

Rex Phillips, Esq. SBN: 237747
rphillips@law888.com

LAW OFFICES OF SCOTT WARMUTH, APC
17700 Castleton St., Suite #168
City of Industry, CA 91748
Tel: (626) 282-6868
Fax: (626) 642-0808

Electronically FILED by
Superior Court of California,
County of Los Angeles
4/08/2024 1:00 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By M. Aguirre, Deputy Clerk

Attorneys for Plaintiff, VIVI FAY, an individual,
and on behalf of herself and all others similarly
situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

VIVI FAY, an individual and on behalf of
all others similarly situated and aggrieved,

Plaintiff,

v.

TIKTOK U.S. DATA SECURITY, INC., a
Delaware corporation; TIKTOK, INC.; a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: **24STCV08712**
CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. UNFAIR COMPETITION
9. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (CAL LAB. CODE § 2699 *ET SEQ.*)

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff VIVI FAY (“Plaintiff”), on behalf of Plaintiff and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against TIKTOK U.S. DATA SECURITY, INC., and any of its respective subsidiaries or affiliated companies within the State of California (“TUSDS”); TIKTOK, INC., and any of its respective subsidiaries or affiliated companies within the state of California (“TikTok”) (TUSDS and TikTok with DOES 1 through 100, as further defined below, “Defendants”) on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

PARTIES

A. Plaintiff

2. Plaintiff VIVI FAY is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff VIVI FAY as a non-exempt employee, with duties that included, but were not limited to, system operations specialist. Plaintiff is informed and believes and based thereon alleges that she worked for Defendants from approximately October 4, 2022 through the present.

B. Defendants

3. Plaintiff is informed and believes and based thereon alleges that defendant TUSDS is, and at all times relevant hereto was, a Delaware corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California with its principal address located at 5800 Bristol Parkway, 100, Culver City, California 90230. At all relevant times herein, TUSDS employed Plaintiff and similarly situated employees within the State of California.

4. Plaintiff is informed and believes and based thereon alleges that defendant TikTok, Inc. is, and at all times relevant hereto was, a California corporation organized and

1 existing under and by virtue of the laws of the State of California and doing business in the
2 County of Los Angeles, State of California with its principal address located at 5800 Bristol
3 Parkway, 100, Culver City, California 90230. At all relevant times herein, TikTok, Inc.
4 employed Plaintiff and similarly situated employees within the State of California.

5 5. The true names and capacities, whether individual, corporate, associate, or
6 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently
7 unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of
8 Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that
9 each of the defendants designated herein as DOE is legally responsible in some manner for
10 the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this
11 Complaint to reflect the true names and capacities of the defendants designated hereinafter as
12 DOES when such identities become known. Plaintiff is informed and believes, and based
13 thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent
14 of the other defendant(s), carried out a joint scheme, business plan or policy in all respects
15 pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.
16 Whenever, heretofore or hereinafter, reference is made to "Defendant(s)," it shall include
17 TUSDS, TikTok, and any of their parent, subsidiary, or affiliated companies within the State
18 of California, as well as DOES 1 through 100 identified herein.

19 **JOINT LIABILITY ALLEGATIONS**

20 6. Plaintiff is informed and believes and based thereon alleges that all the times
21 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
22 representative, joint venture or co-conspirator of each of the other defendants, either actually
23 or ostensibly, and in doing the things alleged herein acted within the course and scope of such
24 agency, employment, joint venture, and conspiracy.

25 7. All of the acts and conduct described herein of each and every corporate
26 defendant was duly authorized, ordered, and directed by the respective and collective
27 defendant corporate employers, and the officers and management-level employees of said
28 corporate employers. In addition thereto, said corporate employers participated in the

1 aforementioned acts and conduct of their said employees, agents, and representatives, and
2 each of them; and upon completion of the aforesaid acts and conduct of said corporate
3 employees, agents, and representatives, the defendant corporation respectively and
4 collectively ratified, accepted the benefits of, condoned, lauded, acquiesced, authorized, and
5 otherwise approved of each and all of the said acts and conduct of the aforementioned
6 corporate employees, agents and representatives.

7 8. As a result of the aforementioned facts, Plaintiff is informed and believes, and
8 based thereon alleges that Defendants, and each of them, are joint employers.

9 **JURISDICTION**

10 9. Jurisdiction exists in the Superior Court of the State of California pursuant to
11 Code of Civil Procedure section 410.10.

