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FILED
Superior Court of California
County of Los Angeles
05/17/2024

David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

11 MICHELLE SCHWANKE, individually, on
12 behalf of all others similarly situated, and as
a proxy of the State of California on behalf
of aggrieved employees,

13 Plaintiff,

14 v.

15 BODY CONCEPTS BY ORANGE TWIST
16 1 CORP., a California Corporation; and
Does 1 to 100, inclusive,

17 Defendants.

Case No. 24STCV06778
(PAGA Law Enforcement Action & Class Action)

FIRST AMENDED COMPLAINT

1. Failure to Pay Minimum Wage and Overtime, Cal. Lab. Code §§ 510, 1194, 1194.2 and 1198 and IWC Wage Order 4
2. Failure to Provide Accurate Itemized Wage Statements, Cal. Lab. Code § 226
3. Failure to Provide Rest Breaks, Lab. Code §§ 226.7 & 512 and IWC Wage Order 4
4. Continuing Wages, Cal. Lab. Code § 203
5. Failure to Reimburse Expenses, Cal. Lab. Code § 2802
6. Failure to Provide Employment Records Upon Request, Cal. Lab. Code § 226
7. Failure to Provide Employment Records Upon Request, Cal. Lab. Code § 1198.5
8. Cal. Bus. & Prof. Code section 17200
9. Cal. Lab. Code § 2698, *et seq.*, PAGA Civil Penalties

DEMAND FOR JURY TRIAL

Complaint filed: March 18, 2024

1 Plaintiff Michelle Schwanke (“Schwanke”) (“Plaintiffs”), under the California Code of Civil
2 Procedure § 382 on behalf of herself as an individual and in her representative capacity, by and through
3 her undersigned attorneys, allege as follows:

4 **INTRODUCTION**

5 1. This is a class action and PAGA law enforcement representative action seeking unpaid
6 wages, overtime, damages, liquidated damages, continuing wages, reimbursement for expenses,
7 restitution, penalties, civil penalties and attorneys’ fees and costs. This Complaint asserts claims for
8 violations of California Labor Code (the “Code”) sections 201, 201.3, 203, 204, 226, 226.7, 510, 512,
9 1174, 1198 and 2698.5 et seq.; violations of the relevant Wage Orders of the Industrial Welfare
10 Commission (“IWC”); violations of FEHA; violations of section 17200 *et seq.* of the California Business
11 and Professions Code (“UCL”); and otherwise as hereinafter alleged.

12 2. Plaintiffs bring this action pursuant to PAGA, on an individual and a representative basis
13 on behalf of all natural persons who, at any time during the one year preceding the filing of the February
14 22, 2024, PAGA Notice through the present, who were paid for services by Defendant BODY
15 CONCEPTS BY ORANGE TWIST 1 CORP. (“BCOT”) in California (the “Aggrieved Employees.”).

16 3. Plaintiffs bring this Complaint on behalf of all natural persons who, at any time during the
17 four years and 178 days preceding the filing of the Complaint¹ through the present, who were paid for
18 services by Defendant BCOT in California (the “Class Members”).

19 4. Emergency Rule 9 as promulgated by the Judicial Council of California on insert date,
20 provides: “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
21 that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.” The Advisory Committee
22 Comment notes that: “Emergency rule 9 is intended to apply broadly to toll any statute of limitations on
23 the filing of a pleading in court asserting a civil cause of action. The term “civil causes of action”
24 includes special proceedings. (See Code Civ. Proc., §§ 312, 363) [“action,” as used in title 2 of the code
25 (Of the Time of Commencing Civil Actions), is construed “as including a special proceeding of a civil
26 nature”]. . . The rule also applies to statutes of limitations on filing of causes of action in court found in
27 codes other than the Code of Civil Procedure.”

28 ¹ The date is extended an additional 180 days due to Emergency Rule 9.

1 5. Plaintiffs allege that Defendants knowingly and willfully committed numerous violations
2 of the Labor Code, including, but not limited to: failure to timely pay employees, failure to keep proper
3 records, failure to pay agreed-upon commissions, sexual harassment, hostile work environment, sexual
4 discrimination, retaliation, unfair competition and wrongful termination.

5 6. Plaintiff Schwanke alleges that Defendants' consistently tardy payment of wages violated
6 the Code requirements to pay correct overtime and/or the minimum wage in violation, inter alia, of Labor
7 Code sections 510, 515 and 1194. Defendants failed to pay Schwanke and other Class Members the
8 correct minimum wage and overtime for each pay period as required by the IWC.

9 7. BCOT has as its principal business the provision of cosmetic procedures to its clientele,
10 including cool sculpting, hydrafacials, botox injections and the like.

11 8. At BCOT, Defendants created an abusive, hostile and dehumanizing environment.
12 Defendants berated and humiliated Plaintiff and on information and belief other employees,
13 independent contractors, new recruits and customers alike, harassing them with racist, sexist, offensive
14 and insulting language. For example, Schwanke's Regional Manager, Tory Dixon, called Schwanke a
15 hooker, and thereafter communicated the false claim to other persons in the defense management.

16 9. Defendants frequently made sexist, racist and other inappropriate comments.

17 10. Defendant BCOT has been, for many years, acutely aware of abusive behavior of its
18 employees.

19 11. During many weeks after which Defendants were aware that commissions were due and
20 owing to Plaintiff and the class, BCOT failed to pay Plaintiff Schwanke, Class Members and the
21 Aggrieved Employees in timely fashion or the correct amount of earned overtime wages, overtime wages
22 which had been computed without reference to the applicable regular rate, which rate had not been
23 increased to reflect all earned income, such as income earned on account of earned commissions. For
24 example, tardy, untimely commissions were paid by checks dated April 21, 2023, yet no commissions
25 had previously been paid since March 24, 2023. Overtime wages paid by a check dated March 24, 2023,
26 did not reflect any earned commissions. Nor did overtime wages paid by checks issued on the following
27 dates reflect the full amounts owing for overtime: February 24, 2024; February 10, 2023; January 27,
28

2023; January 13, 2023; December 30, 2022; December 2, 2022; November 18, 2022; and so forth. Further, commissions were routinely paid but once per month, rather than as earned. For example, commissions were paid to Schwanke only by checks dated March 24, 2023 (incorrectly stating for the "Period Beginning" and "Period Ending" March 5-18, 2023); February 17, 2023 (incorrectly stating for the "Period Beginning" and "Period Ending" February 12-17, 2023); January 20, 2023 (incorrectly stating for the "Period Beginning" and "Period Ending" January 15-20, 2023); December 23, 2022 (incorrectly stating for the "Period Beginning" and "Period Ending" December 18-23, 2022); November 18, 2022 (incorrectly stating for the "Period Beginning" and "Period Ending" October 30, 2022-November 12, 2022); October 21, 2022 (incorrectly stating for the "Period Beginning" and "Period Ending" October 2-15, 2022); September 3, 2022 (incorrectly stating for the "Period Beginning" and "Period Ending" September 4-17, 2022); and so forth.²

12. This Court has jurisdiction over Plaintiff Schwanke's individual and PAGA claims for civil penalties, Cal. Labor Code § 2698 *et seq.* This Court has jurisdiction over class claims for civil penalties, Cal. Labor Code § 382. This Court has jurisdiction over Plaintiffs' discrimination and hostile work environment claims pursuant to Cal. Gov. Code §§ 12940, *et seq.* At all times relevant herein, Industrial Welfare Commission ("IWC") Wage Order No. 4 (8 Cal. Code Regs. § 11 040), established minimum standards pertaining to wages, hours, and working conditions for all persons such as Plaintiff and the class employed in the "Professional, Technical, Clerical, Mechanical and Similar Occupations."

PARTIES

13. Schwanke is an individual over the age of eighteen (18), who, during the time periods relevant to this Complaint, worked for Defendant in the State of California.

14. During a substantial period of the four-year period (plus 180 days) immediately preceding the filing of this Representative and Class Action Complaint (as extended by the Tolling Agreements) and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff Schwanke was employed by Defendants as a non-exempt, commissioned worker.

15. Plaintiffs are informed and believe, and based thereon alleges, that during the four years preceding the filing of this Representative and Class Action Complaint and continuing to the present,

² In addition, the Defendants similarly failed to account properly for a \$15 Spiff.

1 Defendants did (and do) business with locations within the County of Los Angeles, and elsewhere in the
2 State of California, employing Plaintiff Schwanke and other, similarly situated non-exempt employees
3 throughout the State of California.

4 16. Defendant BCOT is “an Aesthetic Treatment Experience for women and men co-founded
5 by world-renowned Medical Director Dr. Grant Stevens, M.D. F.A.C.S. and Clint Carnell, an expert in
6 delivering lifestyle and consumer experience brands. We offer a selection of the most effective non-
7 invasive treatments for the body, face , and skin from our private, convenient locations across Southern
8 California.” <https://bodybyorangetwist.com/> (last accessed May 15, 2024). Defendant BCOT operates
9 multiple locations in California, including in Santa Clara, Westlake Village, Brentwood, El Segundo,
10 Brea, Tustin, Irvine, Newport Beach, and San Juan Capistrano.
11 <https://orangetwist.com/locations/california/> (last accessed May 15, 2024).

12 17. Plaintiff is informed and believes, and based thereon alleges, that BCOT is incorporated in
13 California. (BCOT’s status on the California Secretary of State’s website as “FTB Forfeited” [Entity
14 #2908605].)

15 18. The true names and/or capacities, whether individual, corporate, associate or otherwise, of
16 defendants Does 1 to 100 inclusive, are unknown to Plaintiff at this time, who therefore sues said
17 defendants by such fictitious names. When the true names and capacities of said defendants have been
18 ascertained, Plaintiff will amend this complaint accordingly. Plaintiff is informed and believes and
19 thereupon alleges that each defendant designated herein as a Doe is responsible, negligently,
20 intentionally, contractually, or in some other actionable manner, for the events and happenings
21 hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiff as is hereinafter
22 alleged, either through said defendants’ own wrongful conduct or through the conduct of their agents,
23 servants, employees, representatives, officers or attorneys, or in some other manner.

24 19. At all times mentioned herein, Defendants, and each of them, were members of and
25 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of
26 and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that
27 all Defendants were joint employers for all purposes of Plaintiff, Class Members and the Aggrieved
28 Employees.

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JURISDICTION AND VENUE

20. Venue is proper based on the operations of the Defendants in Los Angeles County and the location of the commission of the acts alleged herein. The relief requested is within the jurisdiction of this Court.

