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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

MARIA GABRIELA GUTIERREZ
GARCIA,

Plaintiff,

vs.

KSS IMMERSION SCHOOLS, INC.; KIDS
SPEAKING SPANISH PRESCHOOLS
LLC; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: **24CV059118**

COMPLAINT FOR DAMAGES FOR:

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

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, MARIA GABRIELA GUTIERREZ GARCIA (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of ALAMEDA in this judicial district because Defendants KSS IMMERSION SCHOOLS, INC., KIDS SPEAKING SPANISH PRESCHOOLS LLC, and DOES 1 to 25, inclusive, (hereinafter collectively known as “Defendant(s)” or “KSS”), do business in the County of ALAMEDA and because Defendants’ obligations and liabilities arise therein.

Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant KSS IMMERSION SCHOOLS, INC is and was a Delaware Corporation, doing business in Alameda County, California, and which employed Plaintiff. Plaintiff is further informed and believes and thereon alleges that Defendant KIDS SPEAKING SPANISH PRESCHOOLS LLC is and was a limited liability company, doing business in Alameda County, California, and which employed Plaintiff. Defendants KSS IMMERSION SCHOOLS, INC. and KIDS SPEAKING SPANISH PRESCHOOLS LLC are considered “joint employers” of Plaintiff in that they each controlled the wages, hours, and/or working conditions of Plaintiff and other employees.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner

1 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
2 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
3 and capacities of these fictitiously named defendants.

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

11 6. Plaintiff started working for KSS on or around 2021 as a support teacher/floater
12 teacher. During her employment tenure, Plaintiff was classified as an hourly, non-exempt
13 employee. Plaintiff's latest rate of pay was \$25.10 per hour. Plaintiff's employment ended on
14 or around October 13, 2023.
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16 7. KSS has committed the below labor code violations against Plaintiff and other
17 hourly, non-exempt employees. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal.
18 App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant
19 Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a
20 year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his
21 claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of
22 wages upon termination of employment and weekly payment of wages to temporary
23 employees. The trial court determined Huff was not a temporary employee, and therefore,
24 lacked standing to bring the claim. Thus, Securitas was granted a motion for summary
25 judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a
26 new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor
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1 Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA
2 statute only allows the PAGA representative to sue for violations that the representative has
3 personally suffered. The PAGA statute states that an “aggrieved employee” is able to file suit
4 on behalf of themselves and others. The statute also states that an “aggrieved employee” is
5 “any person who was employed by the alleged violator and against whom one or more of the
6 alleged violations was committed.” Because at least one of the violations that Huff had alleged
7 had affected her personally, the Court of Appeal denied Securitas’ motion.
8

9 8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
10 other employees, it allows for suits broader than the specific violations the named employee
11 experienced. Therefore, even if the employee did not personally experience the Labor Code
12 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
13 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
14 other employees, whether it be teachers or other job titles that were paid on an hourly basis.
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16 9. KSS did not provide Plaintiff and other aggrieved employees with compensation for
17 all hours worked and did not pay Plaintiff and others the minimum wages to which they were
18 entitled for work performed “off the clock” pursuant to California Labor Code sections 1194,
19 1197 and 1197.1. Plaintiff and others also worked “off the clock” due to their meal breaks
20 being interrupted with work obligations and work duties. Additionally, Plaintiff and others also
21 worked “off the clock” and were not paid for all hours worked because KSS had a company
22 policy wherein they would disproportionately round down the number of hours worked by
23 Plaintiff and other aggrieved employees, resulting in “time shaving” and further resulting in
24 aggrieved employees not being paid for all hours worked.
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26 10. Due to the above “off the clock” violations and due to rounding/ “time shaving”, KSS
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1 also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees
2 overtime compensation, even though they worked more than 8 hours per day, 12 hours per day,
3 and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved
4 employees' actual work hours entitled them to overtime compensation, however, KSS did not
5 compensate its hourly, non-exempt employees with the correct amount of overtime.
6 Furthermore, KSS failed to include bonuses/incentive payments in calculating Plaintiff' and
7 other employees' regular rate of pay for use in deciphering the correct overtime rate of pay.
8 Additionally, the incentive and bonus payments were also not factored into Plaintiff's and
9 others' regular rate for purposes of receiving meal and rest break premiums per the Ferra v.
10 Loews case.

