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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

LILY LIVINGSTON, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

VERBAL BEHAVIOR ASSOCIATES, a
California corporation; and DOES 1 through
100,

Defendants.

CASE NO. 37-2024-00003049-CU-OE-CTL

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) **FAILURE TO REIMBURSE ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §§
2802, 2804);**
- (6) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (8) **CIVIL PENALTIES UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT (LABOR
CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Lily Livingston (hereinafter “Plaintiff”) on behalf of herself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants Verbal Behavior Associates, a California corporation, and
4 DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
10 1197, 1198, 2698 *et seq.*, 2802, 2804, and Industrial Welfare Commission Wage Order 4 (“Wage
11 Order 4”), in addition to seeking injunctive relief, declaratory relief, and restitution. This
12 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
13 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
14 controversy exceeds this Court’s jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in the County of San Diego. Defendants own, maintain offices, transact business, have
19 an agent or agents within the County of San Diego, and/or otherwise are found within the County
20 of San Diego, and Defendants are within the jurisdiction of this Court for purposes of service of
21 process.

22 **PARTIES**

23 3. Plaintiff is and was at all times relevant herein, an individual over the age of
24 eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident.
25 During the four years immediately preceding the filing of the Complaint in this action and within
26 the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was and
27 is currently employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of
28 Defendants’ policies and/or practices complained of herein, lost money and/or property, and has

1 been deprived of the rights guaranteed by California Business and Professions Code § 17200 *et*.
2 *seq.*, Labor Code §§ 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
3 2698 *et seq.*, 2802, 2804, and Wage Order 4, which sets employment standards for the educational
4 consulting industry.

5 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
6 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
7 continue to do) business providing various program and services for children with disabilities and
8 employed Plaintiff and other, similarly-situated non-exempt employees within San Diego County
9 and the State of California and, therefore, were (and are) doing business in San Diego County and
10 the State of California.

11 5. Plaintiff does not know the true names or capacities, whether individual, partner,
12 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
13 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
14 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
15 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
16 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
17 and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be subject to the
18 unlawful employment practices, wrongs, injuries and damages complained of herein.

19 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
20 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

21 7. At all times herein mentioned, each of said Defendants participated in the doing
22 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
23 Defendants, and each of them, were the agents, servants, and employees of each and every one of
24 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
25 were acting within the course and scope of said agency and employment. Defendants, and each
26 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
27 omissions complained of herein.

28 8. At all times mentioned herein, Defendants, and each of them, were members of

1 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
2 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
3 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
4 members of the Classes.

5 **GENERAL FACTUAL ALLEGATIONS**

6 9. Defendants provide applied behavior analysis services to children impacted by
7 autism or other developmental delays as well as children who demonstrate moderate-severe
8 behavior problems throughout San Diego County and other counties in California.

9 10. Plaintiff has been employed by Defendants as a non-exempt employee in the
10 position of “Registered Behavioral Therapist” (or similarly titled position) since approximately
11 2018. Plaintiff has been on medical leave since approximately March of 2023.

12 11. During Plaintiff’s employment with Defendants, Defendants’ policies and
13 practices did not compensate its non-exempt employees all hours worked. For example, during
14 Plaintiff’s employment with Defendants, Plaintiff would often arrive up to 30-minutes before the
15 start of her scheduled shift in order to, among other things, set up her supplies and materials, and
16 review notes, without being compensated for this time. In addition to the foregoing unlawful
17 policies/practices, Plaintiff and other non-exempt employees were not paid for their travel time
18 to and from their first and last appointments of the day, respectively. Due to Defendants’
19 timekeeping policies and/or practices that fail to compensate for all hours worked, Plaintiff and
20 other non-exempt employees were not compensated for all required minimum and overtime
21 wages.

22 12. During Plaintiff’s employment with Defendants, Plaintiff worked in excess of 8.0
23 hours per workday and/or in excess of 40.0 hours per workweek, but did not receive overtime
24 compensation at one and one-half times her regular rate of pay for working overtime hours.
25 Specifically, Plaintiff received non-discretionary incentive pay, including an “Incentive” and/or
26 other forms of pay that are not excludable from an employee’s “regular rate” of pay (hereinafter
27 the aforementioned forms of pay are collectively referred to as “Incentive Pay”). Despite
28 Defendants’ payment of Incentive Pay to Plaintiff, Defendants failed to properly calculate

1 Plaintiff's "regular rate" of pay, thereby causing Plaintiff to be underpaid for her required
2 overtime wages, sick pay and meal period premiums.