12 10. Venue is proper in Los Angeles County, California pursuant to Code of Civil
13 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the
14 causes of action complained of herein arose; the county in which the employment relationship
15 began; the county in which performance of the employment contract, or part of it, between
16 Plaintiff, or some of them, and Defendants was due to be performed; the county in which the
17 employment contract, or part of it, between Plaintiff, or some of them, and Defendants was
18 actually performed; and the county in which Defendants, or some of them, reside. Moreover,
19 the unlawful acts alleged herein have a direct effect on Plaintiff and Class Members in Los
20 Angeles County, and because Defendants employ numerous Class Members in Los Angeles
21 County.

22 **FACTUAL BACKGROUND**

23 11. For at least four (4) years prior to the filing of this action and continuing to the
24 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class
25 Members, or some of them, in violation of California state wage and hour laws as a result of,
26 without limitation, Plaintiff and Class Members working over eight (8) hours in a workday
27 and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a
28 workweek, without being paid overtime wages for all hours worked as a result of, including

1 but not limited to, Defendants failing to accurately track and/or pay for all minutes actually
2 worked; engaging, suffering, or permitting employees to work off the clock, including,
3 without limitation, by requiring employees to come early to work and leave work late without
4 being able to clock in for all that time, to suffer under Defendants' control to complete
5 post-shift tasks after clocking out, and to clock out for meal periods and continue working;
6 detrimentally rounding employee time entries; editing and/ or manipulation of time entries to
7 show less hours than actually worked; and for paying straight pay instead of overtime pay to
8 the detriment of Plaintiff and Class Members.

9 12. For at least four (4) years prior to the filing of this Action and continuing to the
10 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class
11 Members, or some of them, in violation of California state wage and hour laws as a result of,
12 among other things, at times, force employees to work off the clock, including, without
13 limitation, by requiring employees: to come early to work and leave work late without being
14 able to clock in for all that time, to suffer under Defendants' control to complete post-shift
15 tasks after clocking out, and to clock out for meal periods and continue working;
16 detrimentally rounded employee time entries; edited and/or manipulated time entries to show
17 less hours than actually worked; and failed to pay reporting time pay to the detriment of
18 Plaintiff and Class Members.

19 13. For at least four (4) years prior to the filing of this Action and continuing to the
20 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of
21 them, full, timely thirty (30) minute uninterrupted meal period for days on which they worked
22 more than five (5) hours in a work day and a second thirty (30) minute uninterrupted meal
23 period for days on which they worked in excess of ten (10) hours in a work day, and failing to
24 provide compensation for such unprovided meal periods as required by California wage and
25 hour laws.

26 14. For at least four (4) years prior to the filing of this action and continuing to the
27 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class
28 Members, or some of them, to take rest periods of at least ten (10) minutes per four (4) hours

1 worked or major fraction thereof and failed to provide compensation for such unprovided rest
2 periods as required by California wage and hour laws.

3 15. For at least three (3) years prior to the filing of this action and continuing to the
4 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of
5 them, the full amount of their wages owed to them upon termination and/or resignation as
6 required by Labor Code sections 201 and 202, including for, without limitation, failing to pay
7 overtime wages, minimum wages, premium wages, and vacation pay pursuant to Labor Code
8 section 227.3.

9 16. For at least one (1) year prior to the filing of this Action and continuing to the
10 present, Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of
11 them, with itemized wage statements that accurately reflect gross wages earned; total hours
12 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate; the name and address of the legal
14 entity that is the employer; and other such information as required by Labor Code section 226,
15 subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
16 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

17 17. For at least one (1) year prior to the filing of this action and continuing to the
18 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of
19 them, the full amount of their wages for labor performed in a timely fashion as required under
20 Labor Code section 204.

21 18. Plaintiff, on their own behalf and on behalf of Class Members, brings this
22 action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 226,
23 226.7, 510, 512, 1194, 1194.2, 1197, *et al.*, and California Code of Regulations, Title 8,
24 section 11040, seeking overtime wages, minimum wages, payment of premium wages for
25 missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage
26 statement penalties, other such provisions of California law, and reasonable attorneys' fees
27 and costs.

28 19. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant

1 to Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
2 prohibiting Defendants from further violating the Labor Code and requiring the establishment
3 of appropriate and effective means to prevent further violations, as well as all monies owed
4 but withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as
5 well as restitution of amounts owed.

