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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Aida Cruz, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

(UNLIMITED JURISDICTION)

EVA GABRIELA DELGADO,

Plaintiff,

vs.

PINNACLE INDUSTRIAL SUPPLY, INC., a
California corporation; DANIEL HALECKY,
an individual; and DOES 1 to 25, inclusive,

Defendants.

Case No.: 37-2024-00009843-CU-OE-CTL

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Failure to Provide Personnel Records;
- 9) Failure to Provide Pay Records;
- 10) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 11) Wrongful Constructive Discharge In Violation of Public Policy; and

12) Unfair Competition (Bus. & Prof.
Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, EVA GABRIELA DELGADO (hereafter “Plaintiff”), and complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”), the Business and Professions Code, and public policy against PINNACLE INDUSTRIAL SUPPLY, INC., a California corporation; DANIEL HALECKY, an individual; and DOES 1 to 25, inclusive (collectively “PINNACLE” or “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of San Diego – Central District because Defendants PINNACLE INDUSTRIAL SUPPLY, INC., a California corporation; DANIEL HALECKY, an individual; and DOES 1 to 25, inclusive, do business in the County of San Diego and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of San Diego is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

THE PARTIES

3. Plaintiff Eva Gabriela Delgado is a female resident of San Diego, California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11070 and an “Aggrieved Employee” within the meaning of Labor Code Section 2699(c).

4. Defendant PINNACLE INDUSTRIAL SUPPLY, INC. is and was a California corporation, doing business in San Diego County, and which employed Plaintiff. As such, it is

1 a citizen of California based on Plaintiff's information and belief.

2 5. Defendant DANIEL HALECKY is a citizen of California based on Plaintiff's
3 information and belief.

4 6. In relevant part, Labor Code section 558.1 states:

5 (a) Any employer or other person acting on behalf of an employer, who violates,
6 or causes to be violated, any provision regulating minimum wages or hours and
7 days of work in any order of the Industrial Welfare Commission, or violates, or
8 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
9 held liable as the employer for such violation.

10 (b) For purposes of this section, the term "other person acting on behalf of an
11 employer" is limited to a natural person who is an owner, director, officer, or
12 managing agent of the employer, and the term "managing agent" has the same
13 meaning as in subdivision (b) of Section 3294 of the Civil Code.

14 7. Based on Plaintiff's information and belief, Defendant DANIEL HALECKY is
15 a natural person, and an owner, director, officer, and/or managing agent of PINNACLE
16 INDUSTRIAL SUPPLY, INC., who directly or indirectly, or through his agent, employed or
17 exercised control over the wages, hours, or working conditions of Plaintiff and the Aggrieved
18 Employees (defined below). Therefore, he is liable to Plaintiff and the Aggrieved Employees
19 for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7,
20 1194, and 2802 pursuant to Labor Code section 558.1.

21 8. The "Aggrieved Employees" are all current and former non-exempt or hourly
22 paid employees who worked for Defendants in California during the relevant time period
23 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys
24 General Act of 2004 ("PAGA").

25 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
26 participation in the conduct alleged herein, of the defendants sued as DOES 1-25, inclusive, but
27 is informed and believes and thereon alleges that said defendants are legally responsible for the
28 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
defendants when ascertained.

10. Plaintiff is informed and believes and thereon alleges that, at all relevant times

1 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
2 remaining Defendants, and in doing the things hereinafter alleged, were acting within the
3 course and scope of such agency or employment, and with the approval and ratification of each
4 of the other Defendants.

5 11. Plaintiff is informed and believes and thereon alleges that each and every one of
6 the acts and omissions alleged herein were performed by, and/or are attributable to, all
7 Defendants, each acting as agents and/or employees, and/or under the direction and control of
8 each of the other Defendants, and that said acts and failures to act were within the course and
9 scope of said agency, employment, and/or direction and control.

10 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
11 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
12 lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved
13 Employees in accordance with applicable California labor laws as alleged herein.

