

Lilit Tunyan (SBN 329351)
ltunyan@tunyanlaw.com
Artur Tunyan (SBN 349174)
atunyan@tunyanlaw.com
TUNYAN LAW, APC
535 N. Brand Blvd., Suite 285
Glendale, California 91203
Telephone: (323) 410-5050

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
6/17/2024 12:07 PM
By: Alyssa Leber, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ANA BERNAL, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

ONUS GLOBAL FULFILLMENT
SOLUTIONS LLC, a California Limited
Liability Company; MOONSHENG LLC, a
California Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. CIVSB2412062

**Amended as a matter of right, pursuant to
Labor Code Section 2699.3(a)(2)(c)**

FIRST AMENDED COMPLAINT

1. Violation of Labor Code §§ 204, 246, 510, 1194, 1198 (Failure to Pay All Wages and Sick Pay);
2. Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods);
3. Violation of Labor Code § 226.7 (Failure to Provide Rest Periods);
4. Violation of Labor Code § 226, (Failure to Keep Accurate Itemized Wage Statements);
5. Violation of Labor Code §§ 201-203, (Failure to Pay Wages Upon Termination of Employment);
6. Violation of Labor Code § 2802 (Failure to Reimburse for Necessary Expenditures); and
7. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices), and
8. Violation of the Private Attorneys General Act, Labor Code sections 2698, et seq

DEMAND FOR JURY TRIAL

1 Plaintiff ANA BERNAL (hereinafter referred to as “Plaintiff”) on behalf of herself and all
2 others similarly situated, as representative of the State of California and the Labor and Workforce
3 Development Agency (“LWDA”), based upon facts that either have evidentiary support or are
4 likely to have evidentiary support after a reasonable opportunity for further investigation and
5 discovery, complains and alleges as follows:

6 **INTRODUCTION**

7 1. This is a class action brought on behalf of Plaintiff and the class she seeks to
8 represent (“Class” or “Class Members”). Class Members consist of all non-exempt, hourly-paid
9 employees currently and/or formerly employed by ONUS GLOBAL FULFILLMENT
10 SOLUTIONS LLC and MOONSHENG LLC in the State of California during the Class Period.
11 The term “Class Period” is defined as four (4) years prior to the filing of this Complaint through
12 the date final judgment is entered. Plaintiff reserves the right to amend this Complaint to reflect
13 a different “Class Period” or “Class” as further discovery is conducted.

14 2. Plaintiff, individually and on behalf of the class he seeks to represent, seeks relief
15 against ONUS GLOBAL FULFILLMENT SOLUTIONS LLC and MOONSHENG LLC
16 (“Defendants”) for Defendants’ failure to pay all wages due in violation of Labor Code Sections
17 204, 246, 510 and 1194, including regular and overtime wages and failure to pay sick pay; failure
18 to provide meal periods or compensation in lieu thereof pursuant to Labor Code Sections 226.7
19 and 512, the applicable Industrial Welfare Commission Wage Orders, and Code of Regulations,
20 Title 8, Section 11000 et seq.; failure to provide rest periods or compensation in lieu thereof
21 pursuant to Labor Code Sections 226.7 and 512, the applicable Industrial Welfare Commission
22 Wage Orders, and Code of Regulations, Title 8, Section 11000 et seq.; failure to provide accurate
23 itemized wage statements upon payment of wages pursuant to Labor Code Sections 226,
24 subdivision (a), 1174, and 1175; failure to reimburse for necessary expenditures pursuant to Labor
25 Code Section 2802; and failure to pay wages of terminated or resigned employees pursuant to
26 Labor Code Sections 201, 202, 203.

1 3. Plaintiff seeks equitable remedies in the form of declaratory relief and injunctive
2 relief, and relief under Business and Professions Code Section 17200 et seq. for unfair business
3 practices.

4 4. At all relevant times herein, Defendants have consistently maintained and enforced
5 against Plaintiff and Class the following unlawful practices and policies:

6 (a) willfully refusing to pay Plaintiff and Class for all hours worked, including
7 regular and overtime;

8 (b) willfully refusing to permit Plaintiff and Class from taking meal periods or
9 compensation in lieu thereof;

10 (c) willfully refusing to permit Plaintiff and Class from taking rest periods or
11 compensation in lieu thereof;

12 (d) willfully refusing to maintain accurate records and to furnish to Plaintiff and
13 Class accurate itemized wage statements upon payment of wages;

14 (e) willfully refusing to compensate certain members of the Class wages due and
15 owing at the time of Class Members' employment with Defendants ended;
16 and;

17 (f) willfully refusing to reimburse Plaintiff and Class for necessary
18 expenditures.