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12 11. KSS violated Labor Code §§ 512 and 226.7 as well as the applicable Industrial Welfare
13 Commission (IWC) Wage Order (no. 4 or 5) because it failed to provide Plaintiff and other
14 similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for
15 every five (5) hours of work throughout their employment, and Plaintiff did not validly waive
16 said meal periods. KSS did not completely relieve Plaintiffs of all duties during said meal
17 periods. KSS did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of
18 compensation for each workday that one or more statutory meal periods was not provided.
19 There were many, many occasions wherein Plaintiff and others would not be able to receive
20 their meal periods before the 5th hour worked due to work obligations. Late meal breaks were
21 consistent and pervasive and across the board for all hourly, non-exempt employees. Moreover,
22 and as mentioned above, it was routine for Plaintiff's and others' meal periods to be interrupted
23 due to work obligations. Furthermore, KSS failed to include bonuses/incentive payments in
24 calculating Plaintiff's and other employees' regular rate of pay for use in deciphering the
25 correct overtime rate of pay. Additionally, the incentive and bonus payments were also not
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factored into Plaintiff's and others' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

12. If KSS had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift. If KSS had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods or stay on the premises during meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does not and did not prevent her from taking a meal period. KSS could have easily hired more staff, which would have allowed Plaintiff to take a timely, uninterrupted break and be relieved of all work duties. If KSS argues that Plaintiff and others were actually paid for their meal breaks, the latter would not mean there was no violation since Plaintiff and others were essentially denied any meal breaks for them to rest and get something to eat. The solution for KSS is not to keep their employees from taking meal periods, but to hire additional staff and "breakers" to make sure that their employees receive statutory breaks. To the extent that KSS argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at KSS was not conducive to receiving consistent, **timely, uninterrupted** statutory meal breaks under

1 California law. Moreover, any meal or rest break premiums paid were not compensated at the
2 weighted average regular rate, inclusive of bonuses and/or incentive payments.

3 13. KSS violated Labor Code § 226.7 as well as the applicable IWC Wage Order (no. 4 or
4 5) because it failed to provide Plaintiff and other similarly situated aggrieved employees 10-
5 minute rest periods for every four hours of work, or majority portion thereof, throughout their
6 employment. KSS did not completely relieve Plaintiff of all duty during said rest periods.

7 KSS did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of
8 compensation for each workday that one or more statutory rest periods was not provided. It
9 was not company policy and not part of the company culture for employees such as Plaintiff
10 and others to take TIMELY rest breaks, especially two daily rest breaks of at least 10 minutes
11 each wherein Plaintiff and others were fully relieved of their work duties. Plaintiff and others
12 were told to take rest breaks at the very end of the day, which would violate California law.
13 The latter had to do with making sure there was enough supervision for children at school or on
14 the playground, however, the solution was for the school to hire more employees so that
15 everyone can get timely, uninterrupted breaks. As such, the culture at KSS did not lend itself to
16 the employees receiving consistent statutory breaks wherein they were relieved of all work
17 duties. It was the normal practice and custom of KSS not to authorize, permit, and enforce full,
18 timely, and complete statutory rest periods. As such, the environment and culture at KSS was
19 not conducive to receiving statutory rest breaks under California law.
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22 14. Furthermore, during the relevant time period, and due to the aforementioned violations,
23 KSS failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to
24 them within any time period specified by California Labor Code section 204. KSS was also in
25 violation of California Labor Code section 226(a) by failing to include pertinent information on
26 the wage statements, including but not limited to, the correct hourly rate, all hours worked,
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1 overtime hours worked, correct overtime pay, gross wages earned, premium pay for missed
2 meal and rest breaks, all deductions, net wages earned, the correct name and address of the
3 employer, employee identifying information, the correct start and end of the pay periods, and
4 reimbursement for business expenses, among others. As such, KSS did not provide Plaintiff
5 and other similarly situated aggrieved employees with complete, accurate itemized wage
6 statements.

