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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

2/13/2024 10:08 AM

By: Stephanie Paniagua, DEPUTY

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

JIMENA MONTANO HEREDIA, an
individual,

PLAINTIFF,

v.

WORKFORCE PERSONNEL, INC. aka
WORKFORCE PERSONNEL
INCORPORATED, a California Corporation,
and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO.: CIVSB2329377

**PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR DAMAGES FOR:**

1. Retaliation in Violation of Labor Code § 1102.5
2. Wrongful Termination In Violation of Public Policy
3. Failure to Pay Minimum Wages in Violation of Labor Code § 1194 and 1194.2
4. Failure to Pay Overtime Wages In Violation of Labor Code § 510
5. Failure to Provide Accurate Itemized Wage Statements In Violation of Labor Code § 226
6. Waiting Time Penalties Pursuant to Labor Code § 203
7. Unfair Competition in Violation of Bus. & Prof. Code § 17200
8. Penalties Pursuant to Labor Code § 2698, *et seq.* ("PAGA") for Violations of Labor Code §§ 98.6 and 1102.5

DEMAND FOR JURY TRIAL

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. Plaintiff Jimena Montano Heredia (“Plaintiff” or “Jimena”), an individual, complains, on the basis of personal knowledge and/or information and belief against Defendant WORKFORCE PERSONNEL, INC. aka WORKFORCE PERSONNEL INCORPORATED (“Workforce”) and the Doe Defendants (collectively “Defendants”) and each of them as follows:

2. Plaintiff brings this action against Defendants for economic, non-economic, compensatory, and punitive damages, pursuant to Civil Code section 3294, pre-judgment interest pursuant to Code of Civil Procedure section 3294, pre-judgment interest pursuant to Code of Civ. Proc. section 3291, and costs and reasonable attorneys’ fees pursuant to Labor Code sections 510, 203, 226, and 1102.5.

3. Plaintiff worked for Defendant from in or around January 2023 to in or around September 2023.

4. Labor Code § 98.6 states that “[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee...because the employee...engaged in any conduct delineated in this chapter... made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699,...or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.” Lab. Code § 98.6. Lab. Code § 98.6(b) also states that “[a]ny employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.”

1 5. Similarly, Labor Code § 1102.5 protects employees who complain about an
2 alleged unlawful activity to the government or a person with authority over the employee from
3 retaliation. Specifically, Labor Code § 1102.5 states:

4 (a) An employer, or any person acting on behalf of the employer, shall not make, adopt, or
5 enforce any rule, regulation, or policy preventing an employee from disclosing
6 information to a government or law enforcement agency, to a person with authority over
7 the employee, or to another employee who has authority to investigate, discover, or
8 correct the violation or noncompliance, or from providing information to, or testifying
9 before, any public body conducting an investigation, hearing, or inquiry, if the employee
10 has reasonable cause to believe that the information discloses a violation of state or
11 federal statute, or a violation of or noncompliance with a local, state, or federal rule or
12 regulation, regardless of whether disclosing the information is part of the employee's job
13 duties.

14 (b) An employer, or any person acting on behalf of the employer, shall not retaliate
15 against an employee for disclosing information, or because the employer believes that the
16 employee disclosed or may disclose information, to a government or law enforcement
17 agency, to a person with authority over the employee or another employee who has the
18 authority to investigate, discover, or correct the violation or noncompliance, or for
19 providing information to, or testifying before, any public body conducting an
20 investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the
21 information discloses a violation of state or federal statute, or a violation of or
22 noncompliance with a local, state, or federal rule or regulation, regardless of whether
23 disclosing the information is part of the employee's job duties...

24 (d) An employer, or any person acting on behalf of the employer, shall not retaliate
25 against an employee for having exercised their rights under subdivision (a), (b), or (c) in
26 any former employment...

27 (f) In addition to other penalties, an employer that is a corporation or limited liability
28 company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each
violation of this section.

 6. Labor Code § 1102.6 places the burden of proof on Defendants to establish by
clear and convincing evidence that the alleged action, the termination, would have occurred for
legitimate, independent reasons even if the employee had not engaged in the activities protected
by Section 1102.5. All a plaintiff must establish under Labor Code section 1102.5 is that their
lawful complaints were a contributing factor in the termination and here a rebuttable presumption

1 establishes that Plaintiff's use of sick days and request for time-off while sick was a contributing
2 factor in her termination.

3 7. In or around August 25, 2023, Plaintiff complained to Defendants that she did not
4 receive her pay checks and falsely stated that there was a video that she had taken the check.