19 5. On information and belief, Defendants were on actual and constructive notice of
20 the improprieties alleged herein and intentionally refused to rectify their unlawful policies.
21 Defendants' violations, as alleged above, during all relevant times herein were willful and
22 deliberate.

23 6. At all relevant times, Defendants were and are legally responsible for all of the
24 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
25 foregoing paragraphs as the employer of Plaintiff and Class. Further, Defendants are
26 responsible for each of the unlawful acts or omissions complained of herein under the doctrine
27 of "respondeat superior".
28

7. Plaintiff further brings this action as a representative of the State of California and the Labor and Workforce Development Agency (“LWDA”) to recover civil penalties pursuant to the Private Attorneys General Act (“PAGA”), Labor Code sections 2698, et seq., for violations of numerous Labor Code provisions, including, but not limited to, sections 201-203, 204, 226, 226.7, 246, 510, 512, 1174, 1194, 1198 and 2802, as well as violations of the applicable Wage Order.

JURISDICTION AND VENUE

8. Venue is proper in this judicial district and in the County of San Bernardino, California because Defendants maintained its location and/or transacted business in this county, the obligations and liability arise in this county, and work was performed by members of the proposed class made the subject of this action in this county.

9. The wages, statutory penalties, monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. This Court has jurisdiction over this action pursuant to the California Constitution, article VI, Section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

10. The California Superior Court has jurisdiction in the matter because the individual claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional threshold for Federal Court and the five million dollars (\$5,000,000.00) aggregate jurisdictional threshold for Federal Court and, upon information and belief, Plaintiff and Defendants are residents of, domiciled in, or otherwise subject to jurisdiction in the State of California. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law including the Labor Code, Industrial Welfare Commission (“IWC”) Wage Orders, the Code of Civil Procedure, the Rules of Court, and the Business and Professions Code.

THE PARTIES

A. Plaintiff

11. Plaintiff, at all relevant times herein, was Defendants' employee and was entitled to compensation for all hours worked, including regular time and overtime compensation, and

1 penalties from Defendants. Plaintiff was employed by Defendants as a non-exempt, hourly paid
2 employee during the Class Period. Specifically, Plaintiff worked as a laborer from approximately
3 September 2020 to March 1, 2024 at Defendants' location at 1175 E Francis Street, Ontario,
4 California 91761. Each of the Class Members are identifiable, current and/or former similarly
5 situated persons who were employed in non-exempt hourly positions in California by Defendants
6 during the Class Period.

7 **B. Defendants**

8 12. Plaintiff is informed and believes, and based thereon alleges, that Defendant Onus
9 Global Fulfillment Solutions LLC is a California limited liability company, registered and doing
10 business in California. Plaintiff is informed and believes, and based thereon alleges, that
11 Defendant MoonSheng LLC is a California Limited Liability Company, registered and doing
12 business in California. On information and belief, Defendants were and/or are the joint employers
13 of Plaintiff and Class during the Class Period. Plaintiff also alleges that Defendants are
14 conducting business in good standing in California.

15 13. Plaintiff is informed and believes, and thereon alleges that at all relevant times,
16 Defendants were the joint employers of Plaintiff under Labor Code section 2810.3 and, in that
17 Defendants, exercised sufficient control over Plaintiff's and Class Members' wages, hours and
18 working conditions, and/or suffered or permitted them to work so as to be considered the joint
19 employers of Plaintiff and Class.

20 14. California courts have recognized that the definition of "employer" for purposes
21 of enforcement of the California Labor Code goes beyond the concept of traditional employment
22 to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
23 California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who
24 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
25 person to work or exercises control over the wages, hours, or working conditions of any person
26 may be liable for violations of the California Labor Code as to that person.