6 **CLASS ACTION ALLEGATIONS**

7 20. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class
8 action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of
9 all current and former non-exempt employees of Defendants within the State of California at
10 any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the
11 time that notice of the class action is provided to the class (collectively referred to as "Class
12 Members").

13 21. Plaintiff reserves the right under California Rule of Court rule 3.765,
14 subdivision (b) to amend or modify the class description with greater specificity, further
15 divide the defined class into subclasses, and to further specify or limit the issues for which
16 certification is sought.

17 22. This action has been brought and may properly be maintained as a class action
18 under the provisions of Code of Civil Procedure section 382 because there is a well-defined
19 community of interest in the litigation and the proposed Class is easily ascertainable.

20 **A. Numerosity**

21 23. The potential Class Members as defined are so numerous that joinder of all the
22 members of the Class is impracticable. While the precise number of Class Members has not
23 been determined yet, Plaintiff is informed and believes that there are over one thousand
24 (1,000) Class Members employed by Defendants within the State of California.

25 24. Accounting for employee turnover during the relevant periods necessarily
26 increases this number. Plaintiff alleges Defendants' employment records would provide
27 information as to the number and location of all Class Members. Joinder of all members of
28 the proposed Class is not practicable.

1 **B. Commonality**

2 25. There are questions of law and fact common to Class Members. These
3 common questions include, but are not limited to:

- 4 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all
5 hours worked at a proper overtime rate of pay?
- 6 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to
7 pay for all other time worked at the employee's regular rate of pay and a rate
8 of pay that is greater than the applicable minimum wage?
- 9 C. Did Defendants violate Labor Code section 512 by not authorizing or
10 permitting Class Members to take compliant meal periods?
- 11 D. Did Defendants violate Labor Code section 226.7 by not providing Class
12 Members with additional wages for missed or interrupted meal periods?
- 13 E. Did Defendants violate applicable Wage Orders by not authorizing or
14 permitting Class Members to take compliant rest periods?
- 15 F. Did Defendants violate Labor Code section 226.7 by not providing Class
16 Members with additional wages for missed rest periods?
- 17 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay
18 Class Members upon termination or resignation all wages earned?
- 19 H. Are Defendants liable to Class Members for waiting time penalties under
20 Labor Code section 203?
- 21 I. Did Defendants violate Labor Code section 226, subdivision (a) by not
22 furnishing Class Members with accurate wage statements?
- 23 J. Did Defendants violate the Unfair Competition Law, Business and Professions
24 Code section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 25 K. Are Class Members entitled to restitution of wages under Business and
26 Professions Code section 17203?
- 27 L. Are Class Members entitled to costs and attorneys' fees?
- 28 M. Are Class Members entitled to interest?

1 **C. Typicality**

2 26. The claims of Plaintiff herein alleged are typical of those claims which could
3 be alleged by any Class Members, and the relief sought is typical of the relief which would be
4 sought by each Class Member in separate actions. Plaintiff and Class Members sustained
5 injuries and damages arising out of and caused by Defendants' common course of conduct in
6 violation of laws and regulations that have the force and effect of law and statutes as alleged
7 herein.

8 **D. Adequacy of Representation**

9 27. Plaintiff will fairly and adequately represent and protect the interest of Class
10 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage
11 and hour class actions.

12
13 **E. Superiority of Class Action**

14 28. A class action is superior to other available means for the fair and efficient
15 adjudication of this controversy. Individual joinder of all Class Members is not practicable,
16 and questions of law and fact common to Class Members predominate over any questions
17 affecting only individual Class Members. Class Members, as further described therein, have
18 been damaged and are entitled to recovery by reason of Defendants' policies and/or practices
19 that have resulted in the violation of the Labor Code at times, as set out herein.

20 29. Class action treatment will allow Class Members to litigate their claims in a
21 manner that is most efficient and economical for the parties and the judicial system. Plaintiff
22 is unaware of any difficulties that are likely to be encountered in the management of this
23 action that would preclude its maintenance as a class action.

24 **FIRST CAUSE OF ACTION**

25 **(Failure to Pay Overtime Wages – Against All Defendants)**

26 30. Plaintiff realleges and incorporates by reference all of the allegations contained
27 in the preceding paragraphs as though fully set forth hereat.

28 31. At all relevant times, Plaintiff and Class Members were employees or former

1 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as
2 applicable Wage Orders.