14 **GENERAL ALLEGATIONS**

15 13. PINNACLE first employed Plaintiff on or around June 6, 2022 as a receptionist
16 at its San Diego office located at 1612 Pacific Rim Ct. in San Diego, California. During her
17 employment tenure, Plaintiff was classified as an hourly, non-exempt employee, generally
18 worked Monday – Friday, from approximately 8:00 a.m. to 5:00 p.m., and her latest rate of
19 pay was approximately \$18.00 per hour. Plaintiff worked for PINNACLE until approximately
20 October 22, 2023, when her employment ended.

21 14. At all relevant times, PINNACLE paid Plaintiff and the other Aggrieved
22 Employees on a weekly basis at an hourly rate of pay. At all relevant times, PINNACLE
23 classified Plaintiff and the other Aggrieved Employees as non-exempt employees entitled to
24 the protections of both the Labor Code and the Wage Order.

25 15. PINNACLE failed to pay Plaintiff and other Aggrieved Employees for all time
26 worked or subject to its control. PINNACLE paid Plaintiff and the other Aggrieved
27 Employees based on rounded times, which led to time shaving and Plaintiff and others not
28 being paid for all hours worked. Additionally, to the extent that Plaintiff and others worked

1 during and through their meal periods, they were not paid for that time since they were “off
2 the clock”, which is akin to a minimum wage violation.

3 16. Due to the above “off the clock” violations, PINNACLE failed to pay Plaintiff
4 and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved
5 Employees’ actual work hours, which included the “off the clock” work as described above,
6 entitled them to overtime, however, it was not company policy to keep accurate track of all
7 hours worked and to pay employees the accurate amount of overtime, especially since the “off
8 the clock” work was not factored into the equation. Furthermore, any incentive payments
9 and/or bonus payments were not factored into employees’ regular rate of pay for purposes of
10 deciphering the correct overtime rate of pay. In addition, any bonus and/or incentive payments
11 were not factored into the correct meal and rest break premium pay per *Ferra v. Loews*
12 *Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

13 17. PINNACLE failed to provide Plaintiff and the other Aggrieved Employees the
14 requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout
15 their employment, and Plaintiff did not validly waive said meal periods. PINNACLE did not
16 completely relieve Plaintiff and the other Aggrieved Employees of all duties during said meal
17 periods. Plaintiff and the Aggrieved Employees did not always receive their meal periods
18 before the 5th hour worked. Moreover, even when Plaintiff and other Aggrieved Employees
19 would be on their lunch break, PINNACLE staff would interrupt them with questions and
20 requests for assistance. On information and belief, PINNACLE did not pay premium wages to
21 Plaintiff and the other Aggrieved Employees for these meal period violations; if PINNACLE
22 did provide premium wages, they were not paid at the correct rate, as explained above.

23 18. PINNACLE failed to provide Plaintiff and the Aggrieved Employees 10-minute
24 rest periods for every four hours of work, or majority portion thereof, throughout their
25 employment. PINNACLE did not completely relieve Plaintiff of all duty during said rest
26 periods. PINNACLE staff or management frequently interrupted Plaintiff and the other
27 Aggrieved Employees during their rest periods to attend to work matters. On information and
28 belief, PINNACLE did not always pay premium wages to Plaintiff and the other Aggrieved

1 Employees for these rest period violations; if PINNACLE did provide premium wages, they
2 were not paid at the correct rate, as explained above.

3 19. PINNACLE failed to reimburse Plaintiff and the other Aggrieved Employees
4 for business expenses they incurred in direct consequence of the discharge of their duties.
5 These costs include, but are not limited to, use of personal cell phones to clock in and out of
6 work and to communicate with office staff concerning work matters. However, PINNACLE
7 did not reimburse Plaintiff and the other Aggrieved Employees for these mobile phone
8 expenses. Accordingly, PINNACLE was in violation of California Labor Code sections 2800
9 and 2802.

10 20. PINNACLE failed to pay its employees all wages due to them within any time
11 period specified by California Labor Code section 204, including the minimum wages and
12 overtime as described above as well as meal/rest break premiums. PINNACLE did not provide
13 Plaintiff and other Aggrieved Employees accurate, itemized wage statements. Wage
14 statements must include, among other things, total hours worked by the employee. Labor Code
15 § 226(a)(2). PINNACLE issued wage statements that inaccurately reflected total hours
16 worked, gross and net wages earned, and the number of hours worked at each hourly rate
17 because of PINNACLE's failure to properly pay wages as explained herein. Labor Code §§
18 226(a)(1), (2), (5), (9). PINNACLE's failure to maintain accurate records as to the hours
19 worked daily by employees also constitutes a violation of Labor Code section 1174(d).