27 15. Plaintiff is informed and believes and hereon alleges that Defendants must be
28 classified as joint employers of Plaintiff for purposes of liability for Labor Code violations, as the

1 aforementioned entities engaged, suffered and permitted Plaintiff to perform services from which
2 they benefited, and furthermore that the aforementioned entities had the right to exercise control
3 over the wages, hours and/or working conditions of Plaintiff at all relevant times herein, so as to
4 be considered the joint employers of Plaintiff.

5 16. Plaintiff is ignorant of the true names, capacities, relationships and extent of
6 participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50,
7 inclusive, but on information and belief alleges that these Defendants are legally responsible for
8 the payment of overtime compensation, rest and meal period compensation, and wages to Plaintiff
9 and Class by virtue of their unlawful practices, and therefore sues these Defendants by such
10 fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of
11 each DOE Defendants when ascertained.

12 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
13 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
14 managing agent, and/or principal of the Defendants, and in performing the actions mentioned
15 below was acting, at least in part, within the course and scope of that authority as such agent,
16 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
17 permission and consent of the Defendants. Plaintiff also alleges the acts of each Defendants are
18 legally attributable to the other Defendants.

19 18. Plaintiff is informed and believes, and based thereon alleges, that each of the
20 Defendants sued herein was, at all times relevant hereto, the employer, owner, shareholder,
21 principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing
22 agent, joint employer and/or alter-ego of the remaining Defendants, and was acting, at least in
23 part, within the course and scope of such employment and agency, with the express and implied
24 permission, consent, and knowledge, approval and/or ratification of the other Defendants.

25 **ADMINISTRATIVE PREREQUISITE**

26 19. On April 10, 2024, prior to filing this complaint, Plaintiff gave written notice by
27 electronically filing the notice with the Labor Workforce Development Agency (“LWDA”)
28 (LWDA Case No. LWDA- CM-1021433-24) and by certified mail to Defendants of the specified

provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code Section 2699.3.

20. A true and correct copy of Plaintiff's letter sent to the LWDA dated April 10, 2024, is attached hereto as "**Exhibit A**". As of the filing of this complaint, LWDA has not responded to the written notice.

21. Under Labor Code Section 2699.3 subsection (a), a plaintiff may bring a cause of action under PAGA only after giving notice to the Labor Workforce Development Agency ("LWDA") and the employer of the Labor Code Sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice.

22. More than sixty-five (65) days have passed without notice from the LWDA. Accordingly, all administrative prerequisites for filing this First Amended Complaint have been fulfilled.

GENERAL ALLEGATIONS

23. Plaintiff was employed by Defendants as a laborer from approximately September 2020 to March 1, 2024.

24. Labor Code Section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of his or her overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

25. Labor Code Section 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as regular paydays. Pursuant to Labor Code Section 204 (a) labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Pursuant to Labor Code Section 204 (d) the requirements of this Section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if

1 the wages are paid not more than seven calendar days following the close of the payroll period.
2 Plaintiff and Class were also entitled to be paid twice a month at their regular rates, including all
3 meal period premium wages owed, rest period premium wages owed, and wages owed for hours
4 worked. Defendants systematically failed and refused to pay the employees all wages due, and
5 failed to pay those wages twice a month, in that employees were not paid all wages for all meal
6 periods not provided by Defendants, all wages for all rest periods not authorized and permitted
7 by Defendants, and all wages for all hours worked.

8 26. Further, Business and Professions Code Section 17203 provides that any person
9 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
10 Business and Professions Code Section 17204 provides that any person who has suffered actual
11 injury and has lost money or property as a result of the unfair competition may bring an action in
12 a court of competent jurisdiction.

13 27. During all, or a portion of the Class Period, Plaintiff and each member of the Class
14 was employed by Defendants in the State of California.

15 28. Plaintiff and Class Members were non-exempt employees covered under one or
16 more IWC Wage Order(s), and Labor Code Section 510, and/or other applicable Wage Orders,
17 regulations and statutes, and each Class Member was not subject to an exemption for executive,
18 administrative or professional employees, which imposed obligations on the part of Defendants
19 to pay Plaintiff and Class Members lawful overtime compensation.

20 29. Plaintiff and Class were covered by one or more IWC Wage Order(s), and Labor
21 Code Section 226.7 and other applicable Wage Orders, regulations and statutes which imposed
22 an obligation on the part of Defendants to pay Plaintiff and Class rest and meal period
23 compensation.