3 13. Defendants failed to provide Plaintiff and other non-exempt employees with all
4 legally compliant meal periods because they fail to provide their employees with a timely, 30-
5 minute meal period commencing before the end of the fifth hour of work due to nature of
6 Defendants' employees' work duties. For example, Plaintiff often began work before 7:30 a.m.,
7 but was not provided a meal period until well after 12:30 p.m. Further, Defendants' meal period
8 policies/practices failed to provide Plaintiff and other non-exempt employees with a second 30-
9 minute meal period on occasions where they worked over 10.0 hours in a workday.

10 14. Defendants have also failed to authorize and permit all legally required rest periods
11 to Plaintiff and their other non-exempt employees. Plaintiff and other non-exempt employees
12 were often required to work through their rest periods, as a result of the nature of their work and
13 work demands while working with clients. On those occasions where Plaintiff was not provided
14 with all legally compliant rest periods to which she was entitled, Defendants failed to compensate
15 Plaintiff with the required rest period premium for each workday in which she experienced a rest
16 period violation as mandated by Labor Code § 226.7. Despite failing to authorize and permit
17 Plaintiff and other non-exempt employees to take all rest periods to which they are entitled, upon
18 information and belief, Defendants maintained no mechanism for the payment of rest period
19 premium payments as required by Labor Code section 226.7.

20 15. Defendants also failed to adequately reimburse Plaintiff and other non-exempt
21 employees for all reasonable and necessary work expenditures, including, but not limited to, use
22 of personal cellular phones to clock in/out and to communicate with management, and the use of
23 their personal vehicles to travel to and from their first and last appointments respectively. Despite
24 requiring Plaintiff and other non-exempt employees to use their personal cellular phones and
25 personal vehicles for work-related purposes, Defendants did not reimburse Plaintiff and other
26 employees for their cellular phone and vehicle expenses.

27 16. As a result of Defendants' failure to pay all overtime and minimum wages, and
28 failure to pay all meal and rest period premium wages, Defendants maintained inaccurate payroll

records and issued inaccurate wage statements to Plaintiff.

CLASS ACTION ALLEGATIONS

17. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who: (i) were subjected to Defendants' timekeeping policies/practices; and/or (ii) were required to commute between multiple of Defendants' appointments during the course of a workday without being compensated for the actual time traveling between appointments, during the four years immediately preceding the filing of the Complaint through the present.
- b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than 8.0 hours per day and/or 40.0 hours per week and were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of the Complaint through the present.
- c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years immediately preceding the filing of the Complaint through the present
- d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours during the four years immediately preceding the filing of the Complaint through the present.
- e. The Employee Expense Class consists of all of Defendants' current and former employees who used their personal cellular phones and vehicles for work purposes, during the four years immediately preceding the filing of the Complaint through the present.
- f. The Wage Statement Class consists of all members of the Minimum Wage Class,

Overtime Class and/or Rest Period Class who received a wage statement, during the one year immediately preceding the filing of the Complaint through the present.

18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes and Subclasses are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

19. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Plaintiff and members of the Minimum Wage Class were compensated for all hours actually worked;
- ii. Whether Defendants failed to properly include all forms of Incentive Pay when computing the respective regular rates for members of the Overtime Class;
- iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to Plaintiff and members of the Rest Period Class;
- v. Whether Defendants provided rest period premium payments for non-compliant rest periods; and
- vi. Whether Defendants' policies and/or practices regarding business expenditures resulted in the failure to properly reimburse members of the Employee Expense Class; and
- vii. Whether Defendants furnished legally compliant wage statements to Plaintiff and members of the Wage Statement Class pursuant to Labor Code § 226.

20. **Predominance of Common Questions:** Common questions of law and fact

predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, including but not limited to Defendants' uniform overtime payment, minimum wage payment, and meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was and is employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not paid overtime and minimum wages for all hours worked, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, was not reimbursed for all necessary business expenses, and was not provided with accurate, itemized wage statements.

