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CHRISTOPHER MENDOZA,
individually and in a representative
capacity on behalf of other members of
the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CHRISTOPHER MENDOZA, an individual, and)
on behalf of other members of the general public)
similarly situated,

Plaintiff,

v.

LANGERS JUICE COMPANY, INC.; and)
DOES 1 through 10, inclusive,)
Defendants.)

FILED
Superior Court of California
County of Los Angeles
08/09/2024
David W. Slayton, Executive Officer / Clerk of Court
By: J. Gonzalez Deputy

Case No: 24PSCV00126
FIRST AMENDED COMPLAINT FOR:
Individual Claims:
1. INTERFERENCE WITH USE OF
CALIFORNIA FAMILY RIGHTS ACT
[Cal. Gov't Code § 12945.2];
2. RETALIATION IN VIOLATION OF
CALIFORNIA FAMILY RIGHTS ACT
[Cal. Gov't Code § 12945.2(l)];
3. RETALIATION [Cal. Lab. § 1102.5]
4. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY [Cal.
Gov't Code § 12940(h)]
Individual and Representative Claims:
5. MINIMUM WAGE VIOLATIONS
[Cal. Lab. Code § 2698 *et seq.*];
6. OVERTIME VIOLATIONS [Cal. Lab.
Code § 2698 *et seq.*];
7. WAGE STATEMENT VIOLATIONS
[Cal. Lab. Code § 2698 *et seq.*];
8. MEAL AND REST PERIOD
VIOLATIONS [Cal. Lab. Code § 2698
et seq.];
9. FAILURE TO TIMELY PAY WAGES
[Cal. Lab. Code § 2698 *et seq.*];
10. FAILURE TO PROVIDE
PERSONNEL RECORDS [Cal. Lab.
Code § 2698 *et seq.*];
[JURY TRIAL DEMANDED]

COMES NOW Plaintiff CHRISTOPHER MENDOZA (“Plaintiff”), alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) may not be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff injuries occurred in the County of Los Angeles, State of California.
3. Plaintiff, CHRISTOPHER MENDOZA (hereinafter “Plaintiff”) at all times herein mentioned was a resident of the County of San Bernadino in the State of California.
4. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant LANGERS JUICE COMPANY (“LANGERS” or “Defendant” herein) was and is a California Limited Liability Company doing business throughout the state, including the County of Los Angeles, State of California.
5. Plaintiff is informed and believes and thereon alleges that Defendant LANGERS is subject to suit under the California Fair Employment Housing Act (FEHA), California Government Code § 12940 et seq., as it employs in excess of five (5) employees in California.
6. Plaintiff is presently unaware of the true names, capacities and liability of Defendant named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.

- 1 7. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
2 Defendant is responsible in some manner for the wrongs and damages as herein alleged,
3 and in so acting was functioning as the agent, servant, partner, and employee of the co-
4 Defendant, and in doing the actions mentioned below, was acting within the course and
5 scope of his or her authority as such agent, servant, partner, and employee with the
6 permission and consent of the co-Defendant. Plaintiff injuries as herein alleged were
7 proximately caused by said Defendant. Wherever it is alleged herein that any act or
8 omission was done or committed by any specially named Defendant or Defendant,
9 Plaintiff intends thereby to allege and does allege that the same act or omission was also
10 done and committed by each and every defendant named as a DOE, both separately and
11 in concert with the named Defendant or Defendant.
- 12 8. Plaintiff is informed and believes and thereon alleges that Defendant, and each of them,
13 including DOES 1 through 10, are and at all times herein mentioned were either
14 individuals, sole proprietorships, partnerships, registered professionals, corporations, alter
15 egos or other legal entities which were licensed to do and/or were doing business in the
16 County of Los Angeles, State of California at all times relevant to the subject matter of
17 this action.
- 18 9. The tortious acts and omissions alleged to have occurred herein were performed by
19 Defendant's management level employees.
- 20 10. Defendant had constructive knowledge of the tortious acts and/or omissions alleged
21 herein as the result of participating in the wrongful acts or ratifying or affirming the acts
22 once heard or known of.
- 23 11. Defendant committed these acts alleged herein maliciously, fraudulently, and
24 oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an
25 improper and motive amounting to malice or despicable conduct. Alternatively,
26 Defendant's wrongful conduct was carried out with a conscious disregard for Plaintiff's
27 rights.
- 28

12. Such tortious acts were authorized or ratified by upper-level managerial employees of Defendant. The actions of Defendant, and each of them, against the Plaintiff constitute unlawful practices in violation of California law, and have caused, and will continue to cause Plaintiff loss of earnings, loss of employment benefits, and other losses in amounts to be proven at trial.

13. As a further proximate result of the unlawful actions of Defendant, and each of their agents, against Plaintiff as alleged herein, Plaintiff has been harmed in that she has suffered emotional pain, humiliation, mental anguish, loss of enjoyment of life, and emotional distress.

14. Defendant's conduct warrants the assessment of punitive damages in an amount sufficient to punish Defendant and deter others from engaging in similar conduct.

15. Plaintiff seeks compensatory damages, punitive damages, costs of suit herein, and attorney fees.

16. Plaintiff filed a complaint with the California Civil Rights Department ("CRD") on May 20, 2024 and thereafter received a "Right to Sue" letter from the CRD, on the same day, collectively attached hereto as "EXHIBIT 2."

FACTUAL BACKGROUND

17. Defendant LANGERS JUICE COMPANY ("LANGERS" or "Defendant" herein) is a Juice Company based in California, which sells juice throughout the United States. Defendant employs more than 26 employees.

18. In or around July 2015, Defendant hired Plaintiff CHRISTOPHER MENDOZA ("Mendoza" or "Plaintiff" herein) as a Regional Sales Manager of the Southwest division. Throughout his employment with Defendant, Plaintiff performed his job in a capable and competent manner and was commended for doing so.

19. Plaintiff's job duties included but were not limited to organizing meetings with distributors, discussing promotional deals, and training distributor representatives to boost Defendant's market presence. Plaintiff was also responsible for creating promotional sheets and distributing samples during store visits. Plaintiff was required to

1 travel frequently, approximately three to four times a week to stores and distributors in
2 Orange County and Los Angeles County. Plaintiff was frequently required to travel long-
3 distance, including drives, flight arrangements, car rentals, and hotel stays. Additionally,
4 Plaintiff conducted Zoom meetings from home and visited local stores in San Bernadino
5 County to promote Defendant's products. Plaintiff generated potential customers, or
6 "leads," from these activities were then relayed to his distributors to facilitate the sale of
7 Defendant's products. Plaintiff did not make sales himself.

- 8 20. Plaintiff was subject to stringent oversight and control by Defendant in the execution of
9 his job duties. Plaintiff's sales locations were predetermined and he was given a target list
10 of locations to visit by Defendant. Plaintiff was required to submit detailed daily and
11 weekly status reports via email, along with expense reports. This level of structured
12 guidance and supervision in Plaintiff's work routine and strategy significantly limited
13 Plaintiff's autonomy. The close control over Plaintiff's work activities and the lack of
14 independent judgment and discretion in his market clearly indicated that Plaintiff's role
15 was closely directed and monitored by Defendant.

16 **Defendant Denied Plaintiff Paternity Leave**

- 17 21. In or around August 2018, Plaintiff was expecting the birth of his first child. Plaintiff
18 informed his direct supervisor, Defendant's National Sales Manager, David Knowles
19 ("Knowles" herein). Plaintiff repeatedly asked Knowles if he could take paternity leave
20 to be with his wife and new child. Knowles indicated that Plaintiff could take the full
21 time off. Plaintiff also asked Kevin Christens ("Christens" herein), Defendant's Assistant
22 Manager to take paternity leave. Christens confirmed that Plaintiff would be able to take
23 paternity leave. Plaintiff had assumed that Christens and Knowles were permitting
24 Plaintiff to take paternity leave, as neither confirmed the amount of time.
- 25 22. On December 7, 2018, Plaintiff's first daughter was born -- it was the greatest day of
26 Plaintiff's life. Plaintiff shared the exciting news with his work team, including Knowles
27 and Christens.
- 28

1 23. The same day, Knowles emailed Adam Ahl (“Ahl” herein) and cc’d Plaintiff and
2 informed Ahl that Plaintiff’s child had been born and that Plaintiff would be back to work
3 in about 3 weeks on January 1, 2019- which coincided with the holiday time off.
4 Knowles explained that on his return, on January 1, 2019, Plaintiff would begin a new
5 assignment called “Billbacks” which were categorizing invoices from distributors to
6 determine which were being paid by credit or check. Billbacks was work Plaintiff could
7 do from home upon his. Plaintiff was confused by the state date of return, however, based
8 on Knowles’s statement, he assumed that he was only entitled to three weeks of leave.
9 Plaintiff wanted more time to help his wife, but also needed his job to support his family.
10 Since the work he had been assigned was work he could do from home, Plaintiff did not
11 object.

12 24. In or around January 1, 2019, Plaintiff returned to work.

13 25. In or around October 2021, Plaintiff was expecting the birth of his second child. He again
14 informed Knowles and Christens that he would be taking paternity leave to help his wife.
15 This time, however, Knowles did not confirm that Plaintiff would be allowed to take time
16 off to be with his family. Instead, each time Plaintiff reminded Knowles or Christens of
17 the leave request, he was ignored. Plaintiff thought this was odd, but assumed he would
18 be given the same three weeks off as he had with his first child.

19 26. On or around February 28, 2022, Plaintiff’s second child was born. Despite this
20 significant personal event, he was expected to work and answer emails that same day.
21 Plaintiff was not given any time off and was forced to continue his routine of traveling to
22 nearby counties for store visits, approximately three to four days a week. This continued
23 until April 3, 2022, when he was required to travel to Palm Springs for three days.
24 Plaintiff, again, did not want to lose his job. Although he was disappointed that he could
25 not help out his wife, he knew he had to work.

26 27. Because Defendant required Plaintiff to travel, Plaintiff had to enlist his mother-in-law to
27 help his wife as they did not have time to review other childcare options before Plaintiff
28 was required to travel. This placed an enormous strain on Plaintiff’s family as his mother-

in-law did not drive. Additionally, Plaintiff's father-in-law was suffering from cancer and Plaintiff's mother-in-law was the sole care provider.

Plaintiff Complained About Working Unpaid Overtime

28. In or around September 2023, Plaintiff repeatedly voiced complaints to Knowles via email about working six days a week. Additionally, Plaintiff consistently complained to Knowles, both over the phone and in person, regarding working overtime and through rest breaks. Instead of addressing these concerns, Knowles chose to ignore the complaints and continued to assign Plaintiff more work. Knowles also forced Plaintiff to go on more long-distance travel assignments, causing him travel more than usual.

29. In or around September 20, 2023, Human Resources Giovanna Zapata ("Zapata") contacted Plaintiff to discuss the complaints he had made to Knowles. Zapata reached out by replying to an email thread, which she was not originally included in, where Plaintiff had complained about working overtime.

30. In or around September 22, 2023, Zapata met with Plaintiff to address his complaints, including issues of working overtime and Knowles' retaliation.

Defendant Retaliated Against Plaintiff

31. Following correspondence from Plaintiff's counsel¹, in or around November 8, 2023, Human Resources Zapata and Owner Bruce Langer ("Langer") called Plaintiff into a meeting. At the conclusion of the meeting, Zapata issued Plaintiff a "last and final" write up from Knowles for "failure to follow instructions, substandard work, and defective and improper work." The purported reason for the write up was that Plaintiff declined one travel assignment. This action was in direct retaliation to Plaintiff's complaints and efforts to address violations of labor laws. Plaintiff was shocked, as he had never received any warnings or write ups during his nine years of employment with Defendant.

¹ In or around October 4, 2023, Plaintiff sent Defendant a request for his personnel records. In or around November 1, 2023, Plaintiff sent Defendant "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Defendant.

26. On or around January 15, 2024, after Plaintiff filed this lawsuit, Zapata contacted Plaintiff to schedule a meeting for the following day. At the meeting the next day, Zapata terminated Plaintiff. Plaintiff believes his termination was in retaliation for filing this complaint and for raising concerns about labor code violations.

Plaintiff's Complaint to the California Department of Industrial Relations

32. Throughout his employment, Plaintiff was denied the benefits and protections of the Labor Code due to Defendant's institutionalized pay practices, standard as to all of Defendant's California-based employees.

33. On January 8, 2024, counsel for Plaintiff prepared and electronically submitted a letter to the Labor and Workforce Development Agency via the California Department of Industrial Relations' "PAGA Filing" website. This letter concerned Defendant and its Labor Code violations. A copy of this letter was also mailed to Defendant, via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code violated by Defendant, as well as the facts and theories in support of Plaintiff claims. (Please see **Exhibit 3**, a true and correct copy of this letter.) Plaintiff intends to amend this complaint pursuant to Labor Code § 2699.3 to add the PAGA cause of action to the Complaint.

Defendant's Labor Code Violations

34. Throughout his employment with Defendant, Plaintiff was paid on a salary basis, once per week, regardless of hours worked. Plaintiff's salary was less than two times minimum wage.

a. In 2021, two times the minimum wage per year was \$58,240; \$1,120 per week. Plaintiff earned \$49,000; \$942.31 per week.

b. In 2022 two times the minimum wage per year was \$62,400; \$1,200 per week. Plaintiff earned \$49,000; \$942.31 per week.

c. In 2023, two times the minimum wage per year was \$64,480; \$1,240 per week. Plaintiff earned \$49,000; \$1,057.70 per week.

1 35. Plaintiff was required to work overtime nearly every week. Plaintiff worked
2 approximately ten hours of overtime each week. Plaintiff was never paid overtime.

3 36. Additionally, Plaintiff was not permitted to take meal and rest periods. Plaintiff was
4 never paid a meal or rest period premium.

5 37. On October 4, 2023, Plaintiff requested his personnel file. Although Defendant's policy,
6 and the law, entitle Plaintiff to review his personnel file upon request, Defendant never
7 provided Plaintiff's personnel file, nor the opportunity to review it.

8 38. On or around January 8, 2024, Plaintiff sent Defendant a written letter as required by
9 California Labor Code section 2699.3(a)(1), of the specific provisions of the California
10 Labor Code believed Defendant violated.

11 **REPRESENTATIVE ALLEGATIONS**

12 39. As more specifically set forth below, Plaintiff Mendoza brings this action in a
13 representative capacity on behalf of all current and former nonexempt employees of
14 Defendant. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-
15 981. Throughout the operative limitations period, Plaintiff Mendoza and all other
16 aggrieved employees were denied the protections and benefits of the Labor Code and
17 Industrial Welfare Commission ("IWC") Wage Order(s) due to Defendant's standard
18 practices. Throughout their employment, Plaintiffs and all other aggrieved employees
19 were and are denied full and accurate compensation, including overtime compensation, in
20 violation of, *inter alia*, Labor Code §§ 510 and 1194. Plaintiffs and the other aggrieved
21 employees were and are denied meal and rest periods and meal and rest period payments,
22 in violation of, *inter alia*, IWC Wage Order 4 (or any other applicable Wage Order) and
23 Labor Code §§ 226.7 and 512. Defendant failed to furnish accurate itemized wage
24 statements in violation of, *inter alia*, Labor Code § 226. Defendant failed to provide all
25 compensation due at termination of employment in violation of, *inter alia*, Labor Code
26 §§ 201 through 203.

27 40. Plaintiff brings this action on the grounds that he and other similarly situated current and
28 former employees of Defendant were and are improperly denied the mandated wages and

reimbursements resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed fifty (50) aggrieved employees.

41. The approximately fifty (50) aggrieved employees are comprised of all of Defendant's current and former California-based employees, designated as "nonexempt" by Defendant. Defendant's standard policies and practices which lead to Labor Code violations, as alleged herein, applied to all California nonexempt employees.

42. There are questions of fact and law common to all aggrieved employees arising from Defendant's actions include, among others, the following:

- a. Whether Defendant failed to pay its employees the proper straight-time, overtime, and double time wages due and owing to them;
- b. Whether Defendant failed to provide its employees with statutorily-compliant Meal and/or Rest Periods, in violation of, inter alia, California Labor Code §§ 512 and 226.7, in that Defendant's written policies are not compliant with California law, Defendant does not allow its employees duty-free Meal and/or Rest Periods, and Defendant improperly "round" employees recorded Meal Periods;
- c. Whether Defendant failed to properly provide Meal and Rest Period premiums in accordance with law;
- d. Whether Defendant failed to properly calculate and pay its employees Overtime compensation or Meal and Rest Period premiums in accordance with law by failing to properly calculate, into the Regular Rate of Pay, the value of employee benefits;
- e. Whether Defendant failed to provide all compensation upon termination of employment in violation of Labor Code §§ 201-203, due, in part, to the fact that Defendant failed to provide proper compensation for all hours worked, as discussed above; and
- f. Whether Defendant failed to provide Plaintiffs and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code § 226.

43. At all times mentioned herein, Defendant was subject to the Labor Code and Industrial Welfare Commission Wage Orders of the State of California, including, but not limited to, California Labor Code § 2698 et seq.

44. At all times mentioned herein, Defendant is and was an “employer” as that term is used within the relevant sections of the California Labor Code and the applicable wage order. An employer-employee relationship existed between Plaintiff and Defendant.

45. Plaintiff has exhausted his administrative remedies and pre-filing requirements California Labor Code § 2699.3, and has also fulfilled all notice requirements under the statute. On January 8, 2024, counsel for Plaintiff prepared and electronically submitted a letter to the Labor and Workforce Development Agency via the California Department of Industrial Relations’ “PAGA Filing” website. This letter concerned Defendant and its Labor Code violations. A copy of this letter was also mailed to Defendant, via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code violated by Defendant, as well as the facts and theories in support of Plaintiff claims. (Please see **Exhibit 1**, a true and correct copy of this letter.)

46. The statutory time period for the LWDA to investigate and/or respond, and for the employers to respond, has concluded.

47. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to Defendant's standard practices. Said violations are set forth below.

FIRST CAUSE OF ACTION

INTERFERENCE WITH USE OF CALIFORNIA FAMILY RIGHTS ACT

[Cal. Gov’t Code § 12945.2]

Plaintiff, individually, v. Defendant LANGERS and DOES 1-10

48. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

49. At all times mentioned herein, California Government Code section 12945.2 was in full effect and was binding on Defendant. Defendant is an employer within the meaning of

1 Cal. Govt' Code § 12945.2. This section provides that it is unlawful for an employer to
2 deny family care or medical leave or interfere with an employee's rights provided by this
3 section.

4 50. 2 CCR § 11089(a) provides that, "An employee is entitled to reinstatement even if the
5 employee has been replaced or his or her position has been restructured to accommodate
6 the employee's absence."

7 51. 2 CCR § 11089(b) provides that, "The employee is entitled to reinstatement even if the
8 employee has been replaced or his or her position has been restructured to accommodate
9 the employee's absence."

10 52. 2 CCR § 11089(b) provides that, "The employee is entitled to the same position or to a
11 comparable position that is equivalent (i.e. virtually identical) to the employee's former
12 position in terms of pay, benefits, shift, schedule, geographic location, and working
13 conditions, including privileges, prerequisites, and status. The position must involve the
14 same or substantially similar duties and responsibilities, which must entail substantially
15 equivalent skill, effort, responsibility, and authority."

16 53. Plaintiff is an eligible employee for purposes of Cal Gov't Code § 12945.2, because he
17 was a full-time employee of Defendant having more than 12-months of service with
18 Defendant, and having at least 1,250 hours of service with Defendant during the 12-
19 month period preceding his exercise of Family Medical Leave.

20 54. Plaintiff requested Family Medical Leave to be with his newborn infant.

21 55. Plaintiff provided reasonable notice to Defendant for his need for Family Medical Leave.

22 56. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
23 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and
24 mental and physical pain and anguish, all to his damage in a sum to be established
25 according to proof.

26 57. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled
27 to recover punitive and exemplary damages in an amount commensurate with
28

1 Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible
2 conduct.

3 58. In addition to such other damages as may properly be recovered herein, Plaintiff is
4 entitled to recover prevailing party attorney fees and costs.

5 **SECOND CAUSE OF ACTION**

6 **RETALIATION IN VIOLATION OF CALIFORNIA FAMILY RIGHTS ACT**

7 **[Cal. Gov't Code § 12945.2]**

8 **Plaintiff, individually, v. Defendant LANGERS and DOES 1-10**

9 59. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
10 the preceding paragraphs as though fully set forth herein.

11 60. At all times mentioned herein, California Government Code section 12945.2 is and was
12 in full force and effect and was binding on Defendant. Defendant is and was an employer
13 within the meaning of Cal Gov't Code § 12945.2. This section provides that it is unlawful
14 for Defendants, as employers, to retaliate against an employee's exercise of Family
15 Medical Leave.

16 61. Plaintiff is an eligible employee for purposes of Cal Gov't Code § 12945.2, because he
17 was a full-time employee of Defendant having more than 12-months of service with
18 Defendant, and having at least 1,250 hours of service with Defendant during the 12-
19 month period preceding his exercise of Family Medical Leave.

20 62. Plaintiff requested Family Medical Leave to be with his newborn infant.

21 63. Plaintiff provided reasonable notice to Defendant for his need for Family Medical Leave.

22 64. Defendant's wrongful retaliation against Plaintiff's lawful exercise of Family Medical
23 Leave, in violation of Cal Gov't Code § 12945.2 was a substantial motivating factor in
24 engaging in conduct that includes, but is not limited to, subjecting Plaintiff to increased
25 scrutiny and negative performance evaluations.

26 65. Plaintiff filed a timely complaint with the California Civil Rights Department and
27 received a notice of the right to sue in Superior Court.

66. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to his damage in a sum to be established according to proof.

67. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled to recover punitive and exemplary damages in an amount commensurate with Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

68. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to recover prevailing party attorney fees and costs.

THIRD CAUSE OF ACTION

RETALIATION

[Cal. Lab. § 1102.5]

Plaintiff, individually, v. Defendant LANGERS and DOES 1-10

69. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

70. California Labor Code § 1102.5(b) provides:

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

71. At all times relevant herein, Plaintiff was an employee of Defendant.

72. Plaintiff disclosed information to Defendant that he reasonably believed constituted violations of the Cal. Gov't Code § 12945 and California Labor Code §§ 226.7, 510, 512, 1194, and 1198, as stated herein, including but not limited to, overtime violations, meal and rest period violations, and parental leave.

73. Plaintiff's disclosure of such information was a substantial motivating factor in Defendant's decision to retaliate and discriminate against him in the terms and conditions of his employment, including but not limited to, termination.

74. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings, employment benefits, employment opportunities, and Plaintiff has suffered other economic losses in an amount to be determined at time of trial. Plaintiff has sought to mitigate these damages.

75. As a further direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to her damage in a sum according to proof.

76. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled to recover punitive and exemplary damages in an amount commensurate with Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

77. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to a \$10,000 penalty for each violation of Cal. Labor Code § 1102.5, pursuant to Cal. Labor Code § 1102.5(f), and attorney fees pursuant to Cal. Code Civ. Proc. § 1021.5.

FOURTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

[Cal. Gov't Code § 12940(h)]

Plaintiff, individually, v. Defendant LANGERS and DOES 1-10

78. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

79. Plaintiff provided work for Defendant, as an employee, as stated herein.

1 80. Plaintiff believes and thereon alleges that Defendant's motivating reason for terminating
2 his employment was based on his opposition to practices that Plaintiff reasonably
3 believed to be in violation of Cal. Gov't Code § 12945 and Cal. Labor Code §§ 204, 226,
4 226.7, 510, 512, 1194, 1197, 1198.

5 81. Defendant engaged in conduct that, taken as a whole, materially and adversely affected
6 the terms and conditions of Plaintiff's employment.

7 82. Defendant's conduct in terminating Plaintiff's employment on that basis violated the
8 public policy of the State of California embodied in Cal. Gov't Code § 12945 and

9 83. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
10 sustained and continues to sustain substantial losses in earnings, employment benefits,
11 employment opportunities, and Plaintiff has suffered other economic losses in an amount
12 to be determined at time of trial. Plaintiff has sought to mitigate these damages.

13 84. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
14 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and
15 mental and physical pain and anguish, all to her damage in a sum to be established
16 according to proof.

17 85. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled
18 to recover punitive and exemplary damages in an amount commensurate with
19 Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible
20 conduct.

21 86. In addition to such other damages as may properly be recovered herein, Plaintiff is
22 entitled to recover prevailing party attorneys' fees pursuant to Government Code section
23 12965(b).

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FIFTH CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS

[Cal. Lab. Code § 2698 *et seq.*]

Plaintiff, individually, and in a representative capacity,
v. Defendant LANGERS and DOES 1-10

87. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
88. Plaintiff and other aggrieved employees performed work for Defendant for which they were not paid all wages owed.
89. Defendant owes Plaintiff and other aggrieved employees their wages under the terms of their employment, and under the Labor Code.
90. Defendant has failed and refused to pay those wages.
91. Defendant failed to pay its employees all compensation due in violation of, among other statutes, Labor Code § 1197. California law holds that the failure to pay for any work time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323. These violations were caused by and through Defendant's failure to maintain accurate Time Records (as required by California law), to the detriment of the employees. Specifically, Defendant only recorded Plaintiff's, and other employees', scheduled work time, as opposed to their actual work time. Plaintiff and other employees', was often only paid a flat rate each month. Plaintiff was not paid for all hours worked and time under Defendant's control, as stated herein.
92. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.
93. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may

1 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
2 the below Prayer For Relief.

3 94. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
4 Defendant pursuant to Labor Code § 2699(a) for each of these employees.

5 95. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
6 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

7 **SIXTH CAUSE OF ACTION**

8 **OVERTIME VIOLATIONS**

9 **[Cal. Lab. Code § 2698 *et seq.*]**

10 **Plaintiff, individually, and in a representative capacity,**

11 **v. Defendant LANGERS and DOES 1-10**

12 96. Plaintiff hereby incorporates by reference each and every allegation contained in the
13 preceding paragraphs as though fully set forth herein.

14 97. Defendant failed to pay Plaintiff and all other aggrieved employees all compensation,
15 including Overtime Compensation, due in violation of, among other statutes, Labor Code
16 § 510. These violations occurred due to Defendant's illegal policies, referenced above,
17 whereby employees experienced monetary under-compensation. Given the length of
18 Plaintiff's- and other employees'- shifts, the unpaid work time often would have been
19 owed at the overtime rate of pay. These systematic failures to provide proper overtime
20 compensation are in violation of California law.

21 98. Plaintiff and all other aggrieved employees performed work in excess of 8 hours in a
22 workday or 40 hours in a workweek.

23 99. Defendant knew or should have known that Plaintiff and all other aggrieved employees
24 worked overtime hours. Plaintiff and all other aggrieved employees were not paid for
25 some or all of the overtime hours worked.