24 30. During the Class Period, Defendants were obligated to pay Plaintiff and Class
25 Members overtime compensation for all hours worked in excess of eight (8) hours of work in one
26 (1) day or forty (40) hours in one (1) week and double-time compensation for hours worked in
27 excess of twelve (12) in one (1) day. However, often times Plaintiff and Class Members were
28

1 required to work overtime in excess of eight (8) hours per workday and in excess of forty (40)
2 hours per workweek but were not paid at the proper overtime rate of pay.

3 31. During the Class Period, Defendants were obligated to pay Plaintiff and Class
4 Members for all hours worked. However, Defendants failed to pay Plaintiff and Class
5 Members for all hours worked at the legally mandated wage rates, including regular wages and
6 overtime wages. Throughout the Class Period, Defendants regularly used a system of time
7 rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and
8 Class Members properly for all the time they have actually worked, even though the realities of
9 Defendants' operations are such that it is possible, practical, and feasible to count and pay for
10 work time to the minute. Accordingly, Defendants frequently paid Plaintiff and Class
11 Members less than all their work time. Some of this unpaid work also should have been paid
12 at the overtime rate. Throughout the Class Period, despite having an electronic timekeeping
13 system, Defendants failed to maintain accurate time records and falsified Plaintiff's and Class
14 Members' time records. Plaintiff and Class Members were paid in accordance with the
15 handwritten timesheets completed by their supervisors based on their scheduled shift start and
16 end time. Defendants refused to permit Plaintiff and Class Members to complete those
17 timesheets or review their time. Defendants also refused to pay Plaintiff and Class Members in
18 accordance with the actual time recorded on an electronic timekeeping system. Instead,
19 Defendants falsified Plaintiff's and Class Members time by inputting not more than scheduled
20 eight hours in a single day in the handwritten timesheets, despite the fact that Plaintiff and
21 Class Members regularly worked in excess of 8 hours per day, depriving Plaintiff and Class
22 Members of wages, including overtime wages. In doing so, Defendant also failed to maintain
23 accurate records of the hours Plaintiff and Class Members worked, and Defendants failed to
24 provide Plaintiff and Class Members with wage statements listing their hourly pay, hours
25 worked, and deductions as required under California Labor Code. Throughout the Class
26 Period, Defendants also maintained a policy and practice of requiring Plaintiff and Class
27
28

Members to perform work “off-the-clock”. Defendants required Plaintiff and Class Members to arrive earlier than their scheduled time to make sure they clocked in to work using a face reader not later than their scheduled start time considering an approximately five-minute walking distance from to the area where the face reader was located but refused to pay for the time spent for walking to the timeclock equipment. Additionally, Defendants often time required Plaintiff and Class Members to arrive an hour earlier than their scheduled shift start time to unload stuff but refused to pay for that time. Lastly, Plaintiff and Class Members were also required to wash their uniform off-the-clock after their scheduled shift hours but were not compensated for that time. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and Class Members worked.

32. During the Class Period, Defendants were obligated to provide Plaintiff and Class with a work-free meal period within the first five (5) hours of a shift no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Here, Defendants wrongfully failed to provide Plaintiff and Class Members with legally compliant meal periods. Defendants regularly required Plaintiff and Class Members to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and Class Members for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendants did not adequately inform Plaintiff and Class Members of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendants did not have adequate written policies or practices providing and recording meal periods for Plaintiff and Class Members, nor did Defendants have adequate policies or practices regarding the timing of meal periods. Defendants did not require Plaintiff and Class Members to record their meal periods by using the face reader they used to clock in and out from work. Moreover, Defendants falsified Plaintiff’s and Class Members records by automatically deducting 30 minutes from their hours and listing 30 minutes as meal

1 periods without specifying the timing of the meal periods regardless meal periods were taken or
2 not. Plaintiff and Class Members were not allowed to review those handwritten timesheets
3 completed by their supervisors or record their actual meal periods on those timesheets or on
4 Defendants' electronic timekeeping system. Moreover, in those occasions when Plaintiff and
5 Class Members had an opportunity to take their first meal periods, Defendants instructed them to
6 take their first meal periods after the end of the fifth hour of work and to wrongfully combine
7 their first meal periods with rest periods. Additionally, Plaintiff's and Class Members' meal
8 periods were cut short by the walking distance to the break area. Accordingly, Defendants' policy
9 and practice was to not provide meal periods to Plaintiff and Class Members in compliance with
10 California law.