5 8. In or around August 28, 2023, another of employee of Defendants who Plaintiff
6 has no relationship with whatsoever with the last name of Morales deposited Plaintiff's pay check
7 into their account:

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PAID CHECK DETAILS

Account Name [REDACTED] Amount 633.53 USD

Account Number [REDACTED] Description

Date 08/29/2023

Check Image

Workforce Personnel Incorporated Citi Bank

7349 Miliken Ave [REDACTED]

Suite 14010 [REDACTED]

Rancho Cucamonga, CA 91730

Check Number [REDACTED]

Check Date 08/25/23

NOT VALID AFTER 90 DAYS

Amount \$633.53

Six Hundred Thirty Three Dollars and Fifty Three Cents

PAY TO THE ORDER OF Jimena Heredia

DOCUMENT CONTAINS BLUE PANTOGRAPH & MICROPRINTING. BACK HAS THERMOCHROMIC INK & A WATERMARK. HOLD AT AN ANGLE TO VIEW. VOID IF NOT PRESENT.

PACIFIC CITY BANK

FOR DEPOSIT ONLY

PROVALLEY CORP

PROVALLEY CHECK CASHING

ENDORSE HERE

XOCHIMETZIA MORALES

SECURITY FEATURES

The security features listed below, as well as those not listed, exceed industry guidelines.

Pacific City Bank

Los Angeles, CA 90010

Phone: [REDACTED]

Bus Date: 08/28/2023

Branch/Teller [REDACTED]

08/28/2023 14:29:48

24 9. In or around late August 2023, Defendants threatened Plaintiff and told her that
25 she could be in trouble if a family member of hers had cashed her pay check that they never gave
26 her. To date, Plaintiff has still not received any wages whatsoever for the pay period she worked
27 with the check date of August 25, 2023.

1 10. Defendants stopped scheduling Plaintiff for work after she complained that she did
2 not receive any wages whatsoever—including minimum wages and based upon information and
3 belief overtime wages—that corresponded with the check dated August 25, 2023.

4 11. Plaintiff regularly followed-up with Defendants, including their
5 supervisory/managerial employees and/or employees who had the authority to investigate,
6 discover, or correct the violation or noncompliance about her missing wages.

7 12. In or around October 2023, Plaintiff again asked, with the help of another
8 employee for proof that her paycheck had been cashed.

9 13. In or around October 20, 2023, after refusing to pay Plaintiff any wages associated
10 with her August 25, 2023 pay check, Defendants, through their supervisory and managerial
11 employee Celina, falsely accused Plaintiff of cashing this check and continue to refuse to provide
12 her with her lawfully owed pay (including minimum wages) and both Celina and Defendants did
13 not offer her further work assignments.

14 14. In or around mid-October 2023, Plaintiff again followed-up with Defendants
15 regarding the status of her check and was told by the Workforce supervisory/managerial
16 employee with authority over Plaintiff and/or who had the authority to investigate, discover, or
17 correct the violation or noncompliance that someone else had cashed her check. During this
18 meeting, Defendants' supervisory/managerial employee and/or employee who had the authority
19 to investigate, discover, or correct the violation or noncompliance told Plaintiff that they could
20 not reissue her pay check that it had already failed to pay since August 25, 2023, that it could take
21 weeks for them to re-issue the check (in violation of Labor Code §§ 201-202 and 204).

22 15. In or around October 20, 2023, Plaintiff complained to Defendants'
23 supervisory/managerial employee who had the authority to investigate, discover, or correct the
24 violation or noncompliance about her missing wages that she was being retaliated against
25 (referred to as discriminated against), threatened to take legal action, and reiterated that she had
26 been terminated.

27 16. Immediately after Plaintiff complained in writing about the alleged unlawful
28 conduct, Defendants' supervisory/managerial employee who had the authority to investigate,

1 discover, or correct the violation or noncompliance classified Plaintiff's protected complaint
2 within Labor Code §§ 98.6 and 1102.5 as a threat in express violation of the labor code and
3 retaliation for exercising her protected rights.

4 17. In or around October 20, 2023, Defendants managerial/supervisory employee
5 Celina advised Plaintiff that she was no longer an employee confirming that Plaintiff had been
6 terminated.

7 18. On or around October 20, 2023, Plaintiff again formally requested her missing
8 wages in writing and stated "Pues pagame."

9 19. Immediately after Plaintiff sent a two word text asking to be paid her missing
10 wages, which was protected activity within the meaning of Labor Code §§ 98.6 and 1102.5,
11 Defendants supervisory/managerial employee and/or who had the authority to investigate,
12 discover, or correct the violation or noncompliance again classified Plaintiff's complaint to "Pues
13 pagame" meaning pay me as a "threat" and "insult."

