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ELECTRONICALLY FILED

Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By G. Lopez ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

TERA BRANDLEY, an individual, on behalf of
herself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

PANTOGRAN LLC DBA CENTER FOR
AUTISM AND RELATED DISORDERS, a
Delaware limited liability company; and DOES 1
TO 50,

Defendants.

Case Number: 37-2024-00002052-CU-OE-CTL

**First Amended Class and PAGA
Representative Action Complaint For:**

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Maintain Accurate Employment Records,
6. Failure to Pay Wages Timely during Employment,
7. Failure to Pay All Wages Earned and Unpaid at Separation,
8. Failure to Indemnify All Necessary Business Expenditures,
9. Failure to Furnish Accurate Itemized Wage Statements,

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- 10.** Violations of California’s Unfair
Competition Law (Bus. & Prof. Code, §§
17200–17210), and
- 11.** Penalties Pursuant to the Labor Code
Private Attorneys General Act of 2004
(“PAGA”) for Violations of California
Labor Code Sections 201, 202, 203, 204,
210, 226, 226.3, 226.7, 256, 510, 512,
1174, 1174.5, 1185, 1194, 1194.2, 1197,
1197.1, 1198, 1198.5, 1199, 2802, 2804,
and Other Provisions of the Labor Code.

Demand for Jury Trial

1 Plaintiff Tera Brandley (“Plaintiff”), on behalf of herself, the State of California, as a private
2 attorney general, and all other similarly situated employees within the State of California, complains
3 and alleges of defendants Pantogran LLC dba Center for Autism and Related Disorders and Does 1 to
4 50 (collectively, “Defendants”), and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action complaint brought pursuant to California Code of Civil Procedure
7 section 382.

8 2. The “Class Period” as used herein, is defined as the period from August 26, 2023, and
9 continuing into the present and ongoing. Defendants’ violations of California’s laws as described more
10 fully below have been ongoing throughout the Class Period and are still ongoing.

11 3. Plaintiff brings this class action on behalf of herself and the following class: *All*
12 *individuals who are or were employed by Defendants as non-exempt employees in California during*
13 *the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

14 4. Plaintiff brings this action on behalf of herself and the Class Members, as a class action,
15 against Defendants for:

- 16 A. Failure to pay all minimum wages,
- 17 B. Failure to pay all overtime wages,
- 18 C. Failure to provide rest periods and pay missed rest period premiums,
- 19 D. Failure to provide meal periods and pay missed meal period premiums,
- 20 E. Failure to maintain accurate employment records,
- 21 F. Failure to pay wages timely during employment,
- 22 G. Failure to pay all wages earned and unpaid at separation,
- 23 H. Failure to indemnify all necessary business expenditures,
- 24 I. Failure to furnish accurate itemized wage statements, and
- 25 J. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.
26 Code, §§ 17200–17210).

27 5. This action is also a representative action brought pursuant to the California Labor Code
28 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698

1 through 2699.6.

2 6. The “PAGA Period” as used herein, is defined as the period from January 17, 2023, and
3 continuing into the present and ongoing.

4 7. This PAGA action is brought on behalf of Plaintiff, the State of California as private
5 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
6 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
7 “Aggrieved Employees”).

8 8. Plaintiff is informed and believes and thereon alleges that the California Industrial
9 Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC Wage Orders
10 4-2001 and/or 5-2001 (the “Applicable Wage Orders”) and possibly others that may be applicable.
11 (Cal. Code of Regs., tit. 8, §§ 11040, 11050.) Plaintiff reserves the right to amend or modify the
12 definition of “Applicable Wage Orders” with greater specificity or add additional IWC Wage Orders
13 if additional applicable wage orders are discovered in litigation.

14 **II. JURISDICTION & VENUE**

15 9. This Court has subject matter jurisdiction over all causes of action asserted herein
16 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
17 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
18 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
19 is subject to adjudication in the courts of the State of California.

20 10. This Court has personal jurisdiction over Defendants because Defendants have caused
21 injuries in the County of San Diego and the State of California through their acts, and by their violation
22 of the California Labor Code and California state common law. Defendants transact millions of dollars
23 of business within the State of California. Defendants own, maintain offices, transact business, have an
24 agent or agents within the County of San Diego, and/or otherwise are found within the County of San
25 Diego, and Defendants are within the jurisdiction of this Court for purposes of service of process.

26 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
27 Code of Civil Procedure. Defendants operate within California and do business within San Diego
28 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of

1 Defendants' employees identified above within San Diego County and surrounding counties where
2 Defendants may remotely operate.

3 12. This matter is not appropriate for removal under the Class Action Fairness Act (28
4 U.S.C. § 1332) as the amount in controversy for Plaintiff's and the Class Members' claims, in
5 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
6 California. As such, even if the amount in controversy did exceed \$5 million this matter would still not
7 be appropriate for removal under the "local controversy" exception to the Class Action Fairness Act.
8 (28 U.S.C. § 1332, subd. (d)(4)(A).)

9 **III. THE PARTIES**

10 **A. PLAINTIFF**

11 13. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
12 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
13 employee in the County of San Diego.

14 14. Plaintiff brings this action on behalf of herself and the following class pursuant to
15 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*
16 *Defendants as non-exempt employees in California during the Class Period* (the "Class Members").

17 15. Plaintiff also brings this action on behalf of herself and the State of California, as a
18 private attorney general, and on behalf of the following group of aggrieved employees: *All individuals*
19 *who are or were employed by Defendants as non-exempt employees in California during the PAGA*
20 *Period* (the "Aggrieved Employees").

21 16. The Class Members and the Aggrieved Employees, at all times pertinent hereto, are or
22 were employees of Defendants during the relevant statutory period.

23 **B. DEFENDANTS**

24 17. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
25 to and doing business in San Diego County and is and/or was the legal employer of Plaintiff, the other
26 Aggrieved Employees, and the other Class Members during the applicable statutory periods. Plaintiff,
27 the other Aggrieved Employees, and the other Class Members were, and are, subject to Defendants'
28 policies and/or practices complained of herein and have been deprived of the rights guaranteed to them

1 by: California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174,
2 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable;
3 California Business and Professions Code sections 17200 through 17210 (“UCL”); and the Applicable
4 Wage Orders (Cal. Code of Regs., tit. 8, §§ 11040, 11050).

5 18. Plaintiff is informed and believes, and based thereon alleges, that during the Class
6 Period and PAGA Period, Defendants did (and continue to do) business in the State of California,
7 County of San Diego. Defendants’ operations are headquartered in San Diego County.

8 19. Plaintiff does not know the true names or capacities, whether individual, partner, or
9 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
10 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
11 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
12 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
13 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff,
14 the other Aggrieved Employees, and the other Class Members to be subject to the unlawful employment
15 practices, wrongs, injuries, and damages complained of herein.

16 20. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and/or are the employers of Plaintiff, the other Aggrieved Employees, and the
18 other Class Members. At all times herein mentioned, each of said Defendants participated in the doing
19 of the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the
20 Defendants, and each of them, were the agents, representatives, and employees of each and every one
21 of the other Defendants, and at all times herein mentioned were acting within the course and scope of
22 said agency, representation, and employment. Defendants, and each of them, approved of, condoned,
23 or otherwise ratified every one of the acts or omissions complained of herein.

24 21. Plaintiff is further informed, and believes, and thereon alleges, that at all times
25 mentioned herein, that Defendants, and each of them, are the alter egos of one another and that there
26 existed and now exists a unity of interest and ownership between them such that the individuality and
27 separateness of each of them has ceased. Plaintiff is further informed, and believes, and thereon alleges,
28 that at all times mentioned herein, that Defendants, and each of them, have been and now are mere

1 shells and naked frameworks that their principal uses for the conduct of that Defendant's own business,
2 property, and affairs, for which Defendants, and each of them, have concealed and misrepresented their
3 identities as the entities responsible for their ownership, management, and financial interests.

4 22. Plaintiff is further informed, and believes, and thereon alleges, that at all times
5 mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture,
6 partnership, and common enterprise, and acting within the course and scope of and in pursuance of said
7 joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and believes, and
8 thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff, the other
9 Aggrieved Employees, and the other Class Members.

10 **IV. COMMON FACTS & ALLEGATIONS**

11 23. The Class Members and the Aggrieved Employees are, and were, at all relevant times,
12 non-exempt employees for the purposes of minimum wages, overtime, rest breaks, meal periods, and
13 the other claims alleged in this complaint.

14 24. Specifically, Plaintiff was employed by Defendants within the statutory Class Period
15 and PAGA Period, working as an hourly, non-exempt behavior technician for Defendants.

16 **A. MINIMUM WAGE VIOLATIONS**

17 25. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
18 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
19 section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a
20 civil action the unpaid balance of the full amount of this minimum wage." Likewise, the Applicable
21 Wage Orders also obligate employers to pay each employee minimum wages for all hours worked.
22 (Cal. Code of Regs., tit. 8, §§ 11040, 11050.) Labor Code section 1198 makes unlawful the employment
23 of an employee under conditions that the IWC Wage Orders prohibit.

24 26. These minimum wage standards apply to each hour that employees work. Therefore, an
25 employer's failure to pay for any particular time worked by an employee is unlawful, even if averaging
26 an employee's total pay over all hours worked, paid or not, results in an average hourly wage above
27 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)
28

1 27. Here, Defendants failed to fully conform their pay practices to the requirements of the
2 law during the relevant statutory periods. The Class Members and the Aggrieved Employees were not
3 compensated for all hours worked including, but not limited to, all hours they were subject to the control
4 of Defendants and/or suffered or permitted to work under the California Labor Code and the Applicable
5 Wage Orders. Among other violations, the Class Members and the Aggrieved Employees were subject
6 to the control of Defendants while off-the-clock and did not receive minimum wage for each hour
7 worked.

8 28. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an
9 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees
10 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
11 due and interest thereon.

12 29. When employees, such as the Class Members, are not paid for all hours worked under
13 Labor Code section 1194, they are entitled to recover minimum wages for the time which they received
14 no compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015) 154
15 F.Supp.3d 891 [employees suing for failure to pay overtime could recover liquidated damages under
16 Labor Code section 1194.2 if they also showed they were paid less than minimum wage].)

17 30. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
18 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
19 damages, as follows:

20 (1) “For any initial violation that is intentionally committed, one
21 hundred dollars (\$100) for each underpaid employee for each pay period
22 for which the employee is underpaid.”

23 (2) “For each subsequent violation for the same specific offense, two
24 hundred fifty dollars (\$250) for each underpaid employee for each pay
25 period for which the employee is underpaid regardless of whether the
26 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.
27 (a).)
28

1 31. As set forth above, Defendants failed to fully compensate the Class Members and the
2 Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled to recover
3 liquidated damages for violations of Labor Code section 1197.1.

4 32. Based upon these same factual allegations, the Class Members are likewise entitled to
5 penalties under Labor Code sections 1199.

6 **B. OVERTIME VIOLATIONS**

7 33. Labor Code section 510 requires employers to compensate employees who work more
8 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
9 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
10 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
11 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 hours on the seventh consecutive day of work. (Lab. Code, § 510,
13 subd. (a).) These rules are also reflected in the Applicable Wage Orders.

14 34. In accordance with Labor Code section 1194 and the Applicable Wage Orders, the Class
15 Members and the Aggrieved Employees could not then agree and cannot now agree to work for a lesser
16 wage than the amount provided by Labor Code sections 510 or the Applicable Wage Orders.

17 35. Here, Defendants violated their duty to accurately and completely compensate the Class
18 Members and the Aggrieved Employees for all overtime worked. The Class Members and the
19 Aggrieved Employees periodically worked hours that entitled them to overtime compensation under
20 the law but were not fully compensated for those hours.

21 36. Moreover, during the relevant statutory periods, Defendants had a policy and practice
22 of failing to pay overtime wages at the proper rate when it actually paid overtime. Specifically, when
23 Defendants paid overtime wages to the Class Members and the Aggrieved Employees, Defendants
24 failed to include all compensation when calculating the regular rate of pay used in overtime calculations
25 and when paying overtime.

26 37. For instance, the Class Members and the Aggrieved Employees would often receive,
27 along with their hourly rates of pay for their working hours, additional remuneration and/or non-
28 discretionary bonus pay. Defendants, however, calculated the regular rate of pay for the Class Members

1 and the Aggrieved Employees without factoring into the regular rate of pay all other non-hourly pay
2 earnings received during the pay period. As a result, the Class Members and the Aggrieved Employees
3 were underpaid overtime wages when they worked in excess of eight hours in any workday and/or forty
4 hours in a workweek when such additional forms of remuneration were earned. By its practice of
5 periodically requiring the Class Members and the Aggrieved Employees to work in excess of eight
6 hours in a workday and/or forty hours in a workweek without compensating them at the rate of one and
7 one-half (1½) their regular rate of pay, Defendants willfully violated the provisions of Labor Code
8 sections 510, 1194, and 1199.

9 38. These actions were and are in clear violation of California’s overtime laws as set forth
10 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8,
11 §§ 11040, 11050.) As a result of Defendants’ faulty policies and practices, the Class Members and the
12 Aggrieved Employees were not compensated for all hours worked or paid accurate overtime
13 compensation.

14 C. REST BREAK VIOLATIONS

15 39. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants
16 were and are required to provide the Class Members and the Aggrieved Employees with compensated,
17 duty-free rest periods of not less than ten minutes for every major fraction of four hours worked. Under
18 the Applicable Wage Orders, an employer must authorize and permit all employees to take ten minute
19 duty free rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, §§
20 11040, 11050.)

21 40. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
22 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
23 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
24 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
25 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
26 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must
27 factor in all nondiscretionary payments for work performed by the employee, including non-
28 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base

1 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage
2 Orders set when and for how long the rest period must take place and the Labor Code establishes that
3 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
4 their employees when employers fail to provide rest periods.

5 41. The California Supreme Court has held that, during required rest periods, “employers
6 must relieve their employees of all duties and relinquish any control over how employees spend their
7 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
8 control over employees during rest periods requires that employees be “free to leave the employer’s
9 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
10 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
11 policy:

12 “An employer is required to authorize and permit the amount of rest break time
13 called for under the wage order for its industry. If it does not—if, for example,
14 it adopts a uniform policy authorizing and permitting only one rest break for
15 employees working a seven-hour shift when two are required—it has violated
16 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
17 Cal.4th 1004, 1033.)

18 42. Here, Defendants periodically did not permit the Class Members and the Aggrieved
19 Employees to take compliant duty-free rest breaks, free from Defendants’ control as required by Labor
20 Code section 226.7, the Applicable Wage Orders, and applicable precedent. (See *Augustus v. ABM*
21 *Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must
22 relieve employees of all duties and relinquish control over how employees spend their time.”].) At all
23 relevant times, the Class Members and the Aggrieved Employees were periodically not provided with
24 legally-compliant and timely rest periods of at least ten minutes for each four hour work period, or
25 major fraction thereof due to Defendants’ unlawful rest period policies/practices. The Class Members
26 and the Aggrieved Employees were often expected and required to continue working through rest
27 periods to meet the expectations Defendants and finish the workday. In some cases when the Class
28 Members and the Aggrieved Employees worked more than ten hours in a shift, Defendants failed to

1 authorize and/or permit a third mandated rest period. As a result, the Class Members and the Aggrieved
2 Employees were periodically unable to take compliant rest periods.

3 43. In such cases where Defendants did not offer the Class Members and the Aggrieved
4 Employees the opportunity to receive a compliant off-duty rest period, “the court may not conclude
5 employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015)
6 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally compliant meal or rest
7 breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest.*
8 *Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break
9 that was required by law but never authorized; if a break is not authorized, an employee has no
10 opportunity to decline to take it.”].)

11 44. In addition to failing to authorize and permit compliant rest periods, the Class Members
12 and the Aggrieved Employees were not compensated with one hour’s worth of pay at their regular rate
13 of compensation when they were not provided with a compliant rest period in accordance with Labor
14 Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the
15 Applicable Wage Orders.

16 45. Based on the foregoing, Plaintiff seeks to recover, on behalf of herself and other non-
17 exempt employees, rest period premiums and penalties.

18 **D. MEAL BREAK VIOLATIONS**

19 46. Labor Code section 512 and the Applicable Wage Orders require employers to provide
20 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
21 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
22 more than five hours per day without providing the employee with a meal period of not less than 30
23 minutes”]; Cal. Code of Regs., tit. 8, §§ 11040, 11050 [“No employer shall employ any person
24 for a work period of more than five (5) hours without a meal period of not less than 30 minutes”].)
25 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
26 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
27 employ an employee for a work period of more than 10 hours per day without providing the employee
28 with a second meal period of not less than 30 minutes”].)

1 47. “An on-duty meal period is permitted only when the nature of the work prevents an
2 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
3 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
4 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
5 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
6 have “found that the nature of the work exception applies: (1) where the work has some particular
7 external force that requires the employee to be on duty at all times, and (2) where the employee is the
8 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
9 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
10 to determine whether the nature of the work prevents an employee from being relieved before requiring
11 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at
12 p. 946.)

13 48. Here, the Class Members and the Aggrieved Employees were never asked to sign any
14 enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of their
15 work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The*
16 *Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not
17 provide compliant off-duty meal periods within the first five hours of work for the Class Members and
18 the Aggrieved Employees.

19 49. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
20 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
21 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
22 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
23 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
24 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
25 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
26 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
27 *Court*, *supra*, 53 Cal.4th at p. 1033.)
28

1 50. During the applicable statutory periods here, the Class Members and the Aggrieved
2 Employees were periodically denied legally-compliant and timely off-duty meal periods of at least
3 thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of Defendants’
4 uniform meal period policies and practices, the Class Members and the Aggrieved Employees were
5 often not permitted to take compliant first meal periods before the end of the fifth hour of work. The
6 Class Members and the Aggrieved Employees were also periodically not permitted to take second meal
7 periods for shifts in excess of ten hours. Defendants thus violated Labor Code section 512 and the
8 Applicable Wage Orders by failing to advise, authorize, or permit the Class Members and the
9 Aggrieved Employees to receive thirty-minute, off-duty meal periods within the first five hours of their
10 shifts.

11 51. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
12 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
13 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
14 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further obligate
15 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
16 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
17 Regs., tit. 8, §§ 11040, 11050 [“If an employer fails to provide an employee a meal period in accordance
18 with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay
19 at the employee’s regular rate of compensation for each workday that the meal period is not
20 provided.”].) The “regular rate” for these purposes must factor in all nondiscretionary payments for
21 work performed by the employee, including non-discretionary bonuses, commissions, and other forms
22 of wage payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC*
23 (2021) 11 Cal.5th 858, 878.)

24 52. Accordingly, for each day that the Class Members and the Aggrieved Employees did
25 not receive compliant meal periods, they were and are entitled to receive meal period premiums
26 pursuant to Labor Code section 226.7 and the Applicable Wage Orders. Defendants, however, failed
27 to pay the Class Members and the Aggrieved Employees applicable meal period premiums for many
28 workdays that the employees did not receive a compliant meal period. Thus, Defendants have violated

1 Labor Code section 226.7 and the Applicable Wage Orders.

2 53. Based on the foregoing, Plaintiff seeks to recover, on behalf of herself and other non-
3 exempt employees, meal period premiums and penalties.

4 **E. UNTIMELY WAGES DURING EMPLOYMENT**

5 54. Labor Code section 204 expressly requires employers who pay employees on a weekly,
6 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
7 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
8 Labor Code section 204 subject to a penalty of:

9 “(1) For any initial violation, one hundred dollars (\$100) for each
10 failure to pay each employee.

11 “(2) For each subsequent violation, or any willful or intentional
12 violation, two hundred dollars (\$200) for each failure to pay each
13 employee, plus 25 percent of the amount unlawfully withheld.” (Lab.
14 Code, § 210, subd. (a).)

15 55. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
16 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
17 subd. (a).)

18 56. Due to Defendants’ failure to pay the Class Members and the Aggrieved Employees the
19 wages described above, along with rest and meal break premiums, Defendants failed to timely pay the
20 Class Members and the Aggrieved Employees within seven calendar days following the close of payroll
21 in accordance with Labor Code section 204 on a regular and consistent basis. (See *Parson v. Golden*
22 *State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016
23 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period premiums can support claims under
24 Labor Code sections 203 and 204].)

25 **F. UNTIMELY WAGES AT SEPARATION**

26 57. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
27 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
28 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result

1 of Defendants' failure to pay the Class Members and the Aggrieved Employees for the wages described
2 above, along with rest and meal break premiums, Defendants violated and continue to violate Labor
3 Code section 203.

4 58. Due to Defendants' faulty pay policies, those Class Members and Aggrieved Employees
5 whose employment with Defendants concluded were not compensated for each and every hour worked
6 at the appropriate rate. Defendants have failed to pay formerly-employed Class Members and
7 Aggrieved Employees whose sums were certain at the time of termination within at least seventy-two
8 hours of their resignation and have failed to pay those sums for thirty days thereafter.

9 **G. FAILURE TO REIMBURSE BUSINESS EXPENSES**

10 59. At all relevant times herein, Defendants were subject to Labor Code section 2802, which
11 states that "an employer shall indemnify his or her employees for all necessary expenditures or losses
12 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
13 obedience to the directions of the employer." The purpose of this section is to "prevent employers from
14 passing along their operating expenses onto their employees." (*Gattuso v. Harte-Hanks Shoppers, Inc.*
15 (2007) 42 Cal.4th 554, 562.)