21. Venue as to Defendants is proper in this judicial district, pursuant to California Business and Professions Code section 17203 and California Code of Civil Procedure sections 395(a) and 395.5. Defendant maintains an office, transacts business, has an agent or are otherwise found in the County of Los Angeles and is within the jurisdiction of this court for the purpose of service of process. The unlawful acts alleged herein had a direct effect on and were committed within the State of California. Further, at all times relevant herein Plaintiff lived within the County of Los Angeles.

22. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is either a resident of California, has minimum contacts in California, or otherwise intentionally avails itself of the protections of California so as to render California's exercise of jurisdiction over Defendant consistent with traditional notions of fair play and substantial justice.

ADMINISTRATIVE REQUIREMENTS AND TOLLING

23. Plaintiffs has complied with all required administrative requirements prior to the filing of this amended complaint to allege a claim for PAGA civil penalties pursuant to Cal. Lab. Code § 2698, et seq.

GENERAL ALLEGATIONS

24. Plaintiff Schwanke worked for BCOT during the Class Period. Plaintiffs and other Class Members were routinely denied rest breaks, proper wage statements and the timely payment of wages. Schwanke was a commission-only employee, yet BCOT failed to per her the correct overtime wage as required by law.

25. Plaintiff Schwanke, Aggrieved Employees and other Class Members were denied timely payment of all accrued wages, including accrued and unpaid wages owing on account of rest break premium wages and commissions, the payments for commissions being tardy and not properly taken into consideration when computing the amounts owing for overtime.

1 26. Plaintiffs and other Class Members were subjected to pervasive and severe unlawful
2 sexual harassment and a hostile work environment. There has been a long history of abuse at BCOT,
3 known to the owner(s), managers and supervisors at BCOT.

4 27. Defendant failed to compensate Plaintiffs and the Aggrieved Employees for their earned,
5 agreed-upon commissions. Plaintiff and the Aggrieved Employees were not timely paid the minimum
6 wages and/or overtime to which they were entitled in violation of California Labor Code §§510 and
7 1194. See Biggs v. Wilson, 1 F3d 1537 (9th Cir. 1993), in which the court found both late payment and
8 nonpayment of minimum wages to violate a statute requiring the payment of minimum hourly wages.

9 28. Plaintiff Schwanke and the Aggrieved Employees were frequently required to work
10 without being provided proper rest breaks.

11 29. Plaintiffs and the Aggrieved Employees did not receive required reimbursements under
12 California Labor Code § 2802 and the California State Occupational Safety and Health Act (“Cal
13 OSHA”). Cal. Lab. Code § 6300 *et seq.* For example, Plaintiff Schwanke was required to use her
14 personal cell phone for scheduling and timekeeping purposes.

15 30. At all times relevant hereto California Labor Code sections 1194 and 1198 and Industrial
16 Welfare Commission (“IWC”) Wage Order 2 and/or 4 required the payment of overtime for hours
17 worked over eight in a workday and over forty in one week.

18 31. At all relevant times mentioned herein, California Labor Code section 1194 provided, in
19 relevant part:

20 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
21 than the legal minimum wage or the legal overtime compensation applicable to the
22 employee is entitled to recover in a civil action the unpaid balance of the full amount of
23 this minimum wage or overtime compensation, including interest thereon, reasonable
24 attorney’s fees, and costs of suit.

25 Cal. Lab. Code § 1194(a).

26 32. At all relevant times mentioned herein, section 1198 of the California Labor Code
27 provided:
28

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

5 Cal. Lab. Code § 1198. Section 1198 refers to “conditions of labor prohibited by the order [of the IWC]”
6 and therefore incorporates by reference IWC Wage Order Numbers 4 and 16. To date, Plaintiff has not
7 been paid for all of the hours she worked for Defendant. By failing to pay Plaintiff and the Aggrieved
8 Employees for all of their hours of work, BCOT violated section 1198 by employing Plaintiff and the
9 Aggrieved Employees “under conditions of labor prohibited by the order.” Cal. Lab. Code § 1198.

10 33. IWC Wage Order 4 provides, in relevant part:

11 (B) Every employer shall pay to each employee, on the established payday for
12 the period involved, not less than the applicable minimum wage for all hours worked in
13 the payroll period, whether the remuneration is measured by time, piece, commissioner,
14 or otherwise.

15 8 Cal. Code Regs. § 11160(4).

16 34. At all relevant times mentioned herein, section 204 of the California Labor Code provided,
17 in relevant part:

18 All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2, earned by any
19 person in any employment are due and payable twice during each calendar month, on days
20 designated in advance by the employer as the regular paydays. Labor performed between
21 the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th
22 and the 26th day of the month during which the labor was performed, and labor performed
23 between the 16th and the last day, inclusive, of any calendar month, shall be paid for
24 between the 1st and 10th day of the following month.

25 Cal. Lab. Code § 204.

26 35. Plaintiff and the Aggrieved Employees were not provided proper rest breaks.

27 36. At all times relevant hereto, section 226.7 of the California Labor Code provided:
28

1 (a) No employer shall require any employee to work during any meal or rest period
2 mandated by an applicable order of the Industrial Welfare Commission.

3 (b) If an employer fails to provide an employee a meal period or rest period in accordance
4 with an applicable order of the Industrial Welfare Commission, the employer shall pay the
5 employee one additional hour of pay at the employee's regular rate of compensation for
6 each work day that the meal or rest period is not provided.

7 Cal. Lab. Code § 226.7.

8 37. IWC Wage Order 4 provides, in relevant part:

9 Every employer shall authorize and permit all employees to take rest periods, which
10 insofar as practicable shall be in the middle of each work period. Nothing in this provision
11 shall prevent an employer from staggering rest periods to avoid interruption in the flow of
12 work and to maintain continuous operations, or from scheduling rest periods to coincide
13 with breaks in the flow of work that occur in the course of the workday. The authorized
14 rest period time shall be based on the total hours worked daily at the rate of ten (10)
15 minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest
16 periods shall take place at employer designated areas, which may include or be limited to
17 the employees' immediate work area.

18 . . .

19 If an employer fails to provide an employee a rest period in accordance with the applicable
20 provisions of this order, the employer shall pay the employee one (1) hour of pay at the
21 employee's regular rate of compensation for each workday that the rest period is not
22 provided.

23 8 Cal. Code Regs. § 11160(11).

24 38. BCOT violated sections 226.7 and 512 of the California Labor Code and the applicable
25 IWC Wage Order by failing to provide proper rest breaks. Accordingly, Plaintiff and the Aggrieved
26 Employees are entitled to an additional hour of pay for each workday Plaintiff was not properly provided
27 their rest periods. See Cal. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11160(11).
28

1 39. Compensation for missed rest periods constitutes wages within the meaning of section 200
2 *et seq.* of the California Labor Code.

3 40. To date, Defendant has failed to compensate Plaintiff, Class Members and the Aggrieved
4 Employees for all of their earned wages in accordance with the California Labor Code, and the IWC
5 Wage Order.

6 41. At all relevant times mentioned herein, section 226 of the California Labor Code
7 provided:

8 (a) Every employer shall, semimonthly or at the time of each payment of wages,
9 furnish each of his or her employees, either as a detachable part of the check, draft, or
10 voucher paying the employee's wages, or separately when wages are paid by personal
11 check or cash, an accurate itemized statement in writing showing (1) gross wages
12 earned, (2) total hours worked by the employee, except for any employee whose
13 compensation is solely based on a salary and who is exempt from payment of
14 overtime under subdivision (a) of Section 515 or any applicable order of the Industrial
15 Welfare Commission, (3) the number of piece-rate units earned and any applicable
16 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided,
17 that all deductions made on written orders of the employee may be aggregated and
18 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
19 which the employee is paid, (7) the name of the employee and his or her social
20 security number, except that by January 1, 2008, only the last four digits of his or her
21 social security number or an employee identification number other than a social
22 security number may be shown on the itemized statement, (8) the name and address of
23 the legal entity that is the employer, and (9) all applicable hourly rates in effect during
24 the pay period and the corresponding number of hours worked at each hourly rate by
25 the employee. The deductions made from payments of wages shall be recorded in ink
26 or other indelible form, properly dated, showing the month, day, and year, and a copy
27 of the statement or a record of the deductions shall be kept on file by the employer for
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1 at least three years at the place of employment or at a central location within the State
2 of California.

3

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

10 Cal. Lab. Code § 226.

11 42. Throughout the period of Plaintiff's employment with BCOT, BCOT failed to provide her
12 with all of the data required by section 226(a) of the California Labor Code. For example, BCOT knew
13 that Plaintiffs and the Aggrieved Employees were not provided with proper rest breaks when working
14 over ten hours per day or a second meal break, yet BCOT failed and refused to reflect the additional
15 wages that accrued to Plaintiffs and the Aggrieved Employees on account of these facts on the wage
16 statements. Further, the wage statement violates law by failing to state the gross and net of all wages
17 earned. For example, the wage statements report "Gross Earnings" and funds paid on account of "Credit
18 Car", but there is no disclosure of what is being paid on account of "Credit Car" payments, Wages or
19 otherwise. Similarly, there is no way in which the employee – from the Wage Statement alone – might
20 determine the amount of Net Wages earned. Further, the Wage Statements fail to report either "the
21 inclusive dates of the period for which the employee is paid" (the employee is routinely provided a
22 truncated period during which commissions were allegedly earned) or "all applicable hourly rates in
23 effect during the pay period and the corresponding number of hours worked at each hourly rate by the
24 employee" (the worker is never provided the hourly overtime rate).

25 43. At all relevant times mentioned herein, section 1174 of the California Labor Code
26 provided:

27 Keep, at a central location in the state or at the plants or establishments at which
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1 employees are employed, payroll records showing the hours worked daily by and the
2 wages paid to, and the number of piece-rate units earned by and any applicable piece rate
3 paid to, employees employed at the respective plants or establishments. These records
4 shall be kept in accordance with rules established for this purpose by the commission, but
5 in any case shall be kept on file for not less than two years.

6 Cal. Lab. Code § 1174(d).

7 44. IWC Wage Order 4 provides, in relevant part:

8 (A) Every employer who has control over wages, hours, or working conditions
9 shall keep accurate information with respect to each employee, including the following:

10 (1) The employee's full name, home address, occupation, and social security number. The
11 employee's date of birth, if under 18 years of age, and designation as a minor. Time
12 records showing when the employee begins and ends each work period. Meal periods,
13 split shift intervals, and total daily hours worked shall also be recorded. Meal periods
14 during which operations cease and authorized rest periods need not be recorded; (2) total
15 wages paid each payroll period, including value of board, lodging, or other compensation
16 actually furnished to the employee; (3) total hours worked during the payroll period and
17 applicable rates of pay. This information shall be made readily available to the employee
18 upon reasonable request. When a piece rate or incentive plan is in operation, piece rates or
19 an explanation of the incentive plan formula shall be provided to employees. An accurate
20 production record shall be maintained by the employer.