14 20. Based upon information and belief, Defendants terminated Plaintiff in or around
15 no later than October 2023.

16 21. Alternatively, based upon information, Defendants constructively discharged
17 Plaintiff by failing to provide her any work opportunities or assignments after she complained
18 that she did not receive all wages that she was owed including any wages for the pay period that
19 corresponded with her August 25, 2023 pay check and failed to provide her with assignments for
20 more than a month.

21 22. Based upon information and belief, Defendants continued to employ the employee
22 who deposited Plaintiff's pay check and still employ this individual.

23 23. Labor Code § 1197 states the California requirement that employees must be paid
24 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
25 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
26 "any employee receiving less than the legal minimum wage...to recover in a civil action the
27 unpaid balance of the full amount of this minimum wage." IWC Wage Order 1-2001 and other
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1 applicable wage orders obligate employers to pay each employee minimum wages for all hours
2 worked.

3 24. In addition, Labor Code § 1198 provides that “the maximum hours of work and the
4 standard conditions of labor fixed by the commission shall be the maximum hours of work and
5 the standard conditions of labor for employees. The employment of any employee for longer
6 hours than those fixed by the order or under conditions of labor prohibited by the order is
7 unlawful.”

8 25. For at least one pay period in August 2023, Defendants failed to pay Plaintiff any
9 wages whatsoever, including minimum wages for the hours that she worked.

10 26. Labor Code § 510 requires an employer to compensate an employee who works
11 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
12 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
13 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
14 employees at no less than twice the regular rate of pay when an employee works more than
15 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
16 In accordance with Labor Code § 1194, Plaintiff and the other Class Members could not agree to
17 work for a lesser wage.

18 27. In addition, Labor Code § 1197 states the California requirement that employees
19 must be paid at least the minimum wage fixed by the Commission or by any applicable state or
20 local law, and any payment of less than the minimum wage is unlawful.

21 28. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the
22 standard conditions of labor fixed by the commission shall be the maximum hours of work and
23 the standard conditions of labor for employees. The employment of any employee for longer
24 hours than those fixed by the order or under conditions of labor prohibited by the order is
25 unlawful.”

26 29. For at least one pay period in August 2023, Defendants failed to pay Plaintiff any
27 wages whatsoever, for the hours that she worked. Based upon information and belief, this
28 included overtime hours.

1 30. Labor Code § 226 obligates employers, semi-monthly or at the time of each
2 payment to furnish an itemized wage statement in writing showing:

- 3 (1) gross wages earned;
4 (2) total hours worked by the employee;
5 (3) the number of piece-rate units earned and any applicable piece rate if the
6 employee is paid on a piece rate;
7 (4) all deductions, provided that all deductions made on written orders of the employee
8 may be aggregated and shown as one item;
9 (5) net wages earned;
10 (6) the inclusive dates of the period for which the employee is paid;
11 (7) the name of the employee and only the last four digits of his or her social security
12 number or an employee identification number other than a social security number;
13 (8) the name and address of the legal entity that is the employer...;
14 (9) all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate by the employee...

16 31. Similarly, Labor Code § 226(e) provides:

17 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
18 employer to comply with subdivision (a) is entitled to recover the greater of all actual
19 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
20 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
21 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
22 award of costs and reasonable attorney's fees.

23 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
24 employer fails to provide a wage statement.

25 (B) An employee is deemed to suffer injury for purposes of this subdivision if the
26 employer fails to provide accurate and complete information as required by any one or
27 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
28 and easily determine from the wage statement alone one or more of the following:

 (i) The amount of the gross wages or net wages paid to the employee during the
 pay period or any of the other information required to be provided on the itemized
 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
 (a).

 (ii) Which deductions the employer made from gross wages to determine the net
 wages paid to the employee during the pay period. Nothing in this subdivision
 alters the ability of the employer to aggregate deductions consistent with the
 requirements of item (4) of subdivision (a).

 (iii) The name and address of the employer and, if the employer is a farm labor
 contractor, as defined in subdivision (b) of Section 1682, the name and address of
 the legal entity that secured the services of the employer during the pay period.

 (iv) The name of the employee and only the last four digits of his or her social
 security number or an employee identification number other than a social security
 number.

32. Within the past year and including for the wage statement that corresponded with
the paycheck dated August 25, 2023, Defendants failed to provide Plaintiff with a wage statement
and instead gave her wage statement to another of Defendants' employees and failed to timely
reissue and/or, based upon information and belief, ever provide to her a copy of her wage

1 statement that corresponded with the pay check dated August 25, 2023. Such conduct violated
2 Labor Code § 226.