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8 15. KSS violated Labor Code § 203 because it willfully failed to pay Plaintiff and other
9 similarly situated aggrieved employees earned and due wages upon separation of employment,
10 either immediately upon involuntary termination, or within 72 hours of resignation. After
11 aggrieved employees stopped working at KSS and after their employment with KSS ended,
12 KSS failed and refused to pay all wages earned and due immediately upon separation. These
13 earned but unpaid wages include the unpaid minimum wages/compensation for all hours
14 worked, overtime, premium pay for missed meal and rest breaks, and business expense
15 reimbursement, among others.
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17 16. It is Plaintiff's contention that the rounding/time shaving, and statutory meal and rest
18 period violations would trigger penalties under Labor Code sections 203, 204, and 226 per
19 Naranjo v. Spectrum Security Services Inc. (2022) 13 Cal. 5th 93.

20 17. During the relevant time period, KSS also failed to keep accurate and complete payroll
21 records showing the correct wages paid to Plaintiff and other aggrieved employees, pursuant to
22 California Labor Code sections 1174(d).
23

24 18. During the relevant time period, Plaintiff and other aggrieved employees incurred
25 necessary, business-related expenses and costs that were not reimbursed by KSS. These costs
26 include, but are not limited to, use of their personal cell phones for work purposes. Plaintiff and
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1 others were also not reimbursed for their uniforms. Accordingly, KSS was in violation of
2 California Labor Code sections 2800 and 2802.

3 19. Moreover, Plaintiff would also have individual claims against KSS for wrongful
4 termination in violation of public policy in that Plaintiff was actually terminated for exercising
5 her right in taking or trying to take a statutory rest period.

6 **FIRST CAUSE OF ACTION**

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

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

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

11 20. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 19, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

2 26. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
3 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
4 amount known to Plaintiff once she has obtained all of her payroll records from
5 Defendants.

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7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

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

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

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

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

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

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

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PAY OVERTIME**

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

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

17 34. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 33, inclusive, of this Complaint as though fully set forth herein. This
19 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

27 36. Plaintiff was a non-exempt employee entitled to the protections of the California
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Industrial Welfare Commission Order No. 4-2001/5-2001, California Code of Regulations, Title 8, Section 11040/11050.

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

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

39. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiff against all named defendants and all DOE defendants)

1 47. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 46, inclusive, of this Complaint as though fully set forth herein. This
3 cause of action is brought by Plaintiff against all Defendants jointly and individually.

4 48. Labor Code section 226(a) requires employers provide employees with itemized wage
5 statements.

6 49. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked
7 and the applicable hourly rates.

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

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

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

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

25 54. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
26 sustained damages, including loss of earnings, in an amount to be established at trial. As a
27 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
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1 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
2 and attorney's fees pursuant to statute.

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4 **FIFTH CAUSE OF ACTION**

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

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

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

8 55. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 54, inclusive, of this Complaint as though fully set forth herein. This
10 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

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

15 58. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
16 informed, believes, and thereon alleges, that all times relevant during the liability period,
17 Defendants maintained a policy or practice of not paying Plaintiff the minimum wage for all
18 hours worked, not paying Plaintiff for all overtime hours worked, and not compensating
19 Plaintiff with premium pay for missed rest and meal breaks.

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

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25 **SIXTH CAUSE OF ACTION**

26 **FAILURE TO GIVE REST BREAKS**

27 **(Plaintiff against all named defendants and all DOE defendants)**
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1 60. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 59, inclusive, of this Complaint as though fully set forth herein. This
3 cause of action is brought by Plaintiff against all Defendants jointly and individually.

4 61. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 5 a. Title 8 of the California Code of Regulations Section 11040/11050(11)(A), which
6 provides that every employer shall authorize and permit all employees to take rest
7 periods, which insofar as practicable shall be in the middle of each work period.
8 The authorized rest period time shall be based on the total hours worked daily at the
9 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
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11 b. Title 8 of the California Code of Regulations Section 11040/11050(11)(B), which
12 provides that if an employer fails to provide an employee a rest period in
13 accordance with the applicable provisions of this order, the employer shall pay the
14 employee one (1) hour of pay at employee's regular rate of compensation for each
15 workday that the rest period is not provided;
16
17 c. Title 8 of the California Code of Regulations section 11040/11050(18)(A), which
18 penalizes the employer \$50.00 for each initial violation, per employee, of any
19 provision of the Wage Order, and \$100.00 for each additional violation thereafter
20 per employee; and
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22 d. California Labor Code section 226.7, which states that (a) no employer shall require
23 any employee to work during any rest period mandated by an applicable order of
24 the Industrial Welfare Commission, and (b) if an employer fails to provide an
25 employee a rest period in accordance with an applicable order of the Industrial
26 Welfare Commission, the employer shall pay the employee one (1) additional hour
27 of pay at employee's regular rate of compensation for each work day that the rest
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period is not provided.