22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

23. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an

individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 17 are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and 1198, which provide that non-exempt employees are entitled to all overtime wages and compensation for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

26. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and Overtime Class members, for all overtime hours worked per Labor Code §§ 510 and 1194 and Wage Order 4. Wage Order 4, § 3 requires an

1 employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay”
2 for work in excess of eight hours per workday and/or in excess of forty hours of work in the
3 workweek, and to pay double the employee’s regular rate of pay for work in excess of twelve
4 hours each workday and/or for work in excess of eight hours on the seventh consecutive workday
5 in a workweek. Defendants caused Plaintiff to work overtime hours, but did not pay Plaintiff or
6 Overtime Class members at the proper overtime or double-time rate of pay for such hours.

7 27. Defendants’ policy/practice of requiring overtime work and not paying at the
8 proper overtime rates for said work violates California Labor Code §§ 204, 210, 216, 510, 558,
9 1194, and 1198; and Wage Order 4.

10 28. The foregoing policies/practices alleged herein are unlawful and create entitlement
11 to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
12 amount of overtime wages, including interest thereon, statutory penalties, civil penalties,
13 attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 218.6,
14 510, 558, 1194, and 1198; Civil Code §§ 3287 and 3289, and Code of Civil Procedure § 1021.5.

15 **SECOND CAUSE OF ACTION**

16 **MINIMUM WAGE VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

18 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 30. Wage Order 4, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
20 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
21 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
22 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
23 attorneys’ fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
24 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform its
25 pay practices to the requirements of the law by failing to pay Plaintiff and members of the
26 Minimum Wage Class for all hours worked, including, but not limited to, all hours they were
27 subject to the control of Defendants and/or suffered or permitted to work under the California
28 Labor Code and Wage Order 4.

1 31. California Labor Code § 1198 makes unlawful the employment of an employee
2 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
3 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
4 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
5 amount equal to the wages due and interest thereon.

6 32. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and
7 members of the Minimum Wage Class seek penalties pursuant to Wage Order 4 § 20(A) and
8 California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and
9 Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2;
10 attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages
11 and/or penalties pursuant to California Labor Code § 558(a).

12 **THIRD CAUSE OF ACTION**

13 **MEAL PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

15 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 failed in their affirmative obligation to provide their California non-exempt employees, including
18 Plaintiff and Meal Period Class members, with legally compliant meal periods in accordance with
19 the mandates of the Labor Code and Wage Order 4, § 11. Despite Defendants' violations,
20 Defendants did not pay an additional hour of pay to Plaintiff and Meal Period Class members at
21 their regular rates of compensation, in accordance with Labor Code §§ 204, 210, 226.7, and 512.

22 35. As a result, Defendants are responsible for paying premium compensation for meal
23 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
24 pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 4, and Civil Code §§
25 3287(b) and 3289.

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1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 37. Wage Order 4, § 12 and California Labor Code §§ 226.7, 516, 558, and 1198
6 establish the right of employees to be authorized and permitted to take a paid rest period of at
7 least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

8 38. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
9 of the Rest Period Class to take all required and legally compliant rest periods and failed to pay
10 rest period premium wages when rest periods were not authorized and permitted.

11 39. The foregoing violations create an entitlement to recovery by Plaintiff and Rest
12 Period Class members in a civil action for the unpaid rest period premiums owing, including
13 interest thereon, statutory penalties, civil penalties, and costs of suit according to California Labor
14 Code §§ 226.7, 516, 558, and Wage Order 4, and Civil Code §§ 3287(b) and 3289.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO REIMBURSE BUSINESS EXPENDITURES**

17 **(AGAINST ALL DEFENDANTS)**

18 40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 41. Based on information and belief, Defendants required Plaintiff and members of
20 the Employee Expense Class to use their personal cellular phones and personal vehicles for
21 business purposes but failed to provide adequate reimbursement.

22 42. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
23 states that, “[a]n employer shall indemnify his or her employee for all necessary expenditures or
24 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
25 his or obedience to the directions of the employer.”