11 33. Additionally, Defendants were obligated to provide Plaintiff and Class Members
12 with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each
13 day. Defendants prevented Plaintiff and Class Members from taking rest breaks throughout their
14 shifts. Defendants, however, wrongfully failed to authorize and permit Plaintiff and Class
15 Members to take timely and duty-free rest periods. Defendants regularly required Plaintiff and
16 Class Members to work in excess of four consecutive hours a day without Defendants authorizing
17 and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four
18 hours of work (or major fraction of four hours), or without compensating Plaintiff and Class
19 Members for rest periods that were not authorized or permitted. Defendants did not adequately
20 inform Plaintiff and Class Members of their right to take a rest period. Moreover, Defendants did
21 not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and
22 Class Members, nor did Defendants have adequate policies or practices regarding the timing of
23 rest periods. Defendants did not schedule rest periods every 4 hours or a major fraction. Instead,
24 Defendants wrongfully required Plaintiff and Class Members to combine their 30-minute first
25 meal periods with their first rest period instead of taking a separate meal periods and separate rest
26 periods. Defendants failed to inform Plaintiff and Class Members about their entitlement to first,
27 second and third rest periods. Additionally, Plaintiff and Class Members were never authorized
28 or taken their second or third rest periods or separate first rest periods. Accordingly, Defendants'

1 policy and practice was for Plaintiff and Class Members to work through rest periods and to not
2 authorize or permit them to take any rest periods.

3 34. Furthermore, Defendants failed and/or refused to pay Plaintiff and Class Members
4 one (1) hour's pay at the employees' regular rate of pay as premium compensation for
5 Defendants' failure to provide lawful thirty (30) minute, off-duty meal periods and failure to
6 provide lawful ten (10) minute rest periods within the statutory time frames.

7 35. Defendants also failed to indemnify Plaintiff and Class Members all necessary
8 expenditures incurred in direct discharge of their duties without reimbursement. During the Class
9 Period, Defendants wrongfully required Plaintiff and Class Members to pay expenses that they
10 incurred in direct discharge of their duties for Defendants without reimbursement, which included
11 the purchase of pens, markers, pencils, staples, measuring tapes as well as maintenance of the
12 uniforms. Plaintiff and Class Members incurred these substantial expenses as a direct result of
13 performing their job duties for Defendants, and Defendants have failed to indemnify Plaintiff and
14 Class Members for these employment-related expenses.

15 36. Labor Code Section 246 (a) an employee who, on or after July 1, 2015, works in
16 California for the same employer for 30 or more days within a year from the commencement of
17 employment is entitled to paid sick days.

18 37. Labor Code Section 246 (i) requires employers to provide an employee with
19 written notice that sets forth the amount of paid sick leave available.

20 38. During the Class Period, Defendants maintained a policy and practice of failing to
21 provide Plaintiff and Class Members with the paid sick leave as well as to provide a written notice
22 of accrued paid sick leave. On information and belief, Defendants' failure to provide an employee
23 with written notice that sets forth the amount of paid sick leave available was not a single, isolated
24 incident, but was instead part of Defendants' policy and practice that applied to Class Members.

25 39. Defendants continue to employ non-exempt, hourly-paid employees within
26 California.

27 40. Plaintiff and Class Members primarily performed non-exempt work, often in
28 excess of the maximum regular rate hours set forth in the applicable IWC Wage Order(s),

1 regulations or statutes, and therefore entitled the Plaintiff and Class Members to overtime
2 compensation at the rate of one and a half times their regular rate of pay and, when applicable,
3 double time compensation as set forth by the applicable IWC Wage Order(s), regulations and/or
4 statutes.

5 41. During the Class Period, Defendants required Plaintiff and Class Members to work
6 regular hours, off the clock hours, and overtime hours without lawful compensation in violation
7 of the applicable IWC Wage Order(s), regulations and statutes, and Defendants: (1) willfully
8 failed and refused, and continue to fail and refuse to pay compensation for all hours worked,
9 including lawful regular time and overtime compensation, to Class Members; and (2) willfully
10 failed and refused, and continue to fail and refuse to pay due and owing wages promptly upon
11 termination of employment to Plaintiff and affected Class Members.