62. Plaintiff alleges that she was not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

63. Under this cause of action, Plaintiff prays for wages due to her under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs, in an amount to be proven at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

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

SEVENTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named defendants and all DOE defendants)

65. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.

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

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial

Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;

- c. California Industrial Welfare Commission Order No. 4/5 section 11(B)/10(B), as codified under Title 8 of the California Code of Regulations Section 11040/11050, which state that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order No. 4/5 Section 7(A)(3)/6(A)(3), as codified under Title 8 of the California Code of Regulations Section 11040/11050, which require an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 4/5 Section 20(A)/18(A), as codified under California Code of Regulations Section 11040/11050, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4) as enforceable law.

67. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California

1 law. California Labor Code section 512(a) and California Industrial Welfare Commission
2 Order No. 4/5, as codified under California Code of Regulations Sections 11040/11050 et. seq.,
3 require that employees receive uninterrupted meal periods every five (5) hours of consecutive
4 work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of
5 all work duty. California Labor Code section 226.7 provides that employers may not require
6 their employees to work through their meal periods. California Labor Code section 226.7 and
7 California Code of Regulations section 11040/11050 require that if the employer fails to
8 provide the employee with an uninterrupted meal period, the employer must pay the employee
9 one (1) hour of pay for each work day that the meal period is not given.
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11 68. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
12 regulations, and wage orders alleged in this cause of action along with any allowable interest,
13 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
14 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

15 69. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
16 fees as well as interest under Labor Code section 218.6.

17 70. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
18 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
19 trial.
20

21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

24 71. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 70, inclusive, of this Complaint as thought fully set forth herein.

26 72. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
27 employee for all necessary expenditures or losses incurred by the employee in direct
28

consequence of the discharge of his or her duties.”

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

74. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and attorney’s fees and costs, under Labor Code section 2802.

NINTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 202, 203)

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

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

79. After Plaintiff’s employment with Defendants ended, Defendants willfully refused and continue to refuse to pay her unpaid wages as required by Labor Code Section

203.

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

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

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

TENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

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

(Plaintiff Against all Named Defendants and all DOE Defendants)

83. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 82, inclusive, of this Complaint as though fully set forth herein.

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

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

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

1 87. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
2 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
3 departments, divisions, commissions, boards, agencies, or employees for violation of the code
4 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
5 on behalf of himself or herself and other current or former employees pursuant to the
6 procedures specified in California Labor Code section 2699.3.
7

8 88. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
9 violator and had one or more of the alleged violations committed against him, and therefore is
10 properly suited to represent the interests of other current and former hourly, non-exempt
11 employees who worked for KSS at all locations in the state of California during
12 the relevant PAGA Period.

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

16 90. Plaintiff therefore has exhausted all administrative remedies required of her under
17 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
18 cause of action and pursue penalties in a representative action for Defendants’ violations of the
19 Labor Code.

20 91. California Labor Code section 2699 et seq. imposes penalties upon culpable
21 Defendants for violating the Labor Code.

22 92. California Labor Code section 558 establishes a civil penalty as follows: Any
23 employer or other person action on behalf of an employer who violates, or causes to be
24 violated, a section of this chapter or any provision regulating hours and days of work in any
25 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
26 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
27 dollars (\$50) for each underpaid employee for each pay period for which the employee was
28

1 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
2 employee for each pay period for which the employee was underpaid...

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

7 94. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
8 the following:

9 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
10 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2800, 2802, via 2698
11 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order
12 Provisions (no.4/5) violated based on the facts alleged in this Complaint.