3 33. In addition to violating Labor Code § 226(a), Defendants also knowingly and
4 intentionally failed to provide Plaintiff with her wage statement that correspondence with the pay
5 period of August 25, 2023 and/or within the time constraints of Labor Code § 226.

6 34. Moreover, Plaintiff also suffered legal “injury” for purposes of Labor Code section
7 226(e) insofar as he was unable to readily and easily determine from the wage statements
8 themselves the information required to be set forth by Section 226(a) because Defendants never
9 provided her with the wage statement for the pay period of August 25, 2023.

10 35. Under Labor Code §§ 201-202, an employer must provide an employee wages at
11 the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code §
12 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is
13 discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30
14 days. Lab. Code § 203; *Mamika v. Barca*, 68 Cal.App.4th 487, 492 (1998).

15 36. Defendants’ failed to pay Plaintiff any of her wages associated with the pay check
16 from August 25, 2023 and did not pay such wages when terminating her and continue to withhold
17 Plaintiff’s earned wages.

18 37. Plaintiff fully and completely exhausted her administrative remedies under PAGA
19 prior to proceeding with this action. Plaintiffs filed a PAGA Notice online with the Labor
20 Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants
21 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by
22 Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the
23 LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the
24 LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark
25 date of the PAGA notice. Plaintiff is therefore, entitled to commence and proceed with a civil
26 action pursuant to Labor Code § 2699 on behalf of the state of California.

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1 **JURISDICTION AND VENUE**

2 38. This Court has subject matter jurisdiction over all causes of action asserted herein
3 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
4 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
5 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
6 laws of the State of California or is subject to adjudication in the courts of the State of California.

7 39. This Court has personal jurisdiction over Defendant Workforce Personnel, Inc. aka
8 Workforce Personnel Incorporated because it is a California corporation and its principal place of
9 business is located at 7349 Milliken Ave #14012, Rancho Cucamonga, CA 91730. Defendant has
10 caused injuries in the County of San Bernardino and State of California through their acts, and by
11 their violation of California law.

12 40. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
13 Civil Procedure §395. Defendants operate within California and do business within San
14 Bernardino County and caused the injuries while within San Jose County. The unlawful acts
15 alleged herein have a direct effect on Plaintiff and within the State of California and the County
16 of San Bernardino.

17 **III.**

18 **PARTIES**

19 **A. PLAINTIFF**

20 41. Plaintiff Jimena Montano Heredia is a former employee of Defendants who
21 worked for Defendants in San Bernardino County.

22 **B. DEFENDANTS**

23 42. Defendant Workforce Personnel, Inc. aka Workforce Personnel Incorporated is a
24 California Corporation whose principal place of business is located at at 7349 Milliken Ave
25 #14012, Rancho Cucamonga, CA 91730.

26 43. The true names and capacities, whether individual, corporate, associate, or
27 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
28 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure

1 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
2 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
3 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
4 capacities of the Defendants designated hereinafter as DOES when such identities become
5 known.

6 44. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
7 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
8 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
9 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
10 employer and/or joint employer, alter ego, or other person acting on behalf of an employer within
11 the meaning of the Labor Code and/or managing agent within the meaning of the Labor Code and
12 Civil Code.

13 **IV.**
14 **FIRST CAUSE OF ACTION**
15 **RETALIATION IN VIOLATION OF LABOR CODE § 1102.5**
16 **[Against Defendant Workforce Personnel, Inc. aka Workforce Personnel Incorporated and**
17 **the non-individual Doe Defendants]**

18 45. Plaintiff re-alleges and incorporates by reference each and every allegation set
19 forth in the preceding paragraphs.

20 46. At all relevant times, Labor Code section 1102.5 was in effect and was binding on
21 Defendants. This statute prohibited Defendants from retaliating against any employee, including
22 Plaintiff, for actually raising complaints of actual or potential illegality, for providing information
23 of such potential or actual illegality, because the employee is believed to have engaged in such
24 conduct, or because the employee may engage in such conduct. The statute also further prohibits
25 defendants from retaliating against any employee, including plaintiffs, where the employee
26 refused to participate in activity that would result in a violation of the law.

27 47. Labor Code section 1102.5 expressly prohibits an employer or person acting on
28 behalf of an employer from retaliating against an employee for disclosing information or because
the employer believes that the employee disclosed or may disclose information to a government
or law enforcement agency.

1 48. In or around August 25, 2023, Plaintiff complained to Defendants that she did not
2 receive her pay checks and falsely stated that there was a video that she had taken the check.

3 49. In or around August 28, 2023, another of employee of Defendants who Plaintiff
4 has no relationship with whatsoever with the last name of Morales deposited Plaintiff's pay check
5 into their account.

6 50. In or around late August 2023, Defendants threatened Plaintiff and told her that
7 she could be in trouble if a family member of hers had cashed her pay check that they never gave
8 her. To date, Plaintiff has still not received any wages whatsoever for the pay period she worked
9 with the check date of August 25, 2023.

10 51. Defendants stopped scheduling Plaintiff for work after she complained that she did
11 not receive any wages whatsoever—including minimum wages and based upon information and
12 belief overtime wages—that corresponded with the check dated August 25, 2023.

13 52. Plaintiff regularly followed-up with Defendants, including their
14 supervisory/managerial employees and/or employees who had the authority to investigate,
15 discover, or correct the violation or noncompliance about her missing wages.

16 53. In or around October 2023, Plaintiff again asked, with the help of another
17 employee for proof that her paycheck had been cashed.

18 54. In or around October 20, 2023, after refusing to pay Plaintiff any wages associated
19 with her August 25, 2023 pay check, Defendants, through their supervisory and managerial
20 employee Celina, falsely accused Plaintiff of cashing this check and continue to refuse to provide
21 her with her lawfully owed pay (including minimum wages) and both Celina and Defendants did
22 not offer her further work assignments.

23 55. In or around mid-October 2023, Plaintiff again followed-up with Defendants
24 regarding the status of her check and was told by the Workforce supervisory/managerial
25 employee with authority over Plaintiff and/or who had the authority to investigate, discover, or
26 correct the violation or noncompliance that someone else had cashed her check. During this
27 meeting, Defendants' supervisory/managerial employee and/or employee who had the authority
28 to investigate, discover, or correct the violation or noncompliance told Plaintiff that they could

1 not reissue her pay check that it had already failed to pay since August 25, 2023, that it could take
2 weeks for them to re-issue the check (in violation of Labor Code §§ 201-202 and 204).

3 56. In or around October 20, 2023, Plaintiff complained to Defendants'
4 supervisory/managerial employee who had the authority to investigate, discover, or correct the
5 violation or noncompliance about her missing wages that she was being retaliated against
6 (referred to as discriminated against), threatened to take legal action, and reiterated that she had
7 been terminated.

8 57. Immediately after Plaintiff complained in writing about the alleged unlawful
9 conduct, Defendants' supervisory/managerial employee who had the authority to investigate,
10 discover, or correct the violation or noncompliance classified Plaintiff's protected complaint
11 within Labor Code §§ 98.6 and 1102.5 as a threat in express violation of the labor code and
12 retaliation for exercising her protected rights.

13 58. In or around October 20, 2023, Defendants managerial/supervisory employee
14 Celina advised Plaintiff that she was no longer an employee confirming that Plaintiff had been
15 terminated.

16 59. On or around October 20, 2023, Plaintiff again formally requested her missing
17 wages in writing and stated "Pues pagame."

18 60. Immediately after Plaintiff sent a two word text asking to be paid her missing
19 wages, which was protected activity within the meaning of Labor Code §§ 98.6 and 1102.5,
20 Defendants supervisory/managerial employee and/or who had the authority to investigate,
21 discover, or correct the violation or noncompliance again classified Plaintiff's complaint to "Pues
22 pagame" meaning pay me as a "threat" and "insult."

23 61. Based upon information and belief, Defendants terminated Plaintiff in or around
24 no later than October 2023.

25 62. Alternatively, based upon information, Defendants constructively discharged
26 Plaintiff by failing to provide her any work opportunities or assignments after she complained
27 that she did not receive all wages that she was owed including any wages for the pay period that
28

1 corresponded with her August 25, 2023 pay check and failed to provide her with assignments for
2 more than a month.

3 63. Defendant Workforce Personnel, Inc. aka Workforce Personnel Incorporated. is a
4 corporation.

5 64. Labor Code § 1102.5(d) provides that In addition to other penalties, an employer
6 that is a corporation or limited liability company is liable for a civil penalty not exceeding ten
7 thousand dollars (\$10,000) for each violation of this section.

8 65. Labor Code § 1102.5 provides that “[t]he court is authorized to award reasonable
9 attorney’s fees to a plaintiff who brings a successful action for a violation of these provisions”

10 66. As a proximate result of defendants’ willful, knowing, and intentional violations of
11 Labor Code § 1102.5, Plaintiff has suffered and continues to suffer humiliation, emotional
12 distress, and mental and physical pain and anguish, all to their damages in a sum according to
13 proof.