26 100. As a direct result of Defendant's failure to comply with the foregoing provisions of the
27 Labor Code, Plaintiff has been damaged in an amount to be proven at trial.
28

101. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

102. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

103. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SEVENTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

[Cal. Lab. Code § 2698 *et seq.*]

Plaintiff, individually, and in a representative capacity,

v. Defendant LANGERS and DOES 1-10

104. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

105. Defendant willfully failed to provide Plaintiff and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code § 226. These violations include, but are not limited to, Defendant's failure to accurately identify all applicable regular and overtime rates of pay in violation of section 226(a)(9), and failing to provide any representations of both "gross" or "net wages." Defendant also failed to provide any showing of the "total hours worked," in violation of Labor Code § 226(a)(2).

106. Defendant violated Labor Code § 226(a)(1) by failing to furnish any showing of the gross wages earned by its employees. For example, Defendant (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, if Overtime Pay was given at all, and (c) would fail to pay Meal and/or Rest Period Penalties when due.

- 1 107. Defendant violated Labor Code § 226(a)(2) by failing to furnish any showing of all hours
2 worked at each hourly rate by the employee. Plaintiff was not compensated for all hours
3 worked. For example, Defendant consistently failed to account for and compensate
4 Plaintiff for the substantial amount of time spent in travel, including time spent driving to
5 various locations, and the additional hours worked outside of normal business hours,
6 despite Defendant's knowledge of this work time.
- 7 108. Defendant violated Labor Code § 226(a)(5) by willfully failing to furnish an accurate
8 showing of the gross and net wages earned by Plaintiff. For example, Defendant (a)
9 would not provide compensation for all hours and minutes worked, (b) would use an
10 improper (and lesser) Overtime Rate of Pay, if Overtime was given at all, and (c) would
11 fail to pay Meal and/or Rest Period Penalties when due.
- 12 109. Defendant violated Labor Code § 226(a)(9) by failing to furnish any showing of all
13 applicable hourly rates, in effect during the pay period and the corresponding number of
14 hours worked at each hourly rate by the employee. Plaintiff was not compensated for all
15 hours worked (Defendant would require employees to list only their scheduled work-
16 times, and failed to pay employees for the actual work-times.)
- 17 110. Defendant's failure to include the above information in its calculation of Plaintiff's gross
18 and net wages subjects Defendant to liability under Labor Code § 226.
- 19 111. As a direct result of Defendant's failure to comply with the foregoing provisions of the
20 Labor Code, Plaintiff has been damaged in an amount to be proven at trial.
- 21 112. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
22 behalf of himself and all other aggrieved employees by and through Labor Code §
23 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
24 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
25 the below Prayer For Relief.
- 26 113. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
27 Defendant pursuant to Labor Code § 2699(a) for each of these employees.
- 28

114. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

EIGHTH CAUSE OF ACTION

MEAL AND REST PERIOD VIOLATIONS

[Cal. Lab. Code § 2698 *et seq.*]

Plaintiff, individually, and in a representative capacity,

v. Defendant LANGERS and DOES 1-10

115. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

116. Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Defendant violated this section by establishing working conditions below the standard of the applicable Wage Order.

117. Under applicable California law, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a Meal Period of not less than 30 minutes [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second Meal Period of not less than 30 minutes” Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11040 (11)(A).

118. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code Regs. § 11040 (11).

- 1 119. California law requires employers to provide nonexempt employees with a 10-minute
2 Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs.
3 § 11040 (12).
- 4 120. An employer who fails to provide Meal or Rest Periods as required by an applicable
5 Wage Order must pay the employee one additional hour of pay at the employee’s regular
6 rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code §
7 226.7(b); 8 Cal. Code Regs. § 11040 (11), (12).
- 8 121. Within the operative time period, Defendant failed to possess compliant Meal and Rest
9 Period policies.
- 10 122. For example, Plaintiff and other aggrieved employees were often not able to take rest or
11 meal breaks. Defendant's policies and practices mandate that employees are entitled to
12 uninterrupted, duty-free meal periods. However, in practice, Plaintiff and other aggrieved
13 employees were not provided duty-free meal periods as required. Despite the policy,
14 Plaintiff and other aggrieved employees were often expected to attend lunch meetings
15 with distributors or travel, effectively merging their meal period with work obligations.
- 16 123. Defendant does not possess a legal Meal Period policy, and make no attempt to ensure
17 that its employees are either timely or wholly provided Meal Periods. Plaintiff would
18 often either miss a Meal Period entirely, be provided a short or late Meal Period, or be
19 provided only one Meal Period, even when they were working in excess of 10 hours a
20 day. Defendant has never provided a Rest Period penalty payment to Plaintiff.
21 Additionally, Defendant failed to accurately record its employees’ actual start and stop
22 times of Meal Periods, in violation of the IWC Wage Orders. 8 Cal. Code Regs. § 11040
23 (7)(A)(3).
- 24 124. Defendant willfully failed and refused to pay Plaintiff at his regular rate of pay for all
25 workdays that a Meal or Rest Period was not provided, as required by Labor Code §
26 226.7 and IWC Wage Order 4 (11), (12).
- 27 125. As a direct result of Defendant's failure to comply with the foregoing provisions of the
28 Labor Code, Plaintiff has been damaged in an amount to be proven at trial.

126. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

127. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

128. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

NINTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES

[Cal. Lab. Code § 2698 *et seq.*]

Plaintiff, individually, and in a representative capacity,

v. Defendant LANGERS and DOES 1-10

129. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

130. Plaintiff and all other aggrieved employees performed work for Defendant, as employees of Defendant, as stated herein. Throughout Plaintiff's and all other aggrieved employees' employment, they earned wages that were not paid to them, as stated herein, in an amount according to proof at trial.

131. California Labor Code § 204, applicable at all times relevant herein to Plaintiff's employment by Defendant, provides that all wages earned by any person in any employment are due and payable twice during each calendar month. Defendant failed to pay Plaintiff the wages he was entitled to under the Code.

132. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff has been damaged in an amount to be proven at trial.

133. As a result of Defendant's willful failure to pay wages, in addition to such other damages and penalties as may properly be recovered herein, Plaintiff is entitled to back pay,

1 waiting time penalties, interest, costs, and attorneys' fees pursuant to Labor Code §§ 206,
2 218.5, 218.6, 558, 1194.2, and 1197.1.

3 134. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
4 behalf of himself and all other aggrieved employees by and through Labor Code §
5 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
6 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
7 the below Prayer For Relief.

8 135. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
9 Defendant pursuant to Labor Code § 2699(a) for each of these employees.

10 136. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
11 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

12 **TENTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE PERSONNEL RECORDS**

14 **[Cal. Lab. Code § 2698 *et seq.*]**

15 **Plaintiff, individually, and in a representative capacity,**

16 **v. Defendant LANGERS and DOES 1-10**

17 137. Plaintiff hereby incorporates by reference each and every allegation contained in the
18 preceding paragraphs as though fully set forth herein.

19 138. California law provides that current and former employees, as a matter of right are
20 entitled to inspect and receive a copy of their personnel records, including time records
21 and employee handbooks. Pursuant to Labor Code § 266(f) upon a written request from a
22 current or former employee, or a representative, the employer shall provide a copy of the
23 personnel records not less than 21 calendar days from the date the employer receives the
24 request.

25 139. Pursuant to California Labor Code section 226 (f), "A failure by an employer to permit a
26 current or former employee to inspect or copy records within the time set forth in
27 subdivision (c) entitles the current or former employee or the Labor Commissioner to
28 recover a seven hundred-fifty-dollar (\$750) penalty from the employer."

140. Plaintiff submitted a written records request to Defendant on October 4, 2023, via U.S. Mail. To date, Plaintiff has not received Plaintiff's personnel file from Defendant.

141. By failing to provide employees with all personnel records within the thirty (30) days of receiving an employee's records request, Defendant willfully violated the provisions of Labor Code section 226(f).

142. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 226(h), and interest, pursuant to Labor Code § 218.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on his own behalf and on behalf of all California non-exempt employees of Defendant, prays for judgment as follows:

1. For compensatory damages according to proof, as set forth under Labor Code §§ 510, 1194, and 2802, among other statutes;
2. For penalties and restitution of wages according to proof, as set forth under Labor Code §§ 221, 226, 226.7, 450 and 1197.1, among other statutes;
3. For penalties pursuant to Title 8, California Code of Regulations, Wage Order 4 (or any applicable Wage Order);
4. For lost back pay in an amount to be proven;
5. Where available, for liquidated damages pursuant to Labor Code § 1194.2;
6. Where available, for an award of interest, including prejudgment interest, pursuant to Labor Code § 218.6;
7. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code §§ 218.5, 226, 1194, 2802, 1102.5(j), Code of Civil Procedure § 1021.5, Cal. Gov't Code § 12965(b); and
8. For special damages in an amount according to proof;
9. For general damages in an amount according to proof;
10. For mental, emotional distress, and physical pain and suffering damages;
11. For punitive damages in an amount necessary to make an example of and to punish Defendant, and to deter future similar misconduct;

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- 12. Injunctive relief;
- 13. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests that this matter be heard and decided by trial by jury.

DATED: August 9, 2024

GRUENBERG LAW


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