16 60. At all relevant times herein, Defendants were subject to Labor Code section 2804, which
17 states that "any contract or agreement, express or implied, made by any employee to waive the benefits
18 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his
19 personal representative of any right or remedy to which he is entitled under the laws of this State."

20 61. Thus, the Class Members and the Aggrieved Employees were and are entitled to
21 reimbursement for the expenses they incurred during the course of their duties. The duty to reimburse
22 even extends to the use of equipment the employee may already own and would be required to pay for
23 anyway. (*Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 ["The threshold
24 question in this case is this: Does an employer always have to reimburse an employee for the reasonable
25 expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to
26 the situation in which the employee incurred an extra expense that he or she would not have otherwise
27 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer
28 would receive a windfall because it would be passing its operating expenses on to the employee."].)

1 62. Here, Defendants failed to fully reimburse the Class Members and the Aggrieved
2 Employees for necessary expenditures incurred as a direct consequence and requirement of performing
3 their job duties, including the costs associated with their personal cell phone they required to perform
4 their work. Consequently, Defendants failed to comply with Labor Code section 2802.

5 **H. WAGE STATEMENT VIOLATIONS**

6 63. Defendants also failed to provide accurate itemized wage statements in accordance with
7 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
8 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
9 statement in writing showing:

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

25 64. Due to Defendants' failure to pay the Class Members and the Aggrieved Employees
26 properly as described above, the wage statements issued do not indicate the correct amount of gross
27 wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in effect
28 during the pay period and the corresponding number of hours worked at each hourly rate. Thus,

1 Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

2 65. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
3 intentionally failed to provide the Class Members and the Aggrieved Employees with accurate itemized
4 wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they
5 were not providing the Class Members and the Aggrieved Employees with wage statements required
6 by California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett*
7 *v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and
8 intentionally violated Labor Code section 226 because the “[d]efendant knew that it was not providing
9 total hours worked to plaintiff or other employees paid on commission” even though it believed that
10 employees paid solely on commission or commission and salary “are exempt and therefore we do not
11 record hours on a wage statement.”].)

12 **I. RECORDKEEPING VIOLATIONS**

13 66. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
14 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent
15 part, as follows:

16 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
17 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
18 violation in an initial citation and one thousand dollars (\$1,000) per employee
19 for each violation in a subsequent citation, for which the employer fails to
20 provide the employee a wage deduction statement or fails to keep the records
21 required in subdivision (a) of Section 226. The civil penalties provided for in
22 this section are in addition to any other penalty provided by law.” (Lab. Code, §
23 226.3, emphasis added.)

24 67. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
25 Defendants, to:

26 “Keep, at a central location in the state or at the plants or establishments at which
27 employees are employed, payroll records showing the hours worked daily by
28 and the wages paid to, and the number of piece-rate units earned by and any

1 applicable piece rate paid to, employees employed at the respective plants or
2 establishments. These records shall be kept in accordance with rules established
3 for this purpose by the commission, but in any case shall be kept on file for not
4 less than three years. An employer shall not prohibit an employee from
5 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
6 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

7 68. As explained in detail above, Defendants failed to provide the Class Members and the
8 Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part, because they
9 failed to accurately track hours worked by the Class Members and the Aggrieved Employees.
10 Defendants have thus failed to keep accurate records of the “total hours worked by the employee[s]”
11 in violation of Labor Code section 226, subdivision (a), and are therefore subject to the penalties
12 provided by Labor Code section 226.3. These penalties are “in addition to any other penalty provided
13 by law.” (Lab. Code, § 226.3.)

14 69. The failure to accurately track hours worked also resulted in a failure of Defendants to
15 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
16 including Plaintiff and the other Class Members, in violation of Labor Code section 1174, subdivision
17 (d).

18 **V. CLASS ACTION ALLEGATIONS**

19 70. As mentioned above, Plaintiff brings this action on behalf of herself and the Class
20 Members pursuant to section 382 of the Code of Civil Procedure.

21 71. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all
22 members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff
23 at this time; however, it is estimated that the number of Class Members is greater than 100 individuals.
24 The identity of such membership is readily ascertainable via inspection of Defendants’ employment
25 records.

26 72. **Common Questions of Law and Fact Predominate/Well Defined Community of**
27 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
28 non-exempt employees, which predominate over questions affecting only individual members

1 including, without limitation to:

2 A. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
3 Members for all hours worked, including all minimum wages;

4 B. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
5 Members for all required overtime wages at the Class Members' regular rate of pay;

6 C. Whether Defendants' rest period policies and practices afforded legally
7 compliant rest periods or compensation in lieu thereof;

8 D. Whether Defendants' meal period policies and practices afforded legally
9 compliant meal periods or compensation in lieu thereof;

10 E. Whether Defendants maintained accurate employment records;

11 F. Whether Defendants timely paid all wages during employment;

12 G. Whether Defendants timely paid all wages earned and unpaid at separation;

13 H. Whether Defendants indemnified their employees for all necessary business
14 expenditures;

15 I. Whether Defendants furnished legally-compliant wage statements to the Class
16 Members pursuant to Labor Code section 226; and

17 J. Whether Defendants' violations of the Labor Code and the Applicable Wage
18 Orders amounted to a violation of California's UCL.