21 (B) Every employer who has control over wages, hours, or working conditions
22 shall semimonthly or at the time of each payment of wages furnish each employee an
23 itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the
24 period for which the employee is paid; (3) the name of the employee or the employee's
25 social security number; and (4) the name of the employer, provided all deductions made
26 on written orders of the employee may be aggregated and shown as one item. (See Labor
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Code Section 226.) This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

8 Cal. Code Regs. §11160(6)(A)–(B).

45. BCOT failed to maintain payroll records required by the California Labor Code and the IWC Wage Order. For example, BCOT failed to record the “[t]otal hours worked in the payroll period and applicable rates of pay,” which “information shall be made readily available to the 3employee upon reasonable request.” Here, despite reasonable request, the Defendants have failed to provide (or pay) the applicable overtime rates.

46. Section 2699 of the California Labor Code, the Labor Code Private Attorneys General Act of 2004, provides in subpart (a) and subparts (f) through (g):

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

....

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

....

(g) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees

1 against whom one or more of the alleged violations was committed. Any employee who
2 prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.
3 Nothing in this part shall operate to limit an employee's right to pursue or recover other
4 remedies available under state or federal law, either separately or concurrently with an
5 action taken under this part.

6 Cal. Lab. Code § 2699.

7 47. At all times relevant herein, section 226.3 of the California Labor Code provided,
8 in relevant part:

9 Any employer who violates subdivision (a) of Section 226 shall be subject to a civil
10 penalty in the amount of two hundred fifty dollars (\$ 250) per employee per violation in
11 an initial citation and one thousand dollars (\$ 1,000) per employee for each violation in a
12 subsequent citation, for which the employer fails to provide the employee a wage
13 deduction statement or fails to keep the records required in subdivision (a) of Section 226.
14 The civil penalties provided for in this section are in addition to any other penalty
15 provided by law.

16 Cal. Lab. Code § 226.3.

17 48. At all times relevant herein, section 210 of the California Labor Code provided, in
18 relevant part:

19 (a) In addition to, and entirely independent and apart from, any other penalty provided in
20 this article, every person who fails to pay the wages of each employee as provided in
21 Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil
22 penalty as follows:

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

25 (2) For each subsequent violation, or any willful or intentional violation, two hundred
26 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
27 unlawfully withheld.
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1 Cal. Lab. Code § 210.

2 49. At all times relevant herein, section 558 of the California Labor Code provided, in
3 relevant part:

4 (a) Any employer or other person acting on behalf of an employer who violates, or causes
5 to be violated, a section of this chapter or any provision regulating hours and days of work
6 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as
7 follows:

8 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
9 period for which the employee was underpaid in addition to an amount sufficient to
10 recover underpaid wages.

11 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
12 employee for each pay period for which the employee was underpaid in addition to an
13 amount sufficient to recover underpaid wages.

14 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

15

16 (e) The civil penalties provided for in this section are in addition to any other civil or
17 criminal penalty provided by law.

18 Cal. Lab. Code § 558.

19 50. At all times relevant herein, section 1197.1 of the California Labor Code provided, in
20 relevant part:

21 Any employer or other person acting either individually or as an officer, agent, or
22 employee of another person, who pays or causes to be paid to any employee a wage
23 less than the minimum fixed by an order of the commission shall be subject to a civil
24 penalty as follows:

25 (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
26 for each underpaid employee for each pay period for which the employee is underpaid.
27
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1 (2) For each subsequent violation for the same specific offense, two hundred fifty
2 dollars (\$250) for each underpaid employee for each pay period for which the employee is
3 underpaid regardless of whether the initial violation is intentionally committed.

4 Cal. Lab. Code § 1197.1.

5 51. Wage Order 4 provides for civil penalties with respect to violations of the Wage
6 Order:

7 Penalties for Violations of the Provisions of this Order. Any employer or any other
8 person acting on behalf of the employer who violates, or causes to be violated, the
9 provisions of this order, shall be subject to civil and criminal penalties as provided by
10 law. In addition, violation of any provision of this order shall be subject to a civil
11 penalty as follows: (1) Initial Violation - \$50.00 for each underpaid employee for each
12 pay period during which the employee was underpaid in addition to the amount which
13 is sufficient to recover unpaid wages. (2) Subsequent Violations - \$100.00 for each
14 underpaid employee for each pay period during which the employee was underpaid in
15 addition to an amount which is sufficient to recover unpaid wages. (3) The affected
16 employee shall receive payment of all wages recovered. The labor commissioner may
17 also issue citations pursuant to California Labor Code Section 1197.1 for non-payment
18 of wages for overtime work in violation of this order.

19 8 Cal. Code Regs. §11160(18)(A).

20 III.

21 CLASS ACTION ALLEGATIONS

22 52. Plaintiffs bring this action on behalf of herself and all others similarly situated as a Class
23 Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following class
24 and subclasses composed of and defined as follows:

25 THE CLASS

26 All employees who were paid for services by BCOT from four years and 180
27 days prior to filing of this action until entry of Judgment by the Court (the
28

1 “Class Period”).

2 53. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify
3 this class description with greater specificity or further division into subclasses or limitation to particular
4 issues.

5 54. This action has been brought and may properly be maintained as a class action under the
6 provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest
7 in the litigation and each of the proposed Class is easily ascertainable.

8 55. Defendants, through the direct actions of its authorized managers, as broadened by the
9 acquiescence to the harassing acts of other employees, created a hostile work environment for female
10 employees.

11 56. The cumulative effect of harassing, degrading, offensive and discriminatory acts was to
12 create a single, unified, abusive environment in which unwelcome behavior toward women was standard
13 operating procedure.

14 **A. Numerosity**

15 57. The potential members of the Class as defined are so numerous that joinder of all the
16 members the Class is impracticable. While the precise number of the Class has not been ascertained at this
17 time, Plaintiff is informed and believe, and based thereon allege, that Defendants currently employs or
18 engages, and during the relevant time periods employed, over 40 persons in the State of California who fall
19 within the Class definition. While Plaintiff does not know the exact number and identity of all Class
20 Members, Plaintiff is informed and believe that there are at least 40 Class Members. This proposed class is
21 so numerous that joinder of all persons is impracticable and the disposition of their claims as a class will
22 benefit the parties and the Court.

23 58. Accounting for employee turnover during the relevant period necessarily increases this
24 number. Plaintiff alleges Defendants’ employment records would provide information as to the number
25 and location of members of the Class. Joinder of members of the Class is not practicable.

26 **B. Commonality**

27 59. There are questions of law and fact common to the Class that predominate over any
28

1 questions affecting only individual class members. These common questions of law and fact include,
2 without limitation:

- 3 a. Whether Defendants failed to pay Plaintiff and Class members all wages
4 due and owing during the course of their employment, in violation of Labor
5 Code §§ 510, 558, 1194 and 1194.2;
- 6 b. Whether Defendants failed to properly provide rest periods or compensation
7 in lieu thereof to Plaintiff and members of the Class, in violation of Labor
8 Code §§ 226.7, 512 and 558;
- 9 c. Whether Defendants failed to provide Plaintiff and members of the Class
10 accurately itemized wage statements, in accordance with Labor Code §
11 226(a);
- 12 d. Whether Defendants failed to reimburse Plaintiff and Class members for
13 necessary business expenses including personal cell phones incurred in
14 direct consequence of the discharge of their duties, in violation of Labor
15 Code § 2802;
- 16 e. Whether Defendants failed to timely pay all earned commissions and
17 whether commissions and other earned wages were properly considered
18 when determining overtime rates; ;
- 19 g. Whether Defendants failed to timely pay Plaintiff and members of the Class
20 all wages due and owing at the separation of their employment, in violation
21 of Labor Code §§ 201-203; and
- 22 h. Whether Plaintiff and members of the Class are entitled to equitable relief
23 pursuant to Business & Professions Code § 17200 *et seq.*
- 24 i. Whether Plaintiff and members of the Class were systematically harassed
25 and subjected to a hostile work environment.
- 26 j. Whether Defendants' engaged in conduct that constituted unlawful sex
27 discrimination and/or sexual harassment;
28

- k. Whether Defendants violated California's Unruh Act, Cal. Civ. Code §§ 51 and/or 51.5;
- l. Whether Defendants violated California Civil Code § 51.9;
- m. Whether Defendants violated California's Bane Act, Cal. Civ. Code § 52.1;
- n. Whether Plaintiffs and Class Members have been harmed and the proper measure of relief;
- o. Whether Plaintiff and Class Members are entitled to an award of punitive damages, attorneys' fees and expenses against Defendants; and
- p. Whether, as a result of Defendants' misconduct, Plaintiff and Class Members are entitled to equitable relief, and if so, the nature of such relief.

60. Common issues predominate in that there are questions of law and fact common to the proposed classes which predominate over any questions that may affect particular Class Members. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because the putative class members have little or no interest in individually controlling the prosecution of separate actions and individualized litigation would increase the delay and expense to all parties and the court system. Furthermore, it is desirable to concentrate the litigation of the claims in this Court because the practices and procedures complained of occurred within this Court's jurisdiction.

C. Typicality

61. The claims of the named Plaintiff are typical of the claims of members of the Class. Plaintiff and members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

62. The claims alleged by Named Plaintiff herein encompass the challenged practices and common courses of conduct of Defendants and are typical of those claims which could be alleged by any member of the proposed class. Named Plaintiff's claims arise out of the alleged courses of conduct by Defendants and are based on the same legal theories as the claims of the putative class members. The

1 legal issues as to which California laws are violated by such conduct apply equally to Named Plaintiff and
2 the putative class members. Further, the relief sought by Named Plaintiff is typical of the relief which
3 would be sought by each member of the proposed class if they were to file separate actions. Named
4 Plaintiff is a proper representative of the proposed class because they will fairly and adequately represent
5 and protect the interests of all putative class members and because there are no known conflicts of interest
6 between Named Plaintiff and any putative class members. Named Plaintiff is a proper representative of
7 the proposed class because she will fairly and adequately represent and protect the interests of all putative
8 class members and because there are no known conflicts of interest between Named Plaintiff and any
9 putative class members.

10 **D. Adequacy of Representation**

11 63. Plaintiff will fairly and adequately represent and protect the interests of members of the
12 Class. Counsel who represents Plaintiff is competent and experienced in litigating large employment class
13 actions.

14 **E. Superiority of Class Action**

15 64. A class action is superior to other available means for the fair and efficient adjudication of
16 this controversy. Individual joinder of all proposed members of the Class is not practicable, and questions
17 of law and fact common to the proposed Class predominate over any questions affecting only individual
18 members of the proposed Class. Each member of the proposed Class has been damaged and is entitled to
19 recovery by reason of Defendants' illegal policies and/or practices.

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

24 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

25 66. Plaintiff Schwanke was employed by Defendants in California at until approximately 2023.

26 67. Due to Defendants' failure to pay Plaintiff proper overtime for hours worked over 8.0 hours
27 in a workday, Plaintiff is owed additional sums in payment of accrued overtime wages.
28

1 68. Defendants failed to pay Plaintiff overtime compensation for all hours worked in excess of
2 8.0 hours per workday, in violation of Wage Order 4, § 3(B)(2).

3 69. Defendants also failed to pay for all hours worked by Plaintiff and other non-exempt
4 employees due to Defendants' policy/practice of regularly, systematically, and failing to properly
5 compensate and other non-exempt employees for all hours worked. As a result of Defendants' timekeeping
6 policy and/or practice that failed to compensate for all hours worked, Plaintiff and other non-exempt
7 employees were deprived of all required minimum wages and additional overtime wages earned.

8 70. Additionally, Defendants failed to authorize and permit Plaintiff to take uninterrupted, paid
9 rest periods for shifts in excess of 3.5 hours, in violation of California law. Despite Defendants' failure to
10 authorize and permit all required rest periods due to their uniform and unlawful policies/practices,
11 Defendants failed to provide Plaintiff with an hour of pay at her regular rate for each rest period violation
12 as required by Labor Code § 226.7.

13 71. As a result of Defendants' failure to pay all overtime and minimum wages as well as
14 Defendants' failure to authorize and permit required rest periods or pay rest period premium wages in lieu
15 thereof, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to
16 Defendant. Further, Defendant's wage statements are facially deficient due to failing to pay the proper
17 overtime rates, and in violation of Labor Code § 226(a)(9) and failing to include all-inclusive dates of the
18 pay period, in violation of Labor Code § 226(a)(6).

19 72. Based on the foregoing, Plaintiffs Schwanke seeks to represent herself and all aggrieved
20 employees, as defined by Labor Code § 2699(c).

21 73. On or about February 22, 2024, Plaintiff Schwanke gave written notice by certified mail of
22 Defendant's violations of various provisions of the California Labor Code as alleged in this Complaint to
23 the Labor and Workforce Development Agency ("LWDA") and Defendant. Plaintiff brings this action
24 pursuant to PAGA, on an individual and a representative basis on behalf of all natural persons who, at any
25 time during the one year preceding the filing of the PAGA notice through the present, were or are employed
26 by Defendant BCOT ("BCOT") as an employee in California. The number of aggrieved employees is
27 believed to be in excess of fifty, which is readily ascertainable through examination of Defendant's records.
28

1 74. More than sixty-five days have passed from the date of Plaintiff's notice to the LWDA
2 and Plaintiff has not been notified by the LWDA that it intends to investigate Plaintiff's allegations.
3 Therefore, Plaintiff, pursuant to section 2699.3(a)(2)(A), may then "commence a civil action pursuant to
4 Section 2699." Cal. Lab. Code § 2699.3(a)(2)(A).

5 75. Plaintiff is informed and believes and thereon alleges that Defendant has routinely failed
6 to provide Plaintiff and other Aggrieved Employees with proper itemized wage statements, minimum and
7 overtime wages, proper meal and rest periods, reimbursement for protective footwear, and all wages due
8 at termination of their employment. Defendant also unlawfully failed to keep accurate payroll records
9 showing Aggrieved Employees' hours worked and wages paid.

10 76. Plaintiff alleges that Defendant violated PAGA in the following ways: Plaintiff and other
11 Aggrieved Employees worked for Defendant but were regularly paid late and/or paid with checks that
12 bounced. On or about April 10, 2023, Plaintiff served Defendant with a Request for Records pursuant to
13 Cal. Lab. Code sections 226, 432 and 1198.5, requesting that Defendant furnish her with her employment
14 records, including the following: (1) The itemized statements referred to in section 226(a) of the
15 California Labor Code; (2) The statement of total hours worked; (3) All deductions taken from gross pay;
16 (4) Net wages earned; (5) The name and address of the legal entity who or which is the employer; (6) All
17 applicable hourly rates in effect during the pay period and the corresponding number of hours worked at
18 each hourly rate by the employee; (7) "time records showing when the employee begins and ends each
19 work period [including] [m]eal periods, split shift intervals and total daily hours worked;" (8) Any
20 documents he signed during my employment; (9) Any employee reviews of disciplinary write-ups and
21 any employee handbook(s) as well as any other documents Defendant maintains regarding her
22 performance or any grievance concerning her employment, and a copy of all instruments she signed
23 relating to the obtaining or holding of her employment with Defendant; and (10) Any video tape or
24 electronic recording relating to her employment. Defendant failed to provide a complete response to
25 Plaintiff's request for records in violation of Cal. Lab. Code sections 226, 432 and 1198.5.

26 77. Plaintiff and other Aggrieved Employees worked many hours for Defendants but were not
27 timely paid for their work or paid certain sums at all. Plaintiff contends that the Labor Code sections
28

1 listed below, and the Applicable Wage Order enables Plaintiff to recover civil penalties under PAGA, as
2 well as attorneys' fees and costs from Defendant through a civil action on behalf of all Aggrieved
3 Employees.

4 78. "PAGA actions can serve to *indirectly* enforce certain wage order provisions by enforcing
5 *statutes* that require compliance with wage orders (e.g., § 1198, which prohibits longer work hours than
6 those fixed by wage order or employment under conditions prohibited by a wage order)." Thurman v.
7 Bayshore Transit Mgmt., Inc., 203 Cal. App. 4th 1112, 1132 (2012).

8 79. There is a well-defined community of interest in the questions of law and fact common to
9 the Aggrieved Employees. The key questions are the same for each Aggrieved Employee. These
10 common questions include, but are not limited to, the following:

- 11 a. Whether BCOT failed to provide accurate itemized wage statements to each and every
12 Aggrieved Employee.
 - 13 b. Whether BCOT failed to provide Aggrieved Employees with proper meal periods.
 - 14 c. Whether BCOT failed to provide Aggrieved Employees with proper rest periods.
 - 15 d. Whether BCOT failed to provide a one-hour wage premium in those instances when
16 Aggrieved Employees were not provided with a meal period.
 - 17 e. Whether BCOT failed to provide a one-hour wage premium in those instances when
18 Aggrieved Employees were not provided with a rest period.
 - 19 f. Whether BCOT failed to maintain accurate time-keeping and payroll records for the
20 Aggrieved Employees.
 - 21 g. Whether BCOT's failure to provide accurate itemized wage statements to each and
22 every Aggrieved Employee violates sections 226.
 - 23 h. Whether BCOT failed to pay all wages in a timely fashion upon each and every
24 Aggrieved Employees' discharge from, or resignation of, employment in violation of
25 sections 201 and/or 202 of the California Labor Code.
 - 26 i. Whether BCOT failed to pay overtime in a timely fashion under California Labor Code
27 section 201.3 and 204 to the Aggrieved Employees.
- 28

j. Whether BCOT failed to pay minimum wage under California Labor Code section 1194(a) to the Aggrieved Employees.

k. Whether BCOT failed to pay proper minimum wages and/or overtime wages under California Labor Code sections 510 and 1194 to the Aggrieved Employees.

80. There is a well-defined community of interest in the questions of law and fact common to the Aggrieved Employees.

81. Plaintiff's claims are typical of the claims of the Aggrieved Employees, which claims all arise from the same general operative facts, namely, BCOT did not compensate its employees as required by the California Labor Code and applicable Wage Order. Plaintiff has no conflict of interest with the other Aggrieved Employees and is able to represent the Aggrieved Employees' interests fairly and adequately.

FIRST CAUSE OF ACTION

(Cal. Lab. Code §§ 1194, 1194.2 and 1198 and IWC Wage Order 4,
Failure to Pay Overtime)

(On Behalf of Plaintiff Schwanke and the Class Against Defendant BCOT)

82. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set forth in the Complaint.

83. Defendants, by at times failing to pay Plaintiff and other similarly situated persons all wages due, including properly computed overtime wages, has violated the Code and IWC Wage Order 4. Overtime is based on the regular rate of pay, which is the compensation one normally earns for the work performed. The regular rate of pay includes a number of different kinds of remuneration, such as hourly earnings, salary, piecework earnings, and commissions.

84. Plaintiff is, accordingly, entitled to recovery of the unpaid balance of the full amount of her unpaid overtime, including interest thereon, reasonable attorneys' fees and costs of suit, in accordance with section 1194(a) of the California Labor Code.

SECOND CAUSE OF ACTION

(Cal. Lab. Code § 226, Failure to Provide Accurate Information on Wage Statements)
(On behalf of Plaintiff Schwanke and the Class Against Defendant BCOT)

85. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set forth in the Complaint.

1 86. Defendant BCOT employed Plaintiff but failed to provide her with the data required by
2 section 226(a) of the California Labor Code. Defendant BCOT's actions were intentional and caused
3 injury to Plaintiff insofar as Plaintiff was deprived of data to which she was legally entitled.

4 87. Accordingly, Plaintiff is entitled to damages and costs and attorney's fees, demand for
5 which is hereby made in accord with the provisions of California Labor Code section 226(e).

6
7 **THIRD CAUSE OF ACTION**
8 **CAUSE OF ACTION**

(Failure to Provide Proper Rest Periods, California Labor Code section 226.7 and IWC Wage Order 4)
(On Behalf of Plaintiff Schwanke and the Class Against Defendant BCOT)

9 88. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set
10 forth in the Complaint.

11 89. At all times herein relevant, section 226.7 of the California Labor Code and 8 California
12 Code of Regulations section 11160 provided that employees must receive rest periods of ten minutes for
13 each four hours of work. 8 Cal. Code Regs. 11160(11)(A). Because Respondent BCOT failed to properly
14 provide the required rest periods, it is liable to Plaintiff for one hour of additional pay at the regular rate
15 of compensation for each workday that the proper rest periods were not provided, pursuant to Labor Code
16 section 226.7 and California Code of Regulations section 11160, for the period of time from the four
17 years and 180 days prior to the filing of the Complaint to date. Plaintiff also requests relief as described
18 below.

19 **FOURTH CAUSE OF ACTION**
20 **CAUSE OF ACTION**

(Cal. Lab. Code § 203—Continuing Wages)
(On Behalf of Plaintiff Schwanke and the Class Against Defendant BCOT)

21 90. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set
22 forth in the Complaint.