14 67. As a result of Defendants’ adverse employment actions against Plaintiff, Plaintiff
15 has suffered general and special damages in sums according to proof.

16 **V.**

17 **SECOND CAUSE OF ACTION**

18 **PLAINTIFF’S CLAIMS FOR WRONGFUL TERMINATION OF
EMPLOYMENT IN VIOLATION OF PUBLIC POLICY - TAMENY V.**

19 **ATLANTIC RICHFIELD CO., 27 CAL. 3D 167 (1980)**

20 **[Against Defendant Workforce Personnel, Inc. aka Workforce Personnel Incorporated and
the non-individual Doe Defendants]**

21 68. Plaintiff re-alleges and incorporates by reference each and every allegation set
22 forth in the preceding paragraphs.

23 69. Defendants terminated plaintiffs’ employment in violation of various fundamental
24 public policies underlying both state and federal laws. Specifically, Plaintiffs’ employment was
25 terminated because she complained that she was not paid for all hours worked (including
26 minimum wages and, based upon information and belief, overtime wages), disclosed violations of
27 the California Labor Code (including that she had not been paid any wages whatsoever for the
28 pay period associated with the pay check dated August 25, 2023) to a supervisory/managerial
employee of Defendants with authority over Plaintiff and/or who had the authority to investigate,

1 discover, or correct the violation or noncompliance that someone else had cashed her check.
2 During this meeting, Defendants' supervisory/managerial employee and/or employee who had the
3 authority to investigate, discover, or correct the violation or noncompliance told Plaintiff that they
4 could not reissue her pay check that it had already failed to pay since August 25, 2023, that it
5 could take weeks for them to re-issue the check (in violation of Labor Code §§ 201-202 and 204).
6 These good faith complaints were protected activities within the meaning of California. These
7 actions were in violation of, but not limited to, the California Constitution, and California Labor
8 Code sections 98.6 as well as 1102.5.

9 70. As a proximate result of Defendants' wrongful termination of plaintiffs'
10 employment in violation of fundamental public policies, Plaintiff has suffered and continues to
11 suffer humiliation, emotional distress, and mental and physical pain and anguish, all to their
12 damages in a sum according to proof.

13 71. As a result of Defendants' wrongful termination of his employment, Plaintiff has
14 suffered general and special damages in sums according to proof.

15 72. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
16 Pursuant to Code of Civil Procedure sections 1021.5 and 1032, et seq., Plaintiff is entitled to
17 recover reasonable attorneys' fees and costs in an amount according to proof.

18 73. Defendants' wrongful termination of Plaintiff's employment was done
19 intentionally, in a malicious, fraudulent, and/or oppressive manner, and this entitles plaintiffs to
20 punitive damages.

21 **VI.**
22 **THIRD CAUSE OF ACTION**
23 **[Against All Defendants]**

24 74. Plaintiff realleges and incorporates by reference all previous paragraphs.

25 75. Section 1194 of the Labor Code provides, in relevant part:

26 Notwithstanding any agreement to work for a lesser wage, any employee
27 receiving less than minimum wage...applicable to the employee is entitled to
28 recover in a civil action the unpaid balance of the full amount of this
minimum wage ..., including interest thereon, reasonable attorney's fees,
and costs of suit.

76. Section 1194.2 of the Labor Code provides, in relevant part:

In any action under...Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

77. As set forth above, during the statutory period applicable to the claims in this action, including within the past year, Plaintiff was not compensated for all hours worked as a result of Defendants' policies and practices described in detail above including Defendants' failure to pay Plaintiff any of the wages it owed her for the pay period that corresponded with the pay check issued on August 25, 2023 that Plaintiff did not receive.

78. In failing to pay Plaintiff for all hours worked, for the reasons described above, Defendants willfully and intentionally violated Labor Code § 1194 and acted in bad faith. Accordingly, pursuant to sections 1194 and 1194.2 of the California Labor Code, Plaintiff is entitled to recover her unpaid hourly wages due, or minimum wage plus interest and/or liquidated damages in an additional amount equal to the total amount of wages unlawfully withheld. Plaintiff is also entitled to recover reasonable attorneys' fees and costs under Labor Code §§ 218.5 and 1194.

VII.
FOURTH CAUSE OF ACTION
FAILURE TO PAY WAGES AND/OR OVERTIME UNDER
LABOR CODE §§ 510, 1194, and 1199
[Against All Defendants]

79. Plaintiff realleges and incorporates by reference all previous paragraphs.

80. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff could not agree to work for a lesser wage.

81. In addition, Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful.

82. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the standard conditions of labor 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.”