26 43. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
27 states that, “[a]ny contract or agreement, express or implied, made by any employee to waive the
28 benefits of this article or any part thereof, is null and void, and this article shall not deprive any

employee or his personal representative of any right or remedy to which she is entitled under the laws of this State.”

44. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Wage Order 4, § 9, Plaintiff and members of the Employee Expense Class were damaged in sums, which will be shown according to proof.

45. Plaintiff and members of the Employee Expense Class are entitled to attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

46. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue from the date on which they incurred the necessary expenditure.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

48. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with complete and accurate wage statements with respect to their actual hours worked, total gross wages earned, all rates of pay, total net wages earned, and the name and/or address of the legal entity that is the employer, in violation of Labor Code § 226 *et seq.*

49. Defendants’ failures in furnishing Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all their overtime and minimum wages, meal period premium wages, rest period premium wages, and other wages, and deprived them of the information necessary to identify the discrepancies in Defendants’ reported data, as well as the failure to identify the address of the entity that is the employer.

50. Defendants’ failures create an entitlement to recovery by Plaintiff and members of

1 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
2 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
3 costs of suit according to California Labor Code § 226 *et seq.*

4 **SEVENTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(AGAINST ALL DEFENDANTS)**

7 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 52. Defendants have engaged and continue to engage in unfair and/or unlawful
9 business practices in California in violation of California Business and Professions Code § 17200
10 *et seq.*, by failing to properly pay all minimum and overtime wages, failing to provide all required
11 meal periods and authorize and permit all required rest periods, failure to pay premium payments
12 for missed or non-compliant meal and rest periods, and failure to reimburse for all necessary
13 business expenses.

14 53. Defendants' utilization of these unfair and/or unlawful business practices deprived
15 Plaintiff and continues to deprive members of the Classes of compensation to which they are
16 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
17 over Defendants' competitors who have been and/or are currently employing workers and
18 attempting to do so in honest compliance with applicable wage and hour laws.

19 54. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
20 herein, Plaintiff, for herself and on behalf of the members of the Classes, seeks full restitution of
21 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
22 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

23 55. The acts complained of herein occurred within the last four years immediately
24 preceding the filing of this action.

25 56. Plaintiff was compelled to retain the services of counsel to file this court action to
26 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
27 of Defendants' current non-exempt employees, and to enforce important rights affecting the
28 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,

1 which she is entitled to recover under Code of Civil Procedure § 1021.5.

2 **EIGHTH CAUSE OF ACTION**
3 **PRIVATE ATTORNEYS GENERAL ACT**
4 **(AGAINST ALL DEFENDANTS)**

5 57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

6 58. Defendants have committed several Labor Code violations against Plaintiff,
7 members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee”
8 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved
9 employees, brings this representative action against Defendants to recover the civil penalties due
10 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
11 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
12 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
13 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
14 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
15 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
16 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
17 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
18 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
19 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
20 subsequent violation per employee per pay period for those violations of the Labor Code for which
21 no civil penalty is specifically provided, based on the following Labor Code violations:

- 22 a. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
23 earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194,
24 and 1198;
- 25 b. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
26 Wage Class, and other aggrieved employees in violation of Labor Code §§
27 1182.12, 1194, 1194.2, and 1197;
- 28 c. Failing to provide all legally required meal periods, and failure to pay meal period

premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;

d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;

e. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;

f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;

g. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;

h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and

i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

59. On January 23, 2024, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 58 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with

respect to these violations.

60. Based on the foregoing, Plaintiff seeks to represent herself and all Aggrieved Employees, as defined by Labor Code § 2699(c).

61. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 516, and 558;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804
9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Class of all money and/or property unlawfully acquired by Defendants by means of any acts or

practices declared by this Court to be in violation of Cal. Business & Professions Code § 17200 *et seq.*;

11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations identified in Paragraph 58 (a)-(i);

12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and 2802(c) and Civil Code §§ 3287 and 3289;

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226, 1194 *et seq.*, 2699(g) 2802(c), and Code of Civil Procedure § 1021.5; and

14. For such other and further relief, the Court may deem just and proper.

Dated: March 29, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By: _____

Paul K. Haines
Attorneys for Plaintiff

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Dated: March 29, 2024

By:

