judgment as follows:

3 A. For an Order:

4 a. Certifying the Class;

5 b. Appointing Plaintiff as representative of the Class;

6 c. Appointing Plaintiff's counsel as Class Counsel;

7 B. For actual and liquidated damages according to proof at trial;

8 C. For statutory and civil penalties and special damages, according to proof at trial;

9 D. For pre- and post-judgment interest on monetary damages;

10 E. For preliminary and permanent injunctive relief;

11 F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law; and

12 G. For such other relief as this Court deems just and proper.

13
14 Dated: September 18, 2023

Respectfully submitted,

15 **KING & SIEGEL LLP**

16
17 By: Elliot J. Siegel
18 Elliot J. Siegel, Esq.
19 Attorneys for Plaintiffs

20 Dated: September 18, 2023

BARAHMAND LAW GROUP

21
22
23 By: /s/ Navid Barahmand
24 Navid Barahmand, Esq.
25 Attorneys for Plaintiffs
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