3 32. At all times relevant to this Complaint, Labor Code section 510 was in effect
4 and provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of
5 eight hours in one workday and any work in excess of forty hours in any one workweek . . .
6 shall be compensated at the rate of no less than one and one-half times the regular rate of pay
7 for an employee.”

8 33. At all times relevant to this Complaint, Labor Code section 510 further
9 provided that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of
10 no less than twice the regular rate of pay for an employee. In addition, any work in excess of
11 eight hours on any seventh day of a workweek shall be compensated at the rate of no less than
12 twice the regular rate of pay.”

13 34. For at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class
15 Members, or some of them, in violation of California state wage and hour laws as a result of,
16 without limitation, Plaintiff and Class Members working over eight (8) hours in a workday
17 and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a
18 workweek, without being paid overtime wages for all hours worked as a result of, including
19 but not limited to, Defendants failing to accurately track and/or pay for all minutes actually
20 worked; engaging, suffering, or permitting employees to work off the clock, including,
21 without limitation, by requiring employees to come early to work and leave work late without
22 being able to clock in for all that time, to suffer under Defendants’ control to complete
23 post-shift tasks after clocking out, and to clock out for meal periods and continue working;
24 detrimentally rounding employee time entries; editing and/ or manipulation of time entries to
25 show less hours than actually worked; and for paying straight pay instead of overtime pay to
26 the detriment of Plaintiff and Class Members.

27 35. Accordingly, by requiring Plaintiff and Class Members to, at times, work
28 greater than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7)

1 straight workdays without properly compensating overtime wages at the proper overtime rate
2 of pay, Defendants, on occasion, willfully violated the provisions of the Labor Code, among
3 others, sections 510, 1194, and applicable IWC Wage Orders, and California law.

4 36. As a result of the unlawful acts of Defendants, Plaintiff and Class Members
5 have been deprived of overtime wages in amounts to be determined at trial, and are entitled to
6 recovery, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor
7 Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil
8 Code section 3287.

9 **SECOND CAUSE OF ACTION**

10 **(Failure to Pay Minimum Wages – Against All Defendants)**

11 37. Plaintiff realleges and incorporates by reference all of the allegations contained
12 in the preceding paragraphs as though fully set forth hereat.

13 38. At all relevant times, Plaintiff and Class Members were employees or former
14 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage
15 Orders.

16 39. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff
17 and Class Members were entitled to receive minimum wages for all hours worked or
18 otherwise under Defendants' control.

19 40. For at least four (4) years prior to the filing of this Action and continuing to the
20 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class
21 Members, or some of them, in violation of California state wage and hour laws as a result of,
22 among other things, at times, force employees to work off the clock, including, without
23 limitation, by requiring employees: to come early to work and leave work late without being
24 able to clock in for all that time, to suffer under Defendants' control to complete post-shift
25 tasks after clocking out, and to clock out for meal periods and continue working;
26 detrimentally rounded employee time entries; edited and/or manipulated time entries to show
27 less hours than actually worked; and failed to pay reporting time pay to the detriment of
28 Plaintiff and Class Members.

1 41. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
2 suffered damages in an amount, subject to proof, to the extent they were not paid minimum
3 wages for all hours worked or otherwise due.

4 42. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
5 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are
6 entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon,
7 liquidated damages, reasonable attorneys' fees and costs of suit.

8 **THIRD CAUSE OF ACTION**

9 **(Failure to Provide Meal Periods – Against All Defendants)**

10 43. Plaintiff realleges and incorporates by reference all of the allegations contained
11 in the preceding paragraphs as though fully set forth hereat.

12 44. At all relevant times, Plaintiff and Class Members were employees or former
13 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

14 45. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer
15 shall employ an employee for a work period of more than five (5) hours without a timely meal
16 break of not less than thirty (30) minutes in which the employee is relieved of all of his or her
17 duties. Furthermore, no employer shall employ an employee for a work period of more than
18 ten (10) hours per day without providing the employee with a second timely meal period of
19 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.

20 46. Pursuant to Labor Code section 226.7, if an employer fails to provide an
21 employee with a meal period as provided in the applicable Wage Order of the Industrial
22 Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at
23 the employee's regular rate of compensation for each workday that the meal period is not
24 provided.

25 47. For four (4) years prior to the filing of the Complaint in this Action through the
26 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute,
27 duty-free uninterrupted meal periods every five hours of work without waiving the right to
28 take them, as permitted. Moreover, at times, Defendants failed to provide one (1) additional

1 hour of pay at the Class Member's regular rate of compensation on the occasions that Class
2 Members were not provided compliant meal periods.