20 21. PINNACLE has also violated Labor Code section 558 and engaged in business
21 practices which violate Business and Professions Code Section 17200.

22 22. Finally, because PINNACLE did not properly pay all wages earned as
23 explained herein, PINNACLE also failed to pay final wages owed to Plaintiff and other
24 Aggrieved Employees in violation of Labor Code section 203. These earned but unpaid wages
25 include minimum wages and compensation for all hours worked, overtime compensation,
26 premium pay for missed meal and rest breaks, and business expense reimbursement, among
27 others.

28 23. During her employment, Plaintiff complained to management and ownership

1 about rat droppings in and around her workspace and throughout the office. The latter would
2 have been a lawful complaint by Plaintiff due to the company violating Labor Code Section
3 6400, 6402, 6404 in not providing a safe and healthy work environment for employees,
4 including Plaintiff. PINNACLE did not take any action in response to Plaintiff's complaints
5 and instead Manager Brian Chin not only instructed Plaintiff to clean it up herself, but also
6 poked fun at her complaints saying "its mental", and refused to allow Plaintiff to switch to
7 another desk. The situation became intolerable for Plaintiff. Consequently, Plaintiff was forced
8 to quit her employment on or around October 22, 2023.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

11 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

12 **(By Plaintiff against all Defendants)**

13 24. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

14 25. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
15 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,
16 and the Wage Order.

17 26. Section 2(G) of the Wage Order defines "hours worked" as "the time during
18 which an employee is subject to the control of an employer, and includes all the time the
19 employee is suffered or permitted to work, whether or not required to do so."

20 27. Section 3 of the Wage Order states:

21 **(A) Daily Overtime - General Provisions**

22 (1) The following overtime provisions are applicable to
23 employees 18 years of age or over and to employees 16 or
24 17 years of age who are not required by law to attend
25 school and are not otherwise prohibited by law from
26 engaging in the subject work. Such employees shall not
27 be employed more than eight (8) hours in any workday or
28 more than 40 hours in any workweek unless the employee
receives one and one-half (1 ½) times such employee's
regular rate of pay for all hours worked over 40 hours in
the workweek. Eight (8) hours of labor constitutes a day's
work. Employment beyond eight (8) hours in any
workday or more than six (6) days in any workweek is

permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

28. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

29. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

30. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage

1 Order.

2 31. California Labor Code § 1197 makes it unlawful for an employer to pay an
3 employee less than the minimum wage required under the applicable Wage Order for all hours
4 worked during a payroll period.

5 32. California Labor Code § 1198 makes it unlawful for an employer to employ an
6 employee under conditions that violate the Wage Order.

7 33. In conjunction, these provisions of the California Labor Code require employers
8 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
9 for all hours worked, including unrecorded hours when the employer knew or reasonably should
10 have known that employees were working during those hours. (*See Morillion v. Royal Packing*
11 *Co.* (2000) 22 Cal.4th 575, 585.)

12 34. Defendants required Plaintiff to work in excess of eight (8) hours in one workday
13 and forty (40) hours in one workweek without compensating her for such time worked at the
14 premium rates required by California law.

15 35. As described more fully above, Defendants failed to pay all minimum, regular,
16 overtime, and double time wages to Plaintiff because Defendants paid wages based on rounded
17 times, did not pay for off-the-clock work, and failed to pay overtime and double time wages
18 based on correct regular rates of pay.

19 36. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
20 amount, subject to proof, to the extent that she was not paid the full amount of wages earned
21 during each pay period during the applicable limitations period, including minimum, overtime,
22 and double-time wages.

23 37. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for
24 unpaid wages which Defendants failed to pay her at the rates set forth herein, interest thereon,
25 and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

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1 (c) If an employer fails to provide an employee a meal or rest or
2 recovery period in accordance with a state law, including, but not
3 limited to, an applicable statute or applicable regulation, standard, or
4 order of the Industrial Welfare Commission, the Occupational Safety
5 and Health Standards Board, or the Division of Occupational Safety and
6 Health, the employer shall pay the employee one additional hour of pay
at the employee's regular rate of compensation for each workday that
the meal or rest or recovery period is not provided.