19 **73. Predominance of Common Questions:** Common questions of law and fact
20 predominate over questions that affect only individual Class Members. The common questions of law
21 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices
22 applicable to each individual class member, such as Defendants' uniform policy and practice of failing
23 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide
24 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant
25 meal periods, Defendants' failure to provide accurate itemized wage statements, and others. As such,
26 the common questions predominate over individual questions concerning each individual class
27 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.
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1 74. **Typicality:** The claims of Plaintiff are typical of the claims of the Class Members
2 because Plaintiff was employed by Defendants as a non-exempt employee in California during the
3 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,
4 Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime wages
5 because of Defendants' unlawful timekeeping policies and practices, was deprived of rest periods and
6 premium wages in lieu thereof, was deprived of meal periods and premium wages in lieu thereof, was
7 subject to Defendants' uniform rest period policies and practices, was subject to Defendants' uniform
8 meal period policies and practices, was not provided accurate itemized wage statements, was not paid
9 all wages in full and on time, , and was subject to other similar policies and practices to which the Class
10 Members were subject.

11 75. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
12 represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are
13 ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's
14 attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past
15 and are committed to vigorously prosecuting this action on behalf of the Class Members.

16 76. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
17 important public interest in establishing minimum working conditions and standards in California.
18 These laws and labor standards protect the average working employee from exploitation by employers
19 who have the responsibility to follow the laws and who may seek to take advantage of superior
20 economic and bargaining power in setting onerous terms and conditions of employment. The nature of
21 this action and the format of laws available to Plaintiff and the Class Members make the class action
22 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each
23 employee were required to file an individual lawsuit, Defendants would necessarily gain an
24 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
25 each individual plaintiff with their vastly superior financial and legal resources.

26 77. Moreover, requiring each Class Member to pursue an individual remedy would also
27 discourage the assertion of lawful claims by employees who would be disinclined to file an action
28 against their former or current employer for real and justifiable fear of retaliation and permanent

1 damages to their careers at subsequent employment. Further, the prosecution of separate actions by the
2 individual Class Members, even if possible, would create a substantial risk of inconsistent or varying
3 verdicts or adjudications with respect to the individual Class Members against Defendants herein, and
4 which would establish potentially incompatible standards of conduct for Defendants or legal
5 determinations with respect to individual Class Members which would, as a practical matter, be
6 dispositive of the interest of the other Class Members not parties to adjudications or which would
7 substantially impair or impede the ability of the Class Members to protect their interests.

8 78. Further, the claims of the individual Class Members are not sufficiently large to warrant
9 vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As
10 such, the Class Members identified above are maintainable as a class under section 382 of the Code of
11 Civil Procedure.

12 **VI. EXHAUSTION OF REMEDIES**

13 79. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior
14 to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online with
15 the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants
16 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA.
17 (Lab. Code, §§ 2698–2699.6.)

18 80. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by
19 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by
20 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the
21 postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil
22 action pursuant to Labor Code section 2699.

23 **VII. CAUSES OF ACTION**

24 **First Cause of Action**

25 *Failure to Pay All Minimum Wages*

26 *(Against All Defendants)*

27 81. Plaintiff realleges and incorporates by reference all previous paragraphs.
28

1 82. Section 4 of the Applicable Wage Orders and Labor Code section 1197 establish the
2 right of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab.
3 Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11040, 11050.) Labor Code sections 1194, subdivision (a),
4 and 1194.2, subdivision (a), provide that an employee who has not been paid the legal minimum wage
5 as required by Labor Code section 1197 may recover the unpaid balance, together with attorneys' fees
6 and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest
7 accrued thereon.

8 83. Here, Defendants failed to fully conform their pay practices to the requirements of the
9 law during the relevant statutory periods. Plaintiff and the other Class Members were not compensated
10 for all hours worked including, but not limited to, all hours they were subject to the control of
11 Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage
12 Orders.

13 84. Labor Code section 1198 makes unlawful the employment of an employee under
14 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2,
15 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage
16 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages
17 in an amount equal to the wages due and interest thereon.

18 85. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
19 Plaintiff and the other Class Members have sustained economic damages, including but not limited to
20 unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover
21 economic and statutory damages and penalties and other appropriate relief because of Defendants'
22 violations of the Labor Code and Applicable Wage Orders.

23 86. Defendants' practices and policies regarding illegal employee compensation are
24 unlawful and create an entitlement to recovery by Plaintiff and the other Class Members in a civil
25 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
26 statutory penalties, attorneys' fees, and costs of suit according to Labor Code sections 204, 218.5, 1194,
27 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.
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1 worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, §§ 11040, 11050.)

2 92. Due to Defendants' unlawful rest period policies and practices described in detail above,
3 Defendants did not authorize and permit Plaintiff and the other Class Members to take all rest periods
4 to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an
5 additional hour of pay to Plaintiff and the other Class Members at their respective regular rates of pay
6 for each violation, in accordance with California Labor Code section 226.7.

7 93. The foregoing violations create an entitlement to recovery by Plaintiff and the other
8 Class Members in a civil action for the unpaid amount of rest period premiums owing, including interest
9 thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Orders, and California
10 Labor Code section 226.7.

11 **Fourth Cause of Action**

12 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

13 *(Against All Defendants)*

14 94. Plaintiff realleges and incorporates by reference all previous paragraphs.

15 95. Plaintiff is informed and believes and thereon alleges, that Defendants failed in their
16 affirmative obligation to provide their hourly non-exempt employees, including Plaintiff and the other
17 Class Members, with all required meal periods in accordance with the mandates of the Labor Code and
18 the Applicable Wage Orders, for the reasons set forth herein above. Despite Defendants' violations,
19 Defendants have not paid an additional hour of pay to Plaintiff and the other Class Members at their
20 respective regular rates of pay for each violation, in accordance with California Labor Code section
21 226.7.