3 48. By their failure to provide Plaintiff and Class Members compliant meal periods
4 as contemplated by Labor Code section 512, among other California authorities, and failing,
5 at times, to provide compensation for such unprovided meal periods, as alleged above,
6 Defendants willfully violated the provisions of Labor Code section 512 and applicable Wage
7 Orders.

8 49. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
9 suffered damages in an amount, subject to proof, to the extent they were not paid additional
10 pay owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

11 50. Plaintiff and Class Members are entitled to recover the full amount of their
12 unpaid additional pay for unprovided compliant meal periods, in amounts to be determined at
13 trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections
14 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section
15 3287.

16 **FOURTH CAUSE OF ACTION**

17 **(Failure to Provide Rest Periods – Against All Defendants)**

18 51. Plaintiff realleges and incorporates by reference all of the allegations contained
19 in the preceding paragraphs as though fully set forth hereat.

20 52. At all relevant times, Plaintiff and Class Members were employees or former
21 employees of Defendants covered by applicable Wage Orders.

22 53. California law and applicable Wage Orders require that employers "authorize
23 and permit" employees to take ten (10) minute rest periods in about the middle of each four
24 (4) hour work period "or major fraction thereof." Accordingly, employees who work shifts
25 of three and-a-half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest
26 period, employees who work shifts of more than six (6) and up to ten (10) hours must be
27 provided with twenty (20) minutes of paid rest period, and employees who work shifts of
28 more than ten (10) hours must be provided thirty (30) minutes of paid rest period.

1 54. Pursuant to Labor Code section 226.7, if an employer fails to provide an
2 employee with a meal period or rest period as provided in the applicable Wage Order of the
3 Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour
4 of pay at the employee's regular rate of compensation for each work day that the rest period is
5 not provided.

6 55. For four (4) years prior to the filing of the Complaint in this Action through the
7 present, Plaintiff and Class Members were, at times, not authorized or permitted to take
8 complete, timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work
9 or major fraction thereof. Moreover, at times, Defendants failed to provide one (1)
10 additional hour of pay at the Class Member's regular rate of compensation on the occasions
11 that Class Members were not authorized or permitted to take compliant rest periods.

12 56. By their failure, at times, to authorize and permit Plaintiff and Class Members
13 to take rest periods contemplated by California law, and one (1) additional hour of pay at the
14 employee's regular rate of compensation for such unprovided rest periods, as alleged above,
15 Defendants willfully violated the provisions of Labor Code section 226.7 and applicable
16 Wage Orders.

17 57. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
18 suffered damages in an amount, subject to proof, to the extent they were not paid additional
19 pay owed for rest periods that they were not authorized or permitted to take.

20 58. Plaintiff and Class Members are entitled to recover the full amount of their
21 unpaid additional pay for unprovided compliant rest periods, in amounts to be determined at
22 trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections
23 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section
24 3287.

25 **FIFTH CAUSE OF ACTION**

26 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

27 59. Plaintiff realleges and incorporates by reference all of the allegations contained
28 in the preceding paragraphs as though fully set forth hereat.

1 60. At all relevant times, Plaintiff and Class Members were employees or former
2 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as
3 applicable Wage Orders.

4 61. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members
5 were entitled upon termination to timely payment of all wages earned and unpaid prior to
6 termination. Discharged Class Members were entitled to payment of all wages earned and
7 unpaid prior to discharge immediately upon termination. Class Members who resigned were
8 entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after
9 giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to
10 payment of all wages earned and unpaid at the time of resignation.

11 62. Plaintiff is informed and believes, and based thereon alleges, that in the three
12 (3) years before the filing of the Complaint in this Action through the present, Defendants,
13 due to the failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff
14 and Class Members all wages earned prior to resignation or termination in accordance with
15 Labor Code sections 201 or 202.

16 63. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff
17 and Class Members all wages earned prior to termination or resignation in accordance with
18 Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages
19 earned by Plaintiff and Class Members at the time of termination in accordance with Labor
20 Code sections 201 and 202, but intentionally adopted policies or practices incompatible with
21 the requirements of Labor Code sections 201 and 202 resulting in the failure, at times, to pay
22 all wages earned prior to termination or resignation.

23 64. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled
24 to waiting time penalties from the date their earned and unpaid wages were due, upon
25 termination or resignation, until paid, up to a maximum of thirty (30) days.