23 91. Plaintiff Schwanke was discharged in 2023, but was not provided all of her wages within
24 the time required by the Code, despite Defendant BCOT's knowledge of its obligation to do so.
25 Defendant BCOT's actions were "willful" within the meaning of section 203 of the California Labor
26 Code. Plaintiff alleges that Defendant has likewise willfully failed to pay Class Members or her all of her
27 due and owing wages under sections 201, 201.3 or 202.

28 92. Plaintiff and similarly situate former employees are therefore entitled to thirty days of

1 continuing wages pursuant to California Labor Code section 203.

2 **FIFTH CAUSE OF ACTION**

3 (Cal. Lab. Code § 2802— Indemnification and Reimbursement of Expenditures)
4 (On Behalf of Plaintiffs Against Defendant BCOT)

5 93. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set
6 forth in the Complaint.

7 94. At all relevant times herein, California Labor Code section 2802 provided, in relevant
8 part:

9 (a) An employer shall indemnify his or her employee for all necessary
10 expenditures or losses incurred by the employee in direct consequence of the discharge of
11 his or duties

12 (b) All awards made by a court . . . for reimbursement of necessary expenditures
13 under this section shall carry interest at the same rate as judgments in civil actions.
14 Interest shall accrue from the date on which the employee incurred the necessary
15 expenditure or loss.

16 (c) For purposes of this section, the term “necessary expenditures or losses” shall
17 include all reasonable costs, including, but not limited to, attorney’s fees incurred by the
18 employee enforcing rights granted by this section.

19 Cal. Lab. Code § 2802.

20 95. At all relevant times herein, Wage Order 4 provided, in relevant part:

21 (A) When the employer requires uniforms to be worn by the employee as a
22 condition of employment, such uniforms shall be provided and maintained by the
23 employer. The term “uniform” includes wearing apparel and accessories of distinctive
24 design or color.

25 (B) When the employer requires the use of tools or equipment or they are
26 necessary for the performance of a job, such tools and equipment shall be provided and
27 maintained by the employer, except that an employee whose wages are at least two (2)
28 times the minimum wage may provide and maintain hand tools and equipment

1 customarily required by the particular trade or craft in conformity with Labor Code
2 Section 2802.

3 8 Cal. Code Regs. §11160(8).

4 96. In the discharge of its duties, Defendant BCOT required Plaintiff and Class Members to
5 provide use of their personal cell phones. They were not reimbursed for the out-of-pocket expenses.

6 97. Pursuant to section 2802 of the California Labor Code, Plaintiff and Class Members are
7 entitled to reimbursement of their out-of-pocket expenses from Defendant, interest thereon, attorneys'
8 fees and costs, according to proof.

9
10 **SIXTH CAUSE OF ACTION**

11 (Cal. Lab. Code § 226(b)—Failure to Provide Employment Records Upon Request)
12 (On Behalf of Plaintiff Schwanke Only Against Defendant BCOT)

13 98. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set
14 forth in this Complaint.

15 99. Pursuant to Labor Code section 226(b), an employer shall afford current and former
16 employees the right to inspect or copy the records pertaining to that current or former employee, upon
17 reasonable request to the employer.

18 100. Plaintiff has requested that Defendant BCOT permit inspection or copying of Plaintiff's
19 employment records pursuant to Labor Code section 226(b). Defendant BCOT has failed to provide
20 Plaintiff with an opportunity to inspect or copy all of her employment records within 21 days of her
21 request.

22 101. Pursuant to Labor Code section 226(f) and (g), Plaintiff is entitled, and hereby seeks to
23 recover from Defendant BCOT a seven-hundred-fifty-dollar (\$750) penalty, reasonable attorneys' fees,
24 and the cost of bringing this cause of action.

25 **SEVENTH CAUSE OF ACTION**

26 (Cal. Lab. Code § 1198.5—Failure to Provide Personnel Records Upon Request)
27 (On Behalf of Plaintiff Schwanke Against Defendant BCOT)

28 102. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set
forth in this Complaint.

103. Pursuant to Labor Code section 1198.5 “has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Cal. Lab. Code § 1198.5.

104. Plaintiff Schwanke requested that Defendant BCOT permit inspection or copying of her employment records pursuant to Labor Code section 1198.5. Defendant BCOT has failed to provide Plaintiff with an opportunity to inspect or copy all of her employment records within 30 days of her request.

105. Pursuant to Labor Code section 1198.5(k) Plaintiff is entitled, and hereby seeks to recover from Defendant BCOT a seven-hundred-fifty- dollar (\$750) penalty, reasonable attorney's fees, and the cost of bringing this cause of action.

EIGHTH CAUSE OF ACTION

(Cal. Bus. & Prof. Code § 17200, *et seq.*)
(On Behalf of Plaintiff and the Class Against Defendant BCOT)

106. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set forth in this Complaint.

107. Defendant is a “person” within the meaning of section 17201 of the California Business and Professions Code.

108. Plaintiff is suing both in her individual capacities and on behalf of the general public, and she is a proper representative because he has suffered direct harm from the illegal business practices herein alleged.

109. Beginning at an exact date unknown to Plaintiff, Defendant has committed acts of unfair business practice or act as defined in California Business and Professions Code section 17200 *et seq.* by engaging in the following acts and practices: (1) failing to provide minimum wage and/or overtime compensation to its employees under the California Labor Code; (2) failing to provide employees with proper rest periods as required by California law and the applicable Wage Order; (3) failing to reimburse its employees with their personally incurred expenditures for cell phones and other items.

1 110. Under section 17200 *et seq.* of the Business and Professions Code, the Court is authorized
2 to enter such judgment or order as may be necessary to restore to any person in interest the money or
3 property acquired by Defendant through its unlawful and unfair business practices.

4 111. In other words, Plaintiff is entitled to restitution of her unpaid minimum wage and/or
5 overtime, rest wages, and unpaid reimbursements, as such funds should be distributed to the individuals
6 who are rightfully entitled to such monies.

7 112. Plaintiff is a proper person to bring this litigation as a “representative action” to compel
8 restitution. The Plaintiff is a person who has suffered damage as a result of the unlawful actions of
9 BCOT herein alleged. The actions of BCOT herein alleged are in violation of various statutes and in
10 contravention of established public policy, and, accordingly, a court order compelling it to cease and
11 desist from such actions and to make restitution is a vindication of an important public right. The extent
12 to which BCOT has been unjustly enriched as a result of its unlawful and unfair business practices is a
13 matter that can be ascertained by examination of the payroll and accounting records that BCOT is
14 required by law to keep and maintain and that BCOT has kept and maintained.

15 113. The identity of the persons to whom restitution should be made is a matter that can be
16 ascertained from those records that BCOT is required by law to keep and maintain and that it has kept
17 and maintained.

18 114. Plaintiff’s efforts in securing the requested relief will result “in the enforcement of an
19 important right affecting the public interest,” as “a significant benefit, whether pecuniary or
20 nonpecuniary, [will] be[] conferred on . . . a large class of persons.” Cal. Civ. Proc. Code § 1021.5.
21 Moreover, because “the necessity and financial burden of private enforcement . . . are such as to make [an
22 attorney’s fee] award appropriate, and [because attorney’s] fees should not in the interest of justice be
23 paid out of the recovery, if any,” *id.*, Plaintiff requests that the Court also award reasonable attorney’s
24 fees pursuant to the provisions of section 1021.5 of the California Code of Civil Procedure.

25 115. Plaintiff has no plain, speedy, or adequate remedy at law, inasmuch as BCOT, unless
26 enjoined by an order, will continue to violate systematically the provisions of sections of the California
27 Labor Code and the applicable Wage Order, as set forth in this Complaint.
28

116. Pursuant to section 17205, the remedies and penalties provided by section 17200 *et seq.* are cumulative to the remedies and penalties available under all other laws of this state, including appointment of a receiver to run BCOT.

NINTH CAUSE OF ACTION

(PAGA Civil Penalties, Cal. Lab. Code § 2698, *et seq.*)
(On Behalf of Plaintiff, the California Labor & Workforce Development Agency and Aggrieved Employees Against Defendant BCOT)

117. Plaintiff realleges and incorporates herein by reference the allegations contained in this Complaint as though fully set forth herein.

118. Pursuant to section 2699.3(a)(1) of the Labor Code, on or about February 22-, 2024, Plaintiff submitted her PAGA Claim Notice online to the LWDA and notified the LWDA of the specific provisions of the Kabir Cide alleged to have been violated by Defendant, including the theories set forth in the Complaint. Also, on that day, Plaintiff gave written notice by certified mail to Defendant of the specific provisions of the Labor Code alleged to have been violated by Defendant.

119. Plaintiff seeks to represent all Aggrieved Employees, defined as all natural persons who, at any time during the one year period preceding the filing of the PAGA notice through the present, were or are employed by Defendant BCOT as an employee in California.

120. At all relevant times, California Labor Code section 2699.3(a)(2)(A) provided:

The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to Paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to Paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

Cal. Lab. Code § 2699.3(a)(2)(A).

121. When sixty-five (65) calendar days of the postmark date of the notice sent by Plaintiff have passed, Plaintiff may “commence a civil action pursuant to Section 2699.” Cal. Lab. Code § 2699.3(a)(2)(A). More than sixty-five calendar days have passed since Plaintiff gave written notice of the PAGA violations to the LWDA and Defendant.

122. Plaintiff alleges that Defendant violated PAGA in the following ways: Plaintiff alleges that Defendant violated PAGA in the following ways: Plaintiff and other Aggrieved Employees worked

1 for Defendant but were regularly paid late and/or paid with checks that bounced. On or about April 10,
2 2023, Plaintiff served Defendant with a Request for Records pursuant to Cal. Lab. Code sections 226,
3 432 and 1198.5, requesting that Defendant furnish her with her employment records, including the
4 following: (1) The itemized statements referred to in section 226(a) of the California Labor Code; (2) The
5 statement of total hours worked; (3) All deductions taken from gross pay; (4) Net wages earned; (5) The
6 name and address of the legal entity who or which is the employer; (6) All applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly rate by the employee;
8 (7) "time records showing when the employee begins and ends each work period [including] [m]eal
9 periods, split shift intervals and total daily hours worked;" (8) Any documents he signed during my
10 employment; (9) Any employee reviews of disciplinary write-ups and any employee handbook(s) as well
11 as any other documents Defendant maintains regarding her performance or any grievance concerning her
12 employment, and a copy of all instruments she signed relating to the obtaining or holding of her
13 employment with Defendant; and (10) Any video tape or electronic recording relating to her
14 employment. Defendant failed to provide a complete response to Plaintiff's request for records in
15 violation of Cal. Lab. Code sections 226, 432 and 1198.5.