83. Based upon information and belief, at times during Plaintiff's employment and within the past year, Defendants failed to pay Plaintiff all overtime wages including overtime wages that she should have been paid through her August 25, 2023 pay check.

84. Defendants conduct, as described above was willful.

85. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

VIII.
FIFTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 226(e)
[Against all Defendants]

86. Plaintiff realleges and incorporates by reference all previous paragraphs and all subsequent paragraphs.

87. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

1 88. Similarly, Labor Code § 226(e) provides:

2 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
3 employer to comply with subdivision (a) is entitled to recover the greater of all actual
4 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
5 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
6 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
7 award of costs and reasonable attorney's fees.

8 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
9 employer fails to provide a wage statement.

10 (B) An employee is deemed to suffer injury for purposes of this subdivision if the
11 employer fails to provide accurate and complete information as required by any one or
12 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
13 and easily determine from the wage statement alone one or more of the following:

14 (i) The amount of the gross wages or net wages paid to the employee during the
15 pay period or any of the other information required to be provided on the itemized
16 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
17 (a).

18 (ii) Which deductions the employer made from gross wages to determine the net
19 wages paid to the employee during the pay period. Nothing in this subdivision
20 alters the ability of the employer to aggregate deductions consistent with the
21 requirements of item (4) of subdivision (a).

22 (iii) The name and address of the employer and, if the employer is a farm labor
23 contractor, as defined in subdivision (b) of Section 1682, the name and address of
24 the legal entity that secured the services of the employer during the pay period.

25 (iv) The name of the employee and only the last four digits of his or her social
26 security number or an employee identification number other than a social security
27 number.

28 89. Within the past year and including for the wage statement that corresponded with
the paycheck dated August 25, 2023, Defendants failed to provide Plaintiff with a wage statement
and instead gave her wage statement to another of Defendants' employees and failed to timely
reissue and/or, based upon information and belief, ever provide to her a copy of her wage
statement that corresponded with the pay check dated August 25, 2023.

 90. In addition to violating Labor Code § 226(a), Defendants also knowingly and
intentionally failed to provide Plaintiff with her wage statement that correspondence with the pay
period of August 25, 2023 and/or within the time constraints of Labor Code § 226.

 91. Moreover, Plaintiff also suffered legal "injury" for purposes of Labor Code section
226(e) insofar as he was unable to readily and easily determine from the wage statements
themselves the information required to be set forth by Section 226(a) because Defendants never
provided her with the wage statement for the pay period of August 25, 2023.

92. Defendants also failed to both comply with and create a policy that complied with Labor Code § 226 prior to the filing of this lawsuit and having been previously sued for violating Labor Code section 226. Labor Code § 226(e)(3) provides that when determining whether or not an employer's violation of Labor Code § 226(a) was knowing and intentional, "the relevant factor [is] whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section." Accordingly, Defendants' conduct was knowing and intentional within the meaning of Labor Code § 226(e).

93. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees. *See* Lab. Code § 226(e). Plaintiff seeks penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to recovery of such amounts, attorneys' fees, and costs.

IX.
SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203
[Against all Defendants]

94. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

95. Sections 201 and 202 of the California Labor Code requires Defendants to pay all compensation due and owing to Plaintiff during the actionable period for this cause of action, at or around the time that their employment is terminated.

96. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

97. As described in detail above, Defendants failed to pay Plaintiff all wages (all overtime wages, and minimum wages (including any wages whatsoever for the pay period that

1 corresponded with her August 25, 2023 pay check that she never received) at the time of her
2 termination. Thus, as result of Defendants' faulty policies described above, Plaintiff left his
3 employment with Defendants without being compensated for each and every hour worked at the
4 appropriate rate in violation of Labor Code §§ 201 and 203.

5 98. At the time that Plaintiff's employment ended, the sums were certain and known to
6 Defendants.

7 99. As a result, Defendants are liable to Plaintiff for waiting time penalties amounting
8 up to thirty (30) days wages for Plaintiff pursuant to California Labor Code § 203. See, e.g.,
9 DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee
10 to recover waiting time penalties).

11 **X.**
SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200
[Against all Defendants]

13 100. Plaintiff, on behalf of herself realleges and incorporates by reference all previous
14 paragraphs.

15 101. Plaintiff, on behalf of herself and on behalf of the general public and brings this
16 claim pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendants as
17 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff
18 and the general public. Plaintiff seeks to enforce important rights affecting the public interest
19 within the meaning of Code of Civil Procedure § 1021.5. Plaintiff is a "person" within the
20 meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause
21 of action for injunctive relief, restitution, and other appropriate equitable relief.