26 65. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
27 suffered damages in an amount subject to proof, to the extent they were not paid for all wages
28 earned prior to termination or resignation.

66. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover waiting time penalties, interest, and their costs of suit, as well.

SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements – Against All Defendants)

67. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

68. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

69. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement that accurately reflects, among other things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and the name and address of the legal entity that is the employer, among other things.

70. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year before the filing of the Complaint in this Action through the present, Defendants failed to comply with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that accurately reflect, among other things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and the name and address of the legal entity that is the employer, among other things.

71. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate wage statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully provided wage statements that Defendants knew were not accurate.

1 72. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
2 suffered injury. The absence of accurate information on Class Members' wage statements at
3 times has delayed timely challenge to Defendants' unlawful pay practices; requires discovery
4 and mathematical computations to determine the amount of wages owed; causes difficulty and
5 expense in attempting to reconstruct time and pay records; and led to submission of inaccurate
6 information about wages and amounts deducted from wages to state and federal governmental
7 agencies, among other things.

8 73. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class
9 Members are entitled to recover \$50 for the initial pay period during the period in which
10 violation of Labor Code section 226 occurred and \$100 for each violation of Labor Code
11 section 226 in a subsequent pay period, not to exceed an aggregate \$4,000.00 per employee.

12 74. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
13 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
14 recover the full amount of penalties due under Labor Code section 226, subdivision (e),
15 reasonable attorneys' fees, and costs of suit.

16 **SEVENTH CAUSE OF ACTION**

17 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

18 75. Plaintiff reallege each and every allegation set forth in the preceding
19 paragraphs and incorporate each by reference as though fully set forth hereat.

20 76. At all relevant times, Plaintiff and Class Members were employees or former
21 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

22 77. Labor Code section 204 provides that “[l]abor performed between the 1st and
23 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of
24 the month during which the labor was performed, and labor performed between the 16th and
25 the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of
26 the following month.”

27 78. Labor Code section 210, subdivision (a) states that “[i]n addition to, and
28 entirely independent and apart from, any other penalty provided in this article, every person

1 who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1,
2 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial
3 violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
4 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
5 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

6 79. Plaintiff is informed and believes, and based thereon alleges, that in the one (1)
7 year before the filing of the Complaint in this Action through the present, Defendants
8 employed policies and practices that resulted in, at times, not paying Plaintiff and Class
9 Members in accordance with Labor Code section 204.

10 80. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled
11 to recover penalties for Defendants’ violations of Labor Code section 204, in the amount of
12 one hundred dollars (\$100) for each initial violation per Class Member, and two hundred
13 dollars (\$200) for each subsequent violation in connection with each payment that was made
14 in violation of Labor Code section 204 per Class Member, plus 25 percent of the amount
15 unlawfully withheld.

16 81. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections
17 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
18 recovery of penalties, interest, and their costs of suit, as well.

19 **EIGHTH CAUSE OF ACTION**

20 **(Unfair Competition – Against All Defendants)**

21 82. Plaintiff realleges and incorporates by reference all of the allegations contained
22 in the preceding paragraphs as though fully set forth hereat.

23 83. Plaintiff is informed and believes, and based thereon alleges that the unlawful
24 conduct of Defendants alleged herein constitutes unfair competition within the meaning of
25 Business and Professions Code section 17200. Due to their unlawful business practices in
26 violation of the Labor Code, Defendants have gained a competitive advantage over other
27 comparable companies doing business in the State of California that comply with their
28 obligations to compensate employees in accordance with the Labor Code.

1 84. As a result of Defendants' unfair competition as alleged herein, Plaintiff and
2 Class Members have suffered injury in fact and lost money or property.

3 85. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
4 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the
5 Labor Code and requiring the establishment of appropriate and effective means to prevent
6 further violations, as well as restitution of all wages and other monies owed to them under the
7 Labor Code, including interest thereon, in which they had a property interest and which
8 Defendants nevertheless failed to pay them and instead withheld and retained for themselves.
9 Restitution of the money owed to Plaintiff and Class Members is necessary to prevent
10 Defendants from becoming unjustly enriched by their failure to comply with the Labor Code.

11 86. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
12 Procedure section 1032 and interest under Civil Code section 3287.