16 123. Plaintiff and other Aggrieved Employees worked many hours for Defendants but were not
17 timely paid for their work or paid certain sums at all. Plaintiff contends that the Labor Code sections
18 listed below, and the Applicable Wage Order enables Plaintiff to recover civil penalties under PAGA, as
19 well as attorneys' fees and costs from Defendant through a civil action on behalf of all Aggrieved
20 Employees. Plaintiff has alleged that Defendant (1) failed to pay Aggrieved Employees accrued wages
21 for all hours worked in violation of the applicable Wage Order and Labor Code §§ 201, 201.3, 202, 204,
22 510, 1182.12, 1194, and 1197; (2) willfully failed to provide Aggrieved Employees with itemized wage
23 statements in violation of Labor Code §§ 226(a), 1174, and 1174.5; (3) failed to provide the Aggrieved
24 Employees with meal and rest periods in violation of Labor Code § 226.7, and the applicable IWC Wage
25 Order; (4) failed to reimburse Plaintiff for necessary business expenses in violation of section 2802 of the
26 California Labor Code; (5) willfully failed to pay compensation owed in a prompt and timely manner to
27 Plaintiff and other Aggrieved Employees whose employment with Defendant terminated in violation of
28

1 the applicable Wage Order and Labor Code §§201, 201.3, 202, 203 and 558; (6) failed to timely and
2 properly respond to Labor Code section 226(b) requests for production of documents: and (7) failed to
3 keep required payroll records in violation of Labor Code §§ 1174 and 1174.5. “PAGA actions can serve
4 to *indirectly* enforce certain wage order provisions by enforcing *statutes* that require compliance with
5 wage orders (e.g., § 1198, which prohibits longer work hours than those fixed by wage order or
6 employment under conditions prohibited by a wage order).” Thurman v. Bayshore Transit Mgmt., Inc.,
7 203 Cal. App. 4th 1112, 1132 (2012).

8
9 124. Plaintiff seeks to recover the PAGA penalties through a representative action permitted by
10 PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969 (2009) and Huff v.
11 Securitas Sec’y Servs. USA, Inc., 23 Cal. App. 5th 745, 756 (2018). Plaintiff has given notice that she
12 will seek civil penalties pursuant to PAGA based on her investigation regarding Defendant’s violations of
13 the following Labor Code provisions:

14 a. **Failure to provide payroll records in violation of Code § 226(b):** Employers must afford
15 current and former employees the right to inspect or copy the records pertaining to that current or former
16 employee, upon reasonable request to the employer. Plaintiff has not been provided with an opportunity
17 to inspect or copy all payroll records within 21 days of request. Upon information and belief, other
18 Aggrieved Employees have requested their payroll records but have not been given access to them
19 pursuant to section 226(b). Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period per
20 Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for
21 subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

22 b. **Failure to provide personnel records in violation of Code § 1198.5:** Employers must
23 afford current and former employees the right to inspect or copy the personnel records pertaining to that
24 current or former employee, upon reasonable request to the employer. Plaintiff has requested but has not
25 been provided with an opportunity to inspect or copy all personnel records within 30 days of request.
26 Upon information and belief, other Aggrieved Employees have requested their personnel records but
27 have not been given access to them pursuant to section 1198.5. Code § 2699(f)(2) imposes a civil penalty
28 of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per

1 Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not
2 specifically provided.

3 c. **Failure to provide records in violation of Code § 432:** Employers are required to give a
4 copy of any instrument relating to the obtaining or holding of employment, if signed by an employee,
5 upon request. Plaintiff has requested but has not received all of them. Upon information and belief,
6 other Aggrieved Employees have requested their signed documents but have not been provided a copy.
7 Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial
8 violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Code
9 provisions for which a civil penalty is not specifically provided.

10 d. **Failure to timely pay wages during employment in violation of Code §§ 204 and 210:**
11 Plaintiff and Aggrieved Employees were not compensated during their employment by the times
12 prescribed by section 204 due to the failure to allocate sufficient resources to the payroll function. The
13 failure of Defendants to make timely payments within the time provided for has been and is “willful”
14 within the meaning of such word as used in Section 210 of the Code.

15 e. Plaintiff will investigate whether Defendants failed to pay Aggrieved Employees all wages for
16 a weekly payroll period within 7 calendar days following the close of the payroll period in violation of
17 Code §§ 204(d) and 210. Upon information and belief, Plaintiff and Aggrieved Employees were paid
18 after the 7th day following the close of the payroll period in violation of these statutes.

19 f. Plaintiff will investigate whether Defendants failed to pay Plaintiff and Aggrieved Employees
20 all wages for a biweekly payroll period within 7 calendar days following the close of the payroll period in
21 violation of Code §§ 204(d) and 210. Upon information and belief, Plaintiff and Aggrieved Employees
22 were paid after the 7th day following the close of the payroll period in violation of these statutes.

23 g. Plaintiff will investigate whether Defendants failed to timely pay Plaintiff and Aggrieved
24 Employees all wages for a bimonthly payroll period. Section 204 requires that wages be issued no more
25 than 10 calendar days after the last day of the payroll period: “Labor performed between the 1st and 15th
26 days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
27 during which the labor was performed, and labor performed between the 16th and the last day, inclusive,
28

1 of any calendar month, shall be paid for between the 1st and 10th day of the following month” Upon
2 information and belief, Plaintiff and Aggrieved Employees were paid after the 10th day following the
3 close of the payroll period in violation of these statutes. Accordingly, each Aggrieved Employee who
4 was not timely paid his or her timely wages during their employment is entitled to civil penalties. Code
5 section 210 provides for a penalty of \$100 for each initial violation and \$200 for each subsequent, or
6 willful or intentional violation plus 25 percent of the amount unlawfully withheld.

7 **h. Failure to pay wages and/or final wages in violation of Code § 203:** With respect to
8 violations of Code § 203, the failure of Defendants to make final payments within the time provided for
9 has been and is “willful” within the meaning of such word as used in Section 203 of the Code. Code
10 section 203 provides that if “an employer willfully fails to pay...any wages of an employee who is
11 discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof
12 at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for
13 more than 30 days.” Here, Plaintiff and Aggrieved Employees were not timely paid all wages due upon
14 their separation from Defendants’ employ. For example, Plaintiff is still unpaid all of her wages for her
15 work for Defendants. Plaintiff has not been paid all of the overtime she is entitled to due to Defendant’s
16 failure to use the correct overtime rate. Plaintiff has not been paid rest period premiums she was owed
17 due to missed rest breaks. Although Plaintiff on occasion received meal period premiums for missed
18 meal breaks, the premiums were not computed correctly due to Defendants’ failure to include
19 commission payments, SPIFFs, or nondiscretionary incentive awards in the calculations. As such,
20 Defendants failed to pay Plaintiff and Aggrieved Employees all wages due at the time of termination or
21 within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days
22 thereafter in violation of Code § 203. Accordingly, each Aggrieved Employee who was not timely paid
23 his or her final wages is entitled to civil penalties. Code § 2699(f)(2) imposes a civil penalty of \$100 per
24 pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved
25 Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically
26 provided.

27 **i. Wages by check on which payment refused under Code § 203.1:** Upon information and
28

1 belief, certain of the Aggrieved Employees were intentionally paid their wages with checks that
2 subsequently were refused payment due to insufficient funds. Code § 203.1 provides that:

3
4 If an employer pays an employee in the regular course of employment or in accordance
5 with Section 201, 201.3, 201.5, 201.7, or 202 any wages or fringe benefits, or both, by
6 check, draft or voucher, which check, draft or voucher is subsequently refused payment
7 because the employer or maker has no account with the bank, institution, or person on
8 which the instrument is drawn, or has insufficient funds in the account upon which the
instrument is drawn at the time of its presentation, so long as the same is presented within
30 days of receipt by the employee of the check, draft or voucher, those wages or fringe
benefits, or both, shall continue as a penalty from the due date thereof at the same rate
until paid or until an action therefor is commenced [up to 30 days].

9 Cal. Lab. Code § 203.1

10 Here, Aggrieved Employees were not paid immediately after a dishonored check was presented to
11 Defendant and waited up to, or more than 30 days, to be paid after informing Defendant.

12 j. **Unlawful Deductions under Code § 221:** Under Code §§ 221, 222 and 223, it is
13 “unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by
14 said employer to said employee” and it is “unlawful to secretly pay a lower wage while purporting to pay
15 the wage designated by statute or by contract.” Section 222 states that with respect to wages agreements
16 via a collective bargaining agreement, an employer may not willfully, unlawfully or with “intent to
17 defraud an employee, a competitor, or any other person, [] withhold from said employee any part of the
18 wage agreed upon.” Here, upon information and belief, Defendants made improper deductions for which
19 Aggrieved Employees did not expressly authorize in writing. Section 225.5 provides for a civil penalty of
20 \$100 for each failure to pay each employee in an initial violation and \$200 for each failure to pay each
21 employee in a subsequent violation, plus 25 percent of the amount unlawfully withheld.

22 k. **Failure to provide itemized wage statements in violation of Code § 226(a):** Plaintiff
23 and Aggrieved Employees have not been provided wage statements that conformed to the requirements
24 of Code section 226(a). For instance, Defendants failed to pay the correct premium wage to Plaintiffs and
25 Aggrieved Employees for missed meals and did not pay premium wages for missed rest breaks at all.
26 The required premium wages for missed breaks are not reflected on the wage statements provided to
27 Plaintiff and Aggrieved Employees in derogation of Naranjo v. Spectrum Security Services, Inc., 13 Cal.
28 5th 93, 108, 121 (2022) (“the law generally does not permit an employer to deprive an employee of a

1 meal or rest break . . . an employer's obligation under Labor Code section 226 to report wages earned
2 includes an obligation to report premium pay for missed breaks.") The foregoing was the intentional
3 misconduct of Defendants that was intended to mislead and injure Plaintiff and Aggrieved Employees
4 insofar as they were subjected to confusion and deprived of information to which they were legally
5 entitled:

- 6 i. Upon information and belief, many Aggrieved Employees did not receive a
7 wage statement all.
- 8 ii. Upon information and belief, the wage statements failed to include, among
9 other required information, the "gross wages earned" as it only shows the gross
10 wages eventually paid.
- 11 iii. Upon information and belief, the wages statements failed to include, among
12 other required information, the "total hours worked by the employee" as it only
13 shows the total hours eventually paid.
- 14 iv. Upon information and belief, the wage statements failed to include, among
15 other required information, "all deductions, provided that all deductions made
16 on written orders of the employee may be aggregated and shown as one item"
- 17 v. Upon information and belief, the wage statements failed to include, among
18 other required information, the "net wages earned"
- 19 vi. Upon information and belief, the wage statements failed to include, among
20 other required information, the "inclusive dates of the period for which the
21 employee is paid" as it appears to only show the date/dates worked and do not
22 show the start and end date for each pay period.
- 23 vii. Upon information and belief, the wage statements failed to include, among
24 other required information, "the name of the employee and only the last four
25 digits of his or her social security number or an employee identification
26 number other than a social security number" as the statement shows:
 - 27 • no identifying number at all
- 28

- all nine digits of the social security number

viii. Upon information and belief, the wage statements failed to include, among other required information, the “name and address of the legal entity that is the employer” as it does not reflect the full legal name of the employer and/or misstates that the employer is only a “Client”

ix. Upon information and belief, the wage statements failed to include, among other required information, “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee”

x. Upon information and belief, the wage statements failed to include, among other required information, the “the rate of pay and the total hours worked for each temporary services assignment”

Section 226(e) provides that any employee who suffers injury as a result of a knowing and intentional failure by the employer to comply with its obligation to provide wage statements containing all of the information referenced above is entitled to recover. Section 226.3 provides for a civil penalty of \$250 per employee per violation in an initial violation and \$1,000 per employee for each violation in a subsequent violation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

1. **Failure to provide sick leave information under Code §§ 245.5 and 246:** Code sections 245.5 and 246(i) provide that “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.” Here, upon information and belief, Defendants have systematically and intentionally failed to set forth the amount of sick leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage statements described in Section 226 that it issues to Plaintiff and all Aggrieved Employees.