7 43. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest
8 breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

9 44. Defendants failed to authorize and permit Plaintiff to take compliant rest
10 periods and failed to pay one hour of correctly-calculated premium pay for each day such a
11 rest period was not provided.

12 45. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
13 an amount subject to proof to the extent she was not paid additional wages owed for all rest
14 breaks not provided to her.

15 46. By reason of the above, Plaintiff is entitled to premium wages for workdays in
16 which one or more rest breaks were not provided to her pursuant to California Labor Code §
17 226.7, plus interest and costs.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PROVIDE MEAL PERIODS**

20 **(Lab. Code §§ 226.7, 512, and 1198)**

21 **(By Plaintiff against all Defendants)**

22 47. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 48. At all relevant times during the applicable limitations period, Plaintiff was a
24 non-exempt employee of Defendants and entitled to the benefits and protections of California
25 Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

26 49. Labor Code § 1198 states,

27 "The maximum hours of work and the standard conditions of labor
28 fixed by the commission shall be the maximum hours of work and the
standard conditions of labor for employees. The employment of any

employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

50. In relevant part, Labor Code Section 512 states

“An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

51. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee...
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this 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.

52. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day she worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also entitled to a second 30-minute meal period when she worked more than ten (10) hours in a workday.

53. During the relevant time period, Defendants failed to provide Plaintiff with compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

54. As a result of Defendants’ unlawful conduct, Plaintiff has suffered damages in

1 an amount subject to proof to the extent she was not paid additional wages owed for all meal
2 periods not provided to her.

3 55. By reason of the above, Plaintiff is entitled to premium wages for workdays in
4 which one or more meal periods were not provided to her pursuant to California Labor Code §
5 226.7, plus interest and costs.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO INDEMNIFY**

8 **(Lab. Code §§ 1198 & 2802)**

9 **(By Plaintiff against all Defendants)**

10 56. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 57. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
12 entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the
13 Wage Order.

14 58. In pertinent part, California Labor Code § 2802(a) states:
15 An employer shall indemnify his or her employee[s] for all
16 necessary expenditures incurred by the employee in direct
consequence of the discharge of his or her duties.

17 59. California Labor Code § 1198 prohibits employers from employing their
18 employees under conditions prohibited by the Wage Order.

19 60. PINNACLE failed to reimburse Plaintiff for business expenses she
20 incurred in direct consequence of the discharge of her duties. PINNACLE required Plaintiff to
21 use her own personal cell phone to use of personal cell phones to clock in and out of work and
22 to communicate with office staff concerning work matters. However, PINNACLE did not
23 provide Plaintiff with a mobile phone and did not reimburse Plaintiff for these mobile phone
24 expenses. Accordingly, PINNACLE was in violation of California Labor Code sections 2800
25 and 2802.

26 61. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
27 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
28 Defendants' failure to indemnify Plaintiff for the reasonable expenses she incurred in the course

1 of performing her duties.

2 62. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
3 expenditures and losses and interest due and owing to within three years (3) of the date of the
4 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §
5 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

6 **FIFTH CAUSE OF ACTION**

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

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

9 **(By Plaintiff against all Defendants)**

10 63. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

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

20 66. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover
21 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
22 violation occurs and one hundred dollars (\$100) per employee for each violation in a
23 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),
24 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of
25 action pursuant to the 1-year period immediately preceding the date this lawsuit was filed.

26 67. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
27 sustained damages, including loss of earnings, in an amount to be established at trial. As a
28 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,

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.

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

6 **SIXTH CAUSE OF ACTION**

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

8 **(California Labor Code Sections 201-203)**

9 **(By Plaintiff against all Defendants)**

10 69. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

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

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

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

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

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

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

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

5 **SEVENTH CAUSE OF ACTION**

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

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

8 **(By Plaintiff against all Defendants)**

9 77. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

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

15 80. 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 applicable limitations
17 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
18 worked, including the minimum wage, overtime hours, double time hours, and premium pay
19 for missed meal and rest breaks.