22 102. Defendants have engaged in unlawful and unfair business practices that violate
23 fundamental public policies of the state of California and the United States of America. As a
24 result of its unlawful and unfair business practices, Defendants have forced employees, including
25 Plaintiff, to work under substandard and unlawful conditions in an effort to gain a competitive
26 advantage over law-abiding employers who comply with California's Labor Code.
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1 103. Defendants have violated statutes and public policies as alleged herein. Through
2 the conduct alleged in this Complaint, Defendants have acted contrary to these public policies,
3 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
4 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
5 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
6 privileges guaranteed to all employees under law.

7 104. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
8 violation of § 17200 et seq. of the Business & Professions Code.

9 105. Defendants, by engaging in the conduct herein alleged, either knew or in the
10 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
11 violation of § 17200 et seq. of the Business & Professions Code.

12 106. As a proximate result of the above-mentioned acts of Defendants, Plaintiff, other
13 businesses, and the general public have been damaged in a sum as may be proven.

14 107. As part of their claims against Defendants, Plaintiff seeks not only the unpaid
15 wages, but also the market value of the loss of the statutory protections and the cost to other
16 employers of providing proper pay, and complying with the California Labor Code provisions
17 identified herein. *See e.g. Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162 (2015).

18 108. Unless restrained, Defendants will continue to engage in the unlawful conduct as
19 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
20 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
21 employment by Defendants, its agents, or employees, of any unlawful or deceptive practices
22 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
23 and disgorgement of profits which may be necessary to restore Plaintiff the money Defendants
24 have unlawfully failed to pay.

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XI.
EIGHTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS OF
LABOR CODE §§ 98.6 and 1102.5
[Against all Defendants]

109. Plaintiffs, on behalf of the State of California, realleges and incorporates by reference all previous paragraphs.

110. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 98.6 and 1102.5.

111. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, the State of California and Plaintiff as its proxy is entitled to penalties in an amount to be shown at the time of trial subject to the following formula unless a civil penalty is already proscribed under the Labor Code:

\$100 for the initial violation per employee per pay period; and

\$200 for each subsequent violation per employee per pay period.

112. Plaintiff alleges that Labor Code section 1102.5 proscribes a second \$10,000 penalty recoverable under PAGA unless the Court finds that the default \$100/\$200 PAGA penalties referenced above apply and that the penalty continues as long as the retaliatory act (the retaliation) ceases.

113. All PAGA penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For general, compensatory and/or special damages in an amount according to proof for Plaintiff's loss of past and future earnings, loss of job security and all damages flowing therefrom;
2. For general, compensatory, and/or special damages to compensate Plaintiff for any past and future medical expenses, emotional distress, and suffering and related damages;
3. For punitive damages according to proof;
4. For special damages according to proof;

- 1 5. For exemplary damages, according to proof;
- 2 6. For compensatory damages in the amount of unpaid minimum wages not paid to Plaintiff
- 3 as may be proven;
- 4 7. For compensatory damages in the amount of unpaid and/or underpaid wages not paid to
- 5 Plaintiff, as may be proven;
- 6 8. For compensatory damages in the amount of unpaid overtime wages not paid to Plaintiff,
- 7 as may be proven;
- 8 9. For penalties pursuant to Labor Code § 226(e) for violations of Labor Code
- 9 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation
- 10 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
- 11 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) for the
- 12 inaccurate itemized wage statements issued to Plaintiff as may be proven;
- 13 10. An award to Plaintiff of waiting time penalties in the amount of up to 30 days' wages;
- 14 11. For penalties against any Defendants that are either a corporation or limited liability
- 15 company in the amount of \$10,000 pursuant to Labor Code § 1102.5;
- 16 12. For restitution for unfair competition pursuant to Business & Professions Code
- 17 § 17200 to Plaintiff for actions, including disgorgement of profits, in an amount as may be
- 18 proven;
- 19 13. For penalties under Labor Code § 2698, et seq. for the State of California and Plaintiff
- 20 because of Defendants' violation of Labor Code §§ 98.6 and 1102.5;
- 21 14. For pre-judgment and post-judgment interest on all damages awarded to the extent
- 22 permitted by law;
- 23 15. For reasonable attorneys' fees pursuant to Labor Code §§ 203, 226, 510, 1102.5 and 2698
- 24 et seq. ("PAGA");
- 25 16. For costs of suit incurred;
- 26 17. For declaratory relief;
- 27 18. For such other and further relief as the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury.

DATED: February 12, 2024

WINSTON LAW GROUP, P.C.

By:



DAVID S. WINSTON
Attorneys for Plaintiff