1 Code § 248.5(e) provides “equitable relief on behalf of the aggrieved as may be appropriate to
2 remedy the violation, including reinstatement, backpay, the payment of sick days unlawfully withheld, . .
3 . any person or entity enforcing this article on behalf of the public as provided for under applicable state
4 law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable
5 attorney’s fees and costs.”

6 m. **Failure to furnish information under Code § 2810.5:** Plaintiff and Aggrieved
7 Employees were entitled to certain information in writing at the time of hiring including, among other
8 items, the following:

- 9 i. The rate or rates of pay and basis thereof, whether paid by the hour, shift, day,
10 week, salary, piece, commission, or otherwise, including any rates for
11 overtime, as applicable.
- 12 ii. The regular payday designated by the employer in accordance with the
13 requirements of this code.
- 14 iii. The name of the employer, including any “doing business as” names used by
15 the employer.
- 16 iv. The physical address of the employer’s main office or principal place of
17 business, and a mailing address, if different.
- 18 v. The telephone number of the employer.
- 19 vi. The name, address, and telephone number of the employer’s workers’
20 compensation insurance carrier.
- 21 vii. That an employee: may accrue and use sick leave; has a right to request and
22 use accrued paid sick leave; may not be terminated or retaliated against for
23 using or requesting the use of accrued paid sick leave; and has the right to file a
24 complaint against an employer who retaliates.

25 Upon information and belief,, Plaintiff and Aggrieved Employees were not provided with all of the
26 required information under Section 2810.5. Code section 2699(f)(2) imposes a civil penalty of \$100 per
27 pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved
28

1 Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not
2 specifically provided.

3 n. **Failure to provide proper meal periods under Code § 226.7 and Wage Order § 11:**

4 Plaintiff and Aggrieved Employees were not provided with timely meal periods in violation of Code
5 section 226.7 and Applicable Wage Order section 11. For example, Plaintiff worked over 5 or 10/12
6 hours in a day but was not provided with compliant meal breaks and was not otherwise compensated.
7 Upon information and belief, Aggrieved Employees were not permitted to their work location for meal
8 periods, and were required to keep their cell phones on so that they could be reached at all times. They
9 were required to respond regardless of whether they were on a meal or rest break.

10 Code §§ 226.7, 512 and Section 12 of the Applicable Wage Order require an employer to pay an
11 additional hour of compensation for each meal period the employer fails to provide. Section 12 requires
12 that “No employer shall employ any person for a work period of more than six (6) hours without a meal
13 period of not less than thirty (30) minutes, nor more than one (1) hour. Subsequent meal period for all
14 employees shall be called not later than six (6) hours after the termination of the preceding meal period.”
15 Defendants failed to maintain a policy informing all Aggrieved Employees of these rights.

16 Although Plaintiff and Aggrieved Employees on occasion received meal period premiums or
17 penalties for missed meal breaks, the payments were not computed correctly due to Defendants’ failure to
18 include commission payments, SPIFFs, or non-discretionary incentive awards in the calculations.

19 Here, upon information and belief, Defendants failed to apprise all Aggrieved Employees of their
20 rights associated with meal periods and failed to provide timely meal periods. Defendants have had a
21 consistent policy of: (1) requiring all Aggrieved Employees to take late meal breaks that occurred after
22 the first 5 hours of each shift; (2) required Aggrieved Employees to work shifts over 10/12 hours without
23 providing a second meal period of 30 minutes in length; and (3) failed to pay such employees 1 hour of
24 pay at the employees regular rate of compensation for each workday in which a proper meal break was
25 not provided.

26 Upon information and belief, Defendants also maintained a policy of automatically deducting 30
27 minutes from each shift that Plaintiff and the Aggrieved Employees worked. This “auto-deduct” policy
28

1 was unlawful and did not account for whether the employees took their meal periods, took meal periods
2 late, were interrupted with work, and/or took meal periods of less than 30 minutes.

3 Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee
4 for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all
5 Labor Code provisions for which a civil penalty is not specifically provided.

6 o. **Failure to provide proper rest periods under Code § 226.7 and Wage Order § 12:**

7 Upon information and belief, Aggrieved Employees were not provided with timely rest periods in
8 violation of Code section 226.7 and Applicable Wage Order section 12. Aggrieved Employees were not
9 permitted to leave their work location for any purported rest periods. They were required to be available
10 via cell phone at all times. Plaintiff was neither informed of nor otherwise provided with compliant rest
11 breaks. Defendants failed to provide all Aggrieved Employees with rest breaks of not less than 10
12 minutes per 4-hour work period, or major fraction thereof. On a regular and consistent basis, Defendants
13 failed to provide all Aggrieved Employees with a third rest period despite regularly requiring Aggrieved
14 Employees to work over 10 hours. As such, Defendants failed to provide all Aggrieved Employees with
15 compliant rest periods. Further, Plaintiff and the Aggrieved Employees were not compensated with 1
16 hour of wages for each missed rest period as required by Code § 226.7.

17 Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee
18 for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all
19 Code provisions for which a civil penalty is not specifically provided.

20 p. **Improper classification of employees as independent contractors in violation of Code**
21 **§ 226.8:** Upon information and belief, Aggrieved Employees were willfully misclassified as independent
22 contractors even though they were employees. Upon information and belief, Defendants' failure to
23 properly classify as employees all Aggrieved Employees was done on a regular and consistent basis.
24 Code section 226.8 requires "a civil penalty of not less than five thousand dollars (\$5,000) and not more
25 than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines
26 permitted by law." If the employer is found to have engaged in a "pattern or practice" of misclassifying
27 employees, it is subject to a "civil penalty of not less than ten thousand dollars (\$10,000) and not more
28

1 than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines
2 permitted by law.” Cal. Lab. Code § 226.8(c).

3 q. **Failure to reimburse necessary business expenses under Code § 2802:** Upon
4 information and belief, Aggrieved Employees were not reimbursed for necessary business expenses.
5 Section 2802 requires that an employer indemnify his or her employee for all necessary expenditures or
6 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
7 her obedience to the directions of the employer, even though unlawful, unless the employee, at the time
8 of obeying the directions, believed them to be unlawful.

9 Upon information and belief, Defendants have failed to reimburse Plaintiff and Aggrieved
10 Employees the cost of using their personal cell phones for business related purposes. Defendants required
11 that Plaintiff and the Aggrieved Employees be available by cell phone and answer/use their cell phones
12 while working and this was necessary to perform their job duties. These cell phones were not provided by
13 Defendants, and Defendants failed to reimburse Aggrieved Employees for the costs associated with using
14 these personal cell phones.

15 Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee
16 for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all
17 Labor Code provisions for which a civil penalty is not specifically provided.

18 r. **Failure to pay minimum and overtime wages in violation of Code §§ 510, 515, 558, 1194,**
19 **and 1198:** Both late payment and non-payment of minimum wages violate the state statute requiring the
20 payment of a minimum hourly wage. The Labor Code requires an employer to compensate its employees
21 at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the
22 regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40
23 hours in any one workweek.

24 Here, upon information and belief, Plaintiff and other Aggrieved Employees were not paid at the
25 proper corresponding rate for all hours worked, including overtime as a result of the following:

- 26 i. Defendants’ misclassification of these individuals as independent
27 contractors.
28

- ii. Defendants did not record actual hours and failed to pay for all time worked.
- iii. Defendants' failure to pay for all time spent driving/and or travelling from site to site.
- iv. Defendants' failure to calculate the correct overtime rate under Code § 515.
- v. Aggrieved Employees routinely work "off the clock" beyond their scheduled hours.
- vi. Plaintiff and the Aggrieved Employees are routinely paid until an arbitrary time in the day and not until they have actually ceased working.

Plaintiff and Aggrieved Employees were not paid the correct overtime rate because Defendants did not include commissions, SPIFFs or non-discretionary incentive awards in the regular rate of pay under Code § 510(a) for calculation of overtime. Code § 558 imposes a civil penalty in addition to any other penalty provided by law of \$50 for initial violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages, and \$100 for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

s. **Failure to keep complete and accurate payroll records:** Upon information and belief, Defendant failed to keep complete and accurate payroll records relating to Aggrieved Employees in accordance with Code section 1174(d). Willful failure to maintain accurate and complete records required by section 1174(d) is subject to a civil penalty of \$500. Cal. Lab. Code § 1174.5.

t. **Failure to furnish reporting time pay in violation of Applicable Wage Order:** Defendant failed to compensate for reporting time pay. Upon information and belief, Aggrieved Employees reported to work but were not put to work or not furnished at least half of the usual or scheduled hours. If an employee is required to report to work but is not put to work or is furnished less than half of the employee's usual or scheduled day's work, such Aggrieved Employee is entitled to be paid for half the usual or scheduled day's work. Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not

specifically provided.

u. **Failure to provide rest day in violation of Code § 551:** Pursuant to Code § 551, upon information and belief, Defendant failed to provide Aggrieved Employees with one day of rest in seven consecutive days worked. Code § 551 states: “Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven.” Defendant failed to provide this day of rest.

v. **Failure to provide seating in violation of Wage Order:** Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the Industrial Welfare Commission (IWC) or from violating, refusing, or neglecting to comply with any order of the commission’s orders regarding wages, hours, and working conditions. Additionally, Labor Code § 1198 states that the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees and forbids the employment of any employee under conditions of labor prohibited by the commission’s wage orders. Section 14 of the applicable IWC Wage Order requires employers to provide employees with suitable seats when the nature of work reasonably permits the use of seats. Here, upon information and belief, Defendants did not provide suitable seats for employees performing work even though the nature of work reasonably permitted the use of seats.

Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

w. **Failure to remit gratuity in violation of Code § 351:** Code § 351 prohibits employers from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is declared to be the sole property of the employee or employees to whom it was paid, given, or left for.

Here, upon information and belief, Defendant’s customers leave tips for employees but the company retains part of the tip for itself and/or to distribute to the company’s other workers or partners, in violation of Section 351.

1 x. **Failure to pay commission and/or bonuses:** Upon information and belief, Defendant
2 has violated Code §§ 204, 210, 216, 218.5, and 218.6. These statutes require an employer to compensate
3 its employees for all wages owed. Pursuant to Code § 200, wages include commissions/bonuses.

4 Here, Upon information and belief, Defendant failed to pay Plaintiff and other Aggrieved
5 Employees bonuses due pursuant to their employment contracts and/or the terms and conditions of their
6 employment. Further Defendant failed to pay bonuses, commissions, non-discretionary incentive awards
7 and/or SPIFFs when they were due. As such, Plaintiff and the Aggrieved Employees were not paid all of
8 their wages owed.

9 y. **Retaliation against “whistleblowing” employees in violation of Cal. Lab. Code § 1102.5:**

10 Upon information and belief, Defendant has violated Code § 1102.5 with respect to
11 Plaintiff and/or other Aggrieved Employees. Code § 1102.5 states in relevant part:

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

22 (b) An employer, or any person acting on behalf of the employer, shall not retaliate
23 against an employee for disclosing information, or because the employer believes
24 that the employee disclosed or may disclose information, to a government or law
25 enforcement agency, to a person with authority over the employee or another
26 employee who has the authority to investigate, discover, or correct the violation or
27 noncompliance, or for providing information to, or testifying before, any public
28 body conducting an investigation, hearing, or inquiry, 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.

(c) An employer, or any person acting on behalf of the employer, shall not retaliate
against an employee for refusing to participate in an activity that would result in a
violation of state or federal statute, or a violation of or noncompliance with a local,
state, or federal rule or regulation.

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

(e) A report made by an employee of a government agency to their employer is a
disclosure of information to a government or law enforcement agency pursuant to
subdivisions (a) and (b).

(f)

(1) In addition to other remedies available, an employer is liable for a civil penalty

not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section to be awarded to the employee who was retaliated against.
(2) In assessing this penalty, the Labor Commissioner shall consider the nature and seriousness of the violation based on the evidence obtained during the course of the investigation. The Labor Commissioner's consideration of the nature and seriousness of the violation shall include, but is not limited to, the type of violation, the economic or mental harm suffered, and the chilling effect on the exercise of employment rights in the workplace, and shall be considered to the extent evidence obtained during the investigation concerned any of these or other relevant factors.

...

(j) The court is authorized to award reasonable attorney's fees to a plaintiff who brings a successful action for a violation of these provisions.

Cal Lab Code § 1102.5.

Defendant created a hostile work environment by accusing Plaintiff of engaging in prostitution while on the premises, and otherwise harassing her to such a degree, that after she was unceremoniously removed from the workplace, she was required to engage in psychological therapy, to recover from the traumatic experience. During her employment, Plaintiff notified Defendant's agents who had authority over her and who had authority to investigate, discover and/or correct the harassing conduct and was retaliated against for doing so in violation of Code § 1102.5.

z. Discrimination, discharge for exercise of employee rights in violation of Code § 98.6:

Upon information and belief, Defendant has violated Code § 98.6 with respect to Plaintiff and/or other Aggrieved Employees. Code § 98.6 states in relevant part:

- (a) A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to their rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that they are owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of themselves or others of any rights afforded them.
- (b)
 - (1) Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of their employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee

1 has made a bona fide complaint or claim to the division pursuant to this part, or
2 because the employee has initiated any action or notice pursuant to Section 2699
3 shall be entitled to reinstatement and reimbursement for lost wages and work
4 benefits caused by those acts of the employer. If an employer engages in any
5 action prohibited by this section within 90 days of the protected activity specified
6 in this section, there shall be a rebuttable presumption in favor of the employee's
7 claim.

(2) An employer who willfully refuses to hire, promote, or otherwise restore an
employee or former employee who has been determined to be eligible for rehiring
or promotion by a grievance procedure, arbitration, or hearing authorized by law,
is guilty of a misdemeanor.

(3) In addition to other remedies available, an employer who violates this section is
liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per
employee for each violation of this section, to be awarded to the employee or
employees who suffered the violation.

9 Cal Lab Code § 98.6. Defendant created a hostile work environment by accusing Plaintiff of engaging in
10 prostitution while on the premises, and otherwise harassing her to such a degree, that after she was
11 unceremoniously removed from the workplace, she was required to engage in psychological therapy, to
12 recover from the traumatic experience. During her employment, Plaintiff notified Defendant's agents
13 who had authority over her and who had authority to investigate, discover and/or correct the harassing
14 conduct and was retaliated against for doing so in violation of Code § 98.6. Plaintiff notified Defendant's
15 agents that she was owed unpaid wages and for other various labor code violations described herein and
16 was retaliated against for doing so in violation of Code § 98.6.

17 aa. **Improper payment of wages from out of state bank in violation of Code § 212:**

18 Upon information and belief, all Aggrieved Employees are paid with paychecks that violate Code § 212.

19 Section 212 states in relevant part that:

20 Any order, check, draft, note, memorandum, or other acknowledgment of
21 indebtedness, unless it is negotiable and payable in cash, on demand, without
22 discount, at some established place of business in the state, the name and address
23 of which must appear on the instrument, and at the time of its issuance and for a
reasonable time thereafter, which must be at least 30 days, the maker or drawer has
sufficient funds in, or credit, arrangement, or understanding with the drawee for its
payment.

24 Thus, payroll checks must be drawn on an institution located within the state of California. Code section
25 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations,
26 and \$200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code
27 provisions for which a civil penalty is not specifically provided.
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment of at least \$2,000,000, as follows:

1. That, with respect to the First Claim for Relief, this Court enter judgment in favor of Plaintiff and the Class for payment of their unpaid overtime, interest thereon, liquidated damages, reasonable attorneys' fees and costs of suit, according to proof, in accordance with sections 1194(a) and 1194.2 of the California Labor Code, against Defendant BCOT, in amount greater than \$16,000.

2. That, with respect to the Second Claim for Relief, this Court enters judgment in favor of Plaintiff and the Class, damages, reasonable attorney's fees, and costs of suit, each according to proof, in accordance with section 226(a) of the California Labor Code, against Defendant BCOT, in amount greater than \$25,000.

3. That, with respect to the Third Claim for Relief, Plaintiff and the Class be awarded an additional hour of pay for each workday for which a rest period was not properly taken, reasonable attorneys' fees, and costs of suit, each according to proof, pursuant to California Labor Code section 226.7, against Defendant BCOT, in amount greater than \$1,000,000.

4. That, with respect to the Fourth Claim for Relief, Plaintiff and the class be awarded thirty days continuing wages pursuant to California Labor Code section 203 against Defendant BCOT and Harrison, in amount greater than \$15,000.

5. That, under the Fifth Claim for Relief, it be adjudged Plaintiff be awarded reimbursement of their expenses and interest, and attorneys' fees and costs, according to proof, pursuant to section 2802 of the California Labor Code against Defendant BCOT, in amount greater than \$1,000.

6. That, with respect to the Sixth Claim for Relief, Plaintiff be awarded the statutory penalties provided by Labor Code section 226(b) in the amount of \$750 and for reasonable attorneys' fees and costs of suit pursuant to Labor Code section 226(f) and (g), against Defendant BCOT, in amount according to proof.

7. That, with respect to the Seventh Claim for Relief, Plaintiff be awarded the statutory penalties provided by Labor Code section 1198.5(k) in the amount of \$750, as well as injunctive relief to obtain compliance, and for reasonable attorneys' fees and costs of suit against Defendant BCOT.

1 8. That, with respect to the Eighth Claim for Relief, it be adjudged that BCOT's violations of
2 the applicable Wage Order and sections of the California Labor Code with respect to unpaid wages, rest
3 wages, and expenditures, violated section 17200 *et seq.* of the California Business and Professions Code.
4 Accordingly, Plaintiff requests that the Court order BCOT to pay restitution in the form of unpaid
5 overtime wages, wages accrued on account of missed rest periods, and unpaid expenditures unlawfully
6 retained by BCOT, with interest. Finally, Plaintiff requests that the Court award Plaintiff their reasonable
7 attorney's fees and costs incurred in the prosecution of the matter and Plaintiff be awarded and the class
8 be awarded restitution, attorneys' fees and costs, all according to proof, in amount greater than \$21,000.

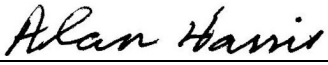
9 9. That, under the Ninth Claim for Relief, this Court award Plaintiff, the State of California,
10 and other former and current Aggrieved Employees their civil penalties, attorney's fees, and costs of suit,
11 all according to proof, pursuant to, *inter alia*, sections 201.3, 201.5, 203, 204, 210, 226, 226.7, 510, 512,
12 558, 558.1, 1174, 1194.2, 1197, 1198 and 2699 *et seq.* of the California Labor Code and the applicable
13 IWC Wage Orders as heretofore articulated.

14 10. For such further relief as the Court may order.

15 11. Plaintiff demands a trial by jury as to all counts.

16 DATED: May 17, 2024

HARRIS & RUBLE



Alan Harris

Attorney for Plaintiff

1 **PROOF OF SERVICE**

2 I am an attorney for the plaintiff herein, over the age of eighteen years, and not a party to the within
3 action. My business address is Harris & Ruble, 655 N. Central Ave., 17th Floor, Glendale CA, 91203.
4 On May 17, 2024, I served the within documents:

5 **FIRST AMENDED COMPLAINT**

6 Electronic Service: Electronic Service: Pursuant to CRC 2.251 and Cal. Code Civ. Proc. § 1010.6, I cause
7 the above-entitled document(s) to be served via electronic service to all parties appearing below:

8 Alessandra C. Whipple (awhipple@cdfsaborlaw.com)
9 Todd R. Wulffson (twulffson@flaborlaw.com)
10 CDF LABOR LAW
11 18300 Von Karman Avenue, Suite # 800
12 Irvine CA 92612

13 I declare under penalty of perjury that the above is true and correct. Executed on May 17, 2024, at Los
14 Angeles, California.

15 

16 _____
17 Priya Mohan
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