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

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

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE PERSONNEL RECORDS**

3 **(Plaintiff against Defendants)**

4 83. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

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

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

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

24 **NINTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE PAY RECORDS**

26 **(Plaintiff against all Defendants)**

27 88. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

28 89. Labor Code section 226 sub-section (b) dictates “an employer...shall afford

1 current and former employees the right to inspect or copy records pertaining to their
2 employment, upon reasonable request to the employer...”

3 90. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer
4 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
5 pertaining to a current or former employee shall comply with the request as soon as practicable,
6 but no later than 21 calendar days from the date of the request.” On information and belief,
7 Defendants intentionally failed to provide Plaintiff with pay records when requested by
8 Plaintiff via letter, on November 1, 2023, and as required by law. Plaintiff requested her pay
9 records in accordance with California Labor Code section 226 on November 1, 2023, via U.S.
10 certified mail. Defendants failed to provide Plaintiff with an opportunity to inspect or copy her
11 pay records within 21 days.

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

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

18 **TENTH CAUSE OF ACTION**

19 **CIVIL PENALTIES**

20 **(Lab. Code §§ 2698, *et seq.*)**

21 **(By Plaintiff against all Defendants)**

22 93. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 94. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of
24 2004 (“PAGA”) because she was employed by Defendants during the applicable statutory
25 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
26 Plaintiff seeks to recover on her own behalf, on behalf of the State of California, and on behalf
27 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
28 PAGA, plus reasonable attorney’s fees and costs.

1 95. During the applicable time period, Defendants violated California Labor Code
2 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 2802, 6400,
3 6402, 6404.

4 96. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
5 behalf of themselves and other current or former employees, to bring a civil action to recover
6 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

7 97. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
8 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants'
9 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1,
10 1174, 1194, 1197, 1198, 2802, 6400, 6402, 6404 during the applicable limitations period in the
11 following amounts:

12 A. For violations of California Labor Code § 204, one hundred dollars
13 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
14 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
15 established by California Labor Code § 210).

16 B. For violations of California Labor Code § 226(a), two hundred fifty
17 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
18 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
19 established by California Labor Code § 226.3).

20 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
22 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
23 California Labor Code § 558).

24 D. For violations of California Labor Code § 1174, five hundred dollars
25 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
26 California Labor Code § 1174.5).

27 E. For violations of California Labor Code § 1197, one hundred dollars
28 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two

1 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
2 per pay period (regardless of whether the initial violations were intentionally committed)
3 (penalty amounts established by California Labor Code § 1197.1).

4 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
5 1198, 2802, 6400, 6402, and 6404, one hundred dollars (\$100.00) for each Aggrieved
6 Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each
7 Aggrieved Employee per pay period for each subsequent violation (penalty amounts
8 established by California Labor Code § 2699(f)(2)).

9 98. Plaintiff has complied with the procedures for bringing suit specified in
10 California Labor Code § 2699.3. By letter dated November 1, 2023, Plaintiff filed written
11 notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written
12 notice by certified mail to Defendants of the specific provisions of the California Labor Code
13 alleged to have been violated, including the facts and theories to support the alleged violations.
14 Plaintiff accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has
15 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice.

16 99. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
17 Employees are entitled to an award of civil penalties and reasonable attorney’s fees and costs in
18 connection with their claims for civil penalties.

19 **ELEVENTH CAUSE OF ACTION**

20 **WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY**

21 **(By Plaintiff against all Defendants except Daniel Halecky)**

22 100. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

25 102. Defendants intentionally created an illegal work environment and atmosphere
26 by discriminating and retaliating against Plaintiff based on her physical disability, thereby not
27 giving Plaintiff an opportunity to work in an environment free of disability discrimination and
28

1 retaliation. This situation became intolerable for Plaintiff and Plaintiff had no alternative but to
2 quit her job.

3 103. The employment of Plaintiff was constructively wrongfully terminated on or
4 around October 22, 2023 in violation of the fundamental public policy of the State of
5 California with respect to not providing employees with a safe and healthy work environment.
6 Moreover, Plaintiff was forced to hire an attorney to assist her to end these illegal activities.
7 Said conduct violated statutory and constitutional expressions of public policy including,
8 FEHA, the California Labor Code and the California Constitution, Article 1 section 8.