13 **NINTH CAUSE OF ACTION**

14 **CIVIL PENALTIES UNDER PRIVATE ATTORNEY GENERAL ACT**

15 **(CALIFORNIA LABOR CODE §2699 ET SEQ.)**

16 **(Against All Defendants)**

17 87. Plaintiff realleges and incorporates by reference all of the allegations contained
18 in the preceding paragraphs as though fully set forth hereat.

19 88. California Labor Code §2699(a) states:

20 Notwithstanding any other provision of the law, any provision of this
21 code that provides for a civil penalty to be assessed and collected by
22 the Labor and Workforce Development Agency or any of its
23 departments, divisions, commissions, boards, agencies, or employees,
24 for a violation of this code, may, as an alternative, be recovered
25 through a civil action brought by an aggrieved employee on behalf of
26 himself or herself and other current or former employees...

27 89. Plaintiff is an "Aggrieved Employee" under PAGA, as Plaintiff was employed
28 by Defendant during the applicable statutory limitations period and suffered one or more of

1 the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of
2 herself and all other current and former Aggrieved Employees, the civil penalties provided by
3 PAGA, plus reasonable attorney's fees and costs.

4 90. Plaintiff seeks to recover the PAGA civil penalties through a representative
5 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46
6 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

7 91. Therefore, under the provisions of PAGA and Labor Code §§ 201, 202, 203,
8 210, 225.5, 226, 226.3, 226.7, 226.8, 256, 432.5, 510, 512, 558, 558.1, 1024.5, 1102.5, 1174,
9 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2699, and all applicable Wage Orders,
10 as well as all interpretations of these laws by California Courts and administrative bodies, as
11 well as any other law that is enforceable through PAGA, Defendant are liable for the
12 following penalties:

13 A. All statutorily-specified penalties recoverable under PAGA as enumerated in
14 the relevant California Labor Code provisions listed herein only if permitted by
15 the PAGA statute; and

16 B. Default PAGA penalties for any violation of the enumerated list of Labor Code
17 violations without a civil penalty recoverable under the PAGA, all in the
18 default amounts provided by Labor Code Section 2699(f).

19 92. The proper measure of penalties under PAGA is the number of violations,
20 whether those violations were committed as against Plaintiff or any Aggrieved Employee,
21 whether a party to this action or not. Further, as a PAGA action, this claim need not be
22 certified as a class action to proceed with a company-wide recovery. (See *Arias v. Superior*
23 *Court*, 46 Cal.4th 969, 970-75 (2009).)

24 93. Plaintiff complied with the procedures for bringing suit specified in Labor
25 Code sections 2699.3 and 2699.5. By letter postmarked January 26, 2024, Plaintiff gave
26 written notice to the California Labor and Workforce Development Agency (“LWDA”) via
27
28

1 electronic mail at PAGAfilings@dir.ca.gov, and via certified mail to Defendant, of the
2 specific provisions of the Labor Code and Wage Orders allegedly violated, including the
3 facts and theories to support the alleged violations.

4 94. Under Labor Code section 2699.3, the LWDA must give written notice by
5 certified mail to the parties that it intends to investigate the alleged violations within 65
6 days of the date of the Plaintiff's written notice. As of April 5, 2024, the LWDA has not
7 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of
8 herself and other similarly aggrieved employees. Accordingly, Plaintiff has exhausted all
9 administrative remedies required by law.
10

11 95. Pursuant to Labor Code § 2699(g), and/or any and all other applicable laws,
12 Plaintiff is entitled to recover civil penalties, costs, and attorney's fees.
13

14 **DEMAND FOR JURY TRIAL**

15 96. Plaintiff demands a trial by jury on all causes of action contained herein.

16 **PRAYER**

17 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment
18 against Defendants as follows:
19

- 20 1. For an order that the action be certified as a class action;
- 21 2. For an order that Plaintiff be appointed class representative;
- 22 3. For an order that counsel for Plaintiff be appointed class counsel;
- 23 4. For compensatory damages according to proof;
- 24 5. For civil penalties as permitted by law;
- 25 6. For an order requiring Defendant to make restitution of all amounts wrongfully
26 withheld from Plaintiff and the class;
- 27 7. For pre-judgment interest as permitted by law;
- 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 8. For reasonable attorney’s fees and costs of suit; and
- 9. For such other and further relief as the Court deems just and proper.

Dated: April 8, 2024

LAW OFFICES OF SCOTT WARMUTH, APC

BY: 

REX J. PHILLIPS
Attorneys for Plaintiff VIVI FAY, an individual and
on behalf of all others similarly situated and aggrieved