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

17 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

23 97. California Labor Code section 98.6 provides, in pertinent part, as follows:

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

98. In doing the things herein alleged, Defendants violated Labor Code Section 98.6

1 in that they retaliated against Plaintiff for engaging in a protected activity in attempting to take
2 a statutory rest break.

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

11 100. The foregoing conduct engaged in by Defendants and each of its directors,
12 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
13 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
14 an environment free of retaliation, so as to justify the imposition of punitive damages to punish
15 and set an example of said Defendants.

17 **TWELFTH CAUSE OF ACTION**

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

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

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

22 102. At all times during her employment with Defendants, Plaintiff performed her
23 duties with the utmost diligence and competence.

24 103. Plaintiff is informed and believes and thereon alleges that Defendants' decision
25 and actions to treat her differently and terminate her employment as alleged herein, was
26 motivated by Plaintiff's attempt to secure a rest break to which Plaintiff is entitled per California
27
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1 labor laws and the Industrial Welfare Commission Wage Orders. Plaintiff is further informed
2 and believes and thereon alleges that any other reasons proffered by Defendants were and are
3 pretextual in nature.

4 104. The employment of Plaintiff was wrongfully terminated in October of 2023 in
5 violation of the fundamental public policy of the State of California with respect to retaliating
6 against an employee on account of her engaging in protected activity in taking a statutory rest
7 break. Moreover, Plaintiff was forced to hire an attorney to assist her to end these illegal
8 activities. Said conduct violated statutory and constitutional expressions of public policy
9 including, the California Labor Code sections 98.6, 226.3, and Industrial Welfare Commission
10 Wage Orders 4-2001/5-2001.

11 105. As set forth above, said actions by Defendants were wrongful and in violation of
12 the fundamental principles of the public policy of the State of California as reflected in its
13 laws, objectives and policies. Said statutes and constitutional expressions of public policy
14 include, but are not limited to, California Labor Code sections 98.6, 226.3, and Industrial
15 Welfare Commission Wage Orders 4-2001/5-2001. These laws inure to the benefit of the public
16 at large, and not just the private interests of the employers and employees whom they govern or
17 protect.
18

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

25 107. The foregoing conduct engaged in by Defendants and each of their directors,
26 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
27 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
28

1 an environment free of harassment and retaliation due to whistleblowing, so as to justify the
2 imposition of punitive damages to punish and set an example of said Defendants.

3 **THIRTEENTH CAUSE OF ACTION**

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

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

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

7
8 108. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 107, inclusive, of this Complaint as though fully set forth herein.

10 109. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
11 constitute unfair and unlawful business practices under California Business and Professions
12 Code Section 17200, et seq.

13 110. Defendants' violations of California labor laws constitutes a business practice because
14 it was done repeatedly over a significant period of time in a systematic manner that was
15 detrimental to Plaintiff and others.

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

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
22 follows:

- 23
24 1. For compensatory damages including lost past and future wages, regular wages,
25 overtime, and all other sums of money, including employment benefits, together with
26 interest on said amounts, and any other economic injury to Plaintiff, according to proof;
27 2. For general damages according to proof;

3. For punitive and exemplary damages against Defendants according to proof;
4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
7. For restitution and disgorgement for all unfair business practices by Defendants against Plaintiff in an amount subject to proof at trial;
8. For an order enjoining Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
9. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
10. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
11. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant as described more particularly in the Complaint and Representative PAGA claim/action;
12. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of attorney's fees, costs, interest, and penalties according to proof to the extent permitted by law;
13. For restitution and/or damages for all amounts unlawfully withheld from the wages of Plaintiff, as may be proven;
14. For the imposition of civil penalties and/or statutory penalties;
15. For all interest as allowed by law;
16. For all costs and disbursements incurred in this suit;
17. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, the California Labor Code; and/or other applicable laws; and

1 18. For such other and further relief as this Court may deem proper.
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3

4 DATED: January 8, 2024

MESSRELIAN LAW INC.

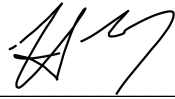
5 By 
6 Harout Messrelian, Esq.
7 Attorneys for Plaintiff
8

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
11

12 DATED: January 8, 2024

MESSRELIAN LAW INC.

13 By 
14 Harout Messrelian, Esq.
15 Attorneys for Plaintiff
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