22 96. As a result, Defendants are responsible for paying premium compensation for meal
23 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
24 Applicable Wage Orders and Labor Code sections 226.7 and 512, and Civil Code sections 3287,
25 subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, §§ 11040, 11050.)
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1 subsequent violation, plus 25% of the amount unlawfully withheld.

2 103. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards
3 to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with intent to
4 secure himself, his employer or other person, any discount upon such indebtedness, or with intent to
5 annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.”

6 104. Defendants as a matter of established company policy and procedure in the State of
7 California, scheduled, required, suffered, and/or permitted Plaintiff and the other Class Members, to
8 work without full compensation, to work without legally-compliant off-duty meal periods, to work
9 without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff and the other
10 Class Members within seven days of the close of payroll, as required by law.

11 105. Defendants, as a matter of established company policy and procedure in the State of
12 California, falsely deny they owe Plaintiff and the other Class Members these wages, with the intent of
13 securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay,
14 and/or defraud Plaintiff and the other Class Members.

15 106. Defendants’ pattern, practice, and uniform administration of its corporate policy of
16 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and
17 the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the
18 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest
19 owed to them pursuant to Labor Code sections 210 and 218.5.

20 **Seventh Cause of Action**

21 *Failure to Pay All Wages Earned and Unpaid at Separation*

22 *(Against All Defendants)*

23 107. Plaintiff realleges and incorporates by reference all previous paragraphs.

24 108. The actionable period for this cause of action is three years prior to the filing of this
25 complaint through the present, and ongoing until the violations are corrected or the class is certified.
26 (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions,*
27 *Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and
28 202 of the California Labor Code require Defendants to pay all compensation due and owing to its

1 former employees (including the formerly-employed Class Members) during the actionable period for
2 this cause of action at or around the time that their employment is or was terminated, or ended.

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

6 110. Due to Defendants' faulty pay policies, those Class Members whose employment with
7 Defendants has concluded were not compensated for each and every hour worked at the appropriate
8 rate. Defendants have willfully failed to pay those formerly-employed Class Members whose sums
9 were certain at the time of termination within seventy-two hours of their resignation and have failed to
10 pay those sums for thirty days thereafter as required by Labor Code sections 201 through 203.

11 111. As a result, Defendants are liable to the formerly-employed Class Members for waiting
12 time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant to
13 Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon
14 termination entitles an employee to recover waiting time penalties].)

15 **Eighth Cause of Action**

16 *Failure to Indemnify All Necessary Business Expenditures*

17 *(Against All Defendants)*

18 112. Plaintiff realleges and incorporates by reference all previous paragraphs.

19 113. California Labor Code Section 2802 states that employers must "indemnify" an
20 employee for "all necessary expenditures or losses incurred by the employee in direct consequence of
21 the discharge of his or her duties, or of his or her obedience to the directions of the employer." Likewise,
22 Labor Code section 2804 states that "any contract or agreement, express or implied, made by any
23 employee to waive the benefits of this article or any part thereof, is null and void, and this article shall
24 not deprive any employee or his personal representative of any right or remedy to which he is entitled
25 under the laws of this State."

26 114. Here, Plaintiff and the other Class Members paid out of pocket for necessary business
27 expenditures incurred as a direct consequence and requirement of performing their job duties, including
28 the costs associated with their personal cell phone they required to perform their work. Despite knowing

1 that Plaintiff and the other Class Members incurred these necessary business expenses, and requiring
2 Plaintiff and the other Class Members to use such items, Defendants did not reimburse them.

3 115. Thus, Plaintiff and the other Class Members are entitled to recover the cost of such
4 necessary business expenses, plus interest from the date each incurred such business expenses, plus
5 fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

6 **Ninth Cause of Action**

7 *Failure to Furnish Accurate Itemized Wage Statements*

8 *(Against All Defendants)*

9 116. Plaintiff realleges and incorporates by reference all previous paragraphs.

10 117. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the
11 time of each payment to furnish an itemized wage statement in writing showing:

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

27 118. As set forth above, Defendants issued and continues to issue wage statements to its non-
28 exempt employees including Plaintiff and the other Class Members that are inadequate under Labor

1 Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members properly as
2 described above, Defendants failed to include required information on their wage statements, including,
3 but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section
4 226, subdivision (a).

5 119. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the
6 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

7 120. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
8 and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiff and the
9 other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of
10 \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class
11 Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and
12 reasonable attorneys' fees.

13 **Tenth Cause of Action**

14 *Violations of California's Unfair Competition Law*

15 *(Against All Defendants)*

16 121. Plaintiff realleges and incorporates by reference all previous paragraphs.

17 122. Defendants have engaged and continue to engage in unfair and/or unlawful business
18 practices in California in violation of California Business and Professions Code section 17200 through
19 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and
20 unlawful business practices deprived and continue to deprive Plaintiff and the other Class Members of
21 compensation to which they are legally entitled. These practices constitute unfair and unlawful
22 competition and provide an unfair advantage over Defendants' competitors who have been and/or are
23 currently employing workers and attempting to do so in honest compliance with applicable wage and
24 hour laws.

25 123. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein,
26 Plaintiff for herself and on behalf of the Class Members, seeks full restitution of monies, as necessary
27 and according to proof, to restore any and all monies withheld, acquired and/or converted by
28 Defendants pursuant to Business and Professions Code sections 17203 and 17208.

1 124. The acts complained of herein occurred within the four years prior to the initiation of
2 this action and are continuing into the present and ongoing.