9 104. As set forth above, said actions by Defendants were wrongful and in violation
10 of the fundamental principles of the public policy of the State of California as reflected in its
11 laws, objectives and policies. Said statutes and constitutional expressions of public policy
12 include, but are not limited to, the California Labor Code. These laws inure to the benefit of
13 the public at large, and not just the private interests of the employers and employees whom
14 they govern or protect.

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

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

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1 **TWELFTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

4 **(By Plaintiff against all Defendants except Daniel Halecky)**

5 107. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 108. At all relevant times during the applicable limitations period, Plaintiff has been
7 an employee of Defendants and entitled to the benefits and protections of the Business and
8 Professions Code §§ 17200, *et seq.*

9 109. Defendants engaged in unfair competition by failing to 1) pay Plaintiff for all
10 hours worked at the correct rates of pay and 2) pay Plaintiff premium wages for workdays
11 during which one or more meal or rest periods were not provided, and 3) reimburse Plaintiff
12 for necessary business expenses incurred in the course of performing her duties.

13 110. The unlawful conduct of Defendants alleged herein amounts to and constitutes
14 unfair competition within the meaning of California Business & Professions Code §§ 17200,
15 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
16 unfairly gained a competitive advantage over other comparable companies doing business in
17 California that comply with their legal obligations to, among other things, provide a safe and
18 healthy workplace, pay their employees premium wages for workdays in which they did not
19 provide employees with one or more meal and rest periods, indemnify them for all business
20 expenses incurred during the course of performing their duties, including, but not limited to,
21 mobile phone expenses, and pay them all wages earned.

22 111. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
23 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
24 hours worked, failed to provide her with premium wages for missed meal and rest periods, and
25 failed to reimburse Plaintiff for all expenses she incurred in the course of performing her
26 duties.

27 112. Pursuant to California Business & Professions Code § 17203, Plaintiff is
28 entitled to restitution of all monies rightfully belonging to her that Defendants did not pay her

1 or otherwise retained by means of their unlawful and unfair business practices.

2 113. Plaintiff is entitled to reasonable attorneys' fees in connection with her unfair
3 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
4 benefit doctrine and/or the common fund doctrine.

5 114. Accordingly, with respect to this cause of action, Plaintiff prays for the herein
6 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
7 thereon, as permitted by law, all in amounts subject to proof.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 10 1. For compensatory damages including lost past and future wages, commissions, and all
11 other sums of money, including employment benefits, together with interest on said
12 amounts, and any other economic injury to Plaintiff, according to proof;
- 13 2. For general damages according to proof;
- 14 3. For special and consequential damages to the extent allowed by law;
- 15 4. For punitive and exemplary damages against corporate Defendant in an amount subject
16 to proof;
- 17 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
18 subject to proof at trial;
- 19 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
20 7. proof at trial;
- 21 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
22 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 23 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
24 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 25 10. For maximum civil penalties available under the Labor Code and applicable Wage
26 Order against Defendants as described more particularly in the Complaint;
- 27 11. For restitution and disgorgement for all unfair business practices by corporate
28 Defendants against Plaintiff in an amount according to proof;

- 1 12. For an order enjoining corporate Defendants from further unfair and unlawful business
2 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 3 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
4 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
5 damages, damages, penalties, and waiting time penalties according to proof to the
6 extent permitted by law;
- 7 14. For the imposition of civil penalties and/or statutory penalties;
- 8 15. For all interest as allowed by law;
- 9 16. For all costs and disbursements incurred in this suit;
- 10 17. Reasonable attorney's fees where available by law, including but not limited to,
11 pursuant to, Labor Code section 2698 *et seq.*, Code of Civil Procedure section 1021.5,
12 and/or other applicable laws; and
- 13 18. For such other and further relief as this Court may deem proper.

14 **DEMAND FOR JURY TRIAL**

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

16
17 Dated: March 1, 2024

MM LAW, APC

18 By Maralle Messrelia
19 Maralle Messrelia, Esq.
20 Attorney for Plaintiff,
21 EVA GABRIELA DELGADO
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