3 125. Plaintiff was compelled to retain the services of counsel to file this Court action to
4 protect her interests and those of the Class Members, to obtain restitution and injunctive relief on behalf
5 of Defendants' current non-exempt employees and to enforce important rights affecting the public
6 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff
7 is entitled to recover under Code of Civil Procedure section 1021.5.

8 **Eleventh Cause of Action**

9 *Penalties Pursuant to PAGA for Violations of California Labor Code Sections 201,*
10 *202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1185, 1194,*
11 *1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the*
12 *Labor Code*
13 *(Against All Defendants)*

14 126. Plaintiff realleges and incorporates by reference all previous paragraphs.

15 127. Based on the above allegations incorporated by reference, Defendants violated Labor
16 Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1185, 1194,
17 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and the
18 Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11040, 11050), and others that may be
19 applicable.

20 128. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections
21 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210,
22 226, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199,
23 2802, 2804, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs.,
24 tit. 8, §§ 11040, 11050), and others that may be applicable.

25 129. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,
26 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
27 of trial subject to the following formula:

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

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

2 130. These penalties must be allocated seventy-five percent to the Labor and Workforce
3 Development Agency (“LWDA”) and twenty-five percent to the affected employees. These penalties
4 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*
5 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*
6 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9,
7 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section
8 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also
9 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL
10 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that “PAGA
11 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for
12 different Labor Code violations.”], internal quotation marks omitted).

13 131. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
14 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section
15 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code
16 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp.
17 780, 788.)

18 132. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
19 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
20 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
21 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
22 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
23 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of
24 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the
25 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and
26 seeks default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226,
27 subdivision (e).

1 133. Labor Code section 210 provides that “in addition to, an entirely independent and apart
2 from, any other penalty provided in this article, every person who fails to pay the wages of each
3 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
4 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
5 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
6 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
7 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover
8 penalties under Labor Code section 210 through PAGA.

9 134. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
10 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
11 intentionally committed for each underpaid employee for each pay period for which the employee is
12 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
13 offense for each underpaid employee for each pay period for which the employee is underpaid
14 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
15 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant
16 to Labor Code section 1197.1.

17 135. Plaintiff was compelled to retain the services of counsel to file this action to protect her
18 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed
19 by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which Plaintiff is also entitled
20 to recover under Labor Code section 2699, subdivision (g)(1).

21 **VIII. DEMAND FOR JURY TRIAL**

22 136. Plaintiff hereby demands trial by jury of Plaintiff’s and the Class Members’ claims
23 against Defendants.

24 **IX. PRAYER FOR RELIEF**

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

- 27 1. For an order certifying the proposed class;
- 28 2. For an order appointing Plaintiff as representative of the class;

3. For an order appointing Plaintiff's counsel as counsel for the class;
4. For the failure to pay all minimum wages, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 1194, 1194.2, 1197, and others as may be applicable;
5. For the failure to pay all overtime wages, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 204, 510, 1194, 1198, and others as may be applicable;
6. For the failure to provide rest periods and pay missed rest period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code section 226.7;
7. For the failure to provide meal periods and pay missed meal period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 226.7 and 512;
8. For the failure to maintain accurate employment records, penalties pursuant to Labor Code sections 226.3, 1174.5, and others that may be applicable;
9. For the failure to pay wages timely during employment, the unpaid balance of the compensation owed to Plaintiff and the other Class Members and any applicable penalties owed to them pursuant to Labor Code section 210;
10. For the failure to pay all wages earned and unpaid at separation, statutory waiting time penalties pursuant to Labor Code sections 201 through 203, for the Class Members who quit or were fired in an amount equal to their daily wage multiplied by thirty days, as may be proven;
11. For the failure to indemnify all necessary business expenditures, all unreimbursed business expenses, and interest thereon, that are owed, pursuant to Labor Code section 2802, and attorney fees, pursuant to Labor Code section 2802, subdivision (c);
12. For the violations of California's Unfair Competition Law, restitution to Plaintiff and the other Class Members 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 Business and Professions Code sections 17200 through 17210;

13. For the claim of penalties pursuant to PAGA and other provisions of the California Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2), in the representative action brought on behalf of Plaintiff and the Aggrieved Employees pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties available under Labor Code section 210;
14. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;
15. On all causes of action for which attorneys' fees may be available, for attorneys' fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section 1021.5, and others as may be applicable;
16. For an order enjoining Defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint; and
17. For such other and further relief, this Court may deem just and proper.

Dated: August 28, 2024

MELMED LAW GROUP P.C.



JONATHAN MELMED

Attorneys for Plaintiff, the Putative Class, and the
Aggrieved Employees

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to the action. My business address is 1801 Century Park East, Suite 850, Los Angeles, CA 90067.

I declare that on the date hereof, August 28, 2024, I served the foregoing document(s) described as:

- **FIRST AMENDED CLASS AND PAGA REPRESENTATIVE ACTION COMPLAINT**

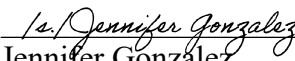
By causing a true copy thereof to be sent to the following individuals and/or parties:

Shareef S. Farag	sfarag@bakerlaw.com
Nicholas D. Poper	npoper@bakerlaw.com
Matthew Eaton	meaton@bakerlaw.com
BAKER & HOSTELER, LLP	
1900 Avenue of the Stars, Suite 2700	
Los Angeles, CA 90067-4508	

[XX] BY ELECTRONIC TRANSMISSION. Pursuant to CCP section 1010.6(e), I caused such document to be served on this date by electronic transmission in accordance with standard procedures and to the email address listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 28, 2024, in Los Angeles, California.


Jennifer Gonzalez