12 42. Class Members who ended their employment with Defendants during the Class
13 Period but were not paid the above due compensation for all hours worked timely upon the
14 termination of their employment as required by Labor Code Sections 201, 202, and 203 are
15 entitled to penalties as provided by Labor Code Section 203.

16 43. During the Class Period, Defendants failed to furnish Plaintiff and Class Members
17 with wage statements showing applicable hourly rates, and all gross and net wages earned,
18 payroll deduction, including employees' total hours worked, correct hours worked, correct
19 wages earned for hours worked, correct overtime hours worked, correct wages for meal periods
20 that were not provided in accordance with California law, correct wages for rest periods that
21 were not authorized and permitted to take in accordance with California law. As a result of
22 these violations of California Labor Code Section 226(a), Plaintiff and Class Members are
23 owed the amounts provided for in California Labor Code Section 226(e), including actual
24 damages.

25 44. Defendants knew or should have known that Plaintiff and Class members were
26 entitled to receive accurate wage statements, which would include meal break premiums, and/or
27 rest break premiums, as required by Labor Code Section 226.
28

45. Defendants knew or should have known that Plaintiff and Class Members were entitled to timely payment of all wages earned upon termination. Plaintiff and Class Members did not receive payment of all wages, including but not limited to, meal and rest break premiums, in violation of the Labor Code.

CLASS ALLEGATIONS

46. Plaintiff brings this action on behalf of herself and all other similarly situated persons as a class action pursuant to Code of Civil Procedure Section 382. The Class is composed of and defined as follows:

- (a) All persons who are employed or have been employed by Defendants in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and were not paid all wages owed, including but not limited to the legally requisite regular time rate, overtime rate and/or double-time rate;
- (b) All persons who are employed or have been employed by Defendants in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and have not been provided a meal period for shifts in excess of five (5) hours within the first five (5) hours such shifts, and were not provided one (1) hour's pay for each day during which a lawful meal period was not provided;
- (c) All persons who are employed or have been employed by Defendants in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and have not been provided a rest period for every four (4) hours, or major fraction thereof, worked per day, and were not provided compensation of one (1) hour's pay for each day on which such rest period(s) was not provided;
- (d) All persons who are employed or have been employed by Defendants in the State of California, and who, within the four (4) years of the filing of this

Complaint to the present, have worked as non-exempt employees and have not been reimbursed expenditures in discharge of their duties;

(e) All persons who are employed or have been employed by Defendants in the State of California, and who, within the three (3) years of the filing of this Complaint to the present, have worked as non-exempt employees and have been terminated or resigned, and have not been paid wages pursuant to Labor Code Section 203 and are owed restitution and waiting time penalties for unpaid wages;

(f) All persons who are employed or have been employed by Defendants in the State of California, and who, within the one (1) year of the filing of this Complaint to the present have worked as non-exempt employees and were not provided an accurate payroll record or wage statement as required under Labor Code Sections 226 and 1174;

(g) All persons who are employed or have been employed by Defendants in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked as non-exempt employees and were subjected to unlawful and unfair business practices within the meaning of California's Unfair Competition Law and who suffered injury, including lost money, as a result of Defendants' unlawful and unfair business practices.

47. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or necessary to amend the definition of the Class. Plaintiff will formally define and designate a class definition at such time when Plaintiff seeks to certify the Class alleged in this Complaint.

48. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure Section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

49. The Court should permit this action to be maintained as a class action pursuant to Code of Civil Procedure Section 382 because:

- 1 (a) The questions of law and fact common to Class predominate over any
2 question affecting only individual class members;
- 3 (b) A class action is superior to any other available method for the fair and
4 efficient adjudication of the claims of the Class members;
- 5 (c) Class is so numerous that it is impractical to bring all members of the
6 Class before the Court;
- 7 (d) Plaintiff and Class Members will not be able to obtain effective and
8 economic legal redress unless the action is maintained as a class action;
- 9 (e) There is a community of interest in obtaining appropriate legal and
10 equitable relief for the common law and statutory violations and other
11 improprieties and in obtaining adequate compensation for the damages
12 and injuries which Defendants' actions have inflicted upon Class;
- 13 (f) There is a community of interest in ensuring that the combined assets and
14 available insurance of the Defendants are sufficient to adequately
15 compensate Class Members for the injuries sustained;
- 16 (g) Without class certification, the prosecution of separate actions by
17 individual members of the Class would create a risk of:
- 18 (1) Inconsistent or varying adjudications with respect to individual
19 members of the Class which would establish an incompatible
20 standard of conduct for Defendants; and/or
- 21 (2) Adjudications with respect to the individual members which
22 would, as a practical matter, be dispositive of the interests of other
23 members not parties to the adjudications, or would substantially
24 impair or impede their ability to protect their interests, including
25 but not limited to the potential for exhausting the funds available
26 from those parties who are, or may be, responsible Defendants; and
27
28

1 (h) Defendants have acted or refused to act on grounds generally applicable
2 to Class, thereby making final injunctive relief appropriate with respect to
3 Class as a whole.

4 50. There is a well-defined community of interest in the litigation and Class is
5 readily ascertainable:

- 6 (a) Numerosity: The members of Class (and each subclass, if any) are so
7 numerous that joinder of all members would be unfeasible and impractical.
8 The membership of the entire Class is unknown to Plaintiff at this time,
9 however, the Class is estimated to be greater than 100 individuals and the
10 identity of such membership is readily ascertainable by inspection of
11 Defendants' records.
- 12 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
13 interests of each Class Member with whom there is a shared, well-defined
14 community of interest, and Plaintiff's claims (or defenses, if any) are typical
15 of all Class Members' claims as demonstrated herein.
- 16 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
17 the interests of each Class Member with whom there is a shared, well-
18 defined community of interest and typicality of claims, as demonstrated
19 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
20 Member. Plaintiff's attorneys, the proposed class counsel, are versed in the
21 rules governing class action discovery, certification, and settlement.
22 Plaintiff has incurred, and throughout the duration of this action, will
23 continue to incur costs and attorneys' fees that have been, are, and will be
24 necessarily expended for the prosecution of this action for the substantial
25 benefit of each class member.
- 26 (d) Superiority: A Class Action is superior to other available methods for the
27
28

1 fair and efficient adjudication of the controversy, including consideration of:

- 2 1. The interests of the members of the Class in individually
- 3 controlling the prosecution or defense of separate actions;
- 4 2. The extent and nature of any litigation concerning the
- 5 controversy already commenced by or against members of the
- 6 Class;
- 7 3. The desirability or undesirability of concentrating the
- 8 litigation of the claims in the particular forum; and
- 9 4. The difficulties likely to be encountered in the management of
- 10 a class action.

11 (e) Public Policy Considerations: The public policy of the State of California is

12 to resolve the California Labor Code claims of many employees through a

13 class action. Indeed, current employees are often afraid to assert their rights

14 out of fear of direct or indirect retaliation. Former employees are also

15 fearful of bringing actions because they believe their former employers

16 might damage their future endeavors through negative references and/or

17 other means. Class actions provide the class members who are not named in

18 the complaint with a type of anonymity that allows for the vindication of

19 their rights at the same time as their privacy is protected.

20

21 51. Plaintiff contemplates the eventual issuance of notice to the proposed members of

22 the Class that would set forth the subject and nature of the instant action. Defendants' own

23 business records may be utilized for assistance in the preparation and issuance of the

24 contemplated notices. To the extent that any further notices may be required, Plaintiff would

25 contemplate the use of additional techniques and forms commonly used in class actions, such as

26 published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by

27 other methods suitable to Class and deemed necessary and/or appropriate by the Court.

28 **FIRST CAUSE OF ACTION**

**Failure to Pay All Wages for All Hours Worked and Sick Pay
(Against Defendants, DOES 1 through 50, and each of them)**

52. Plaintiff and Class Members re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

53. Labor Code Section 510, subdivision (a) states in pertinent part: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee."

54. Labor Code Section 1194, subdivision (a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

55. Further, pursuant to Labor Code Section 1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

56. Pursuant to Labor Code Section 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

57. Pursuant to the IWC Wage Order(s), Defendants is required to pay Plaintiff and Class Members for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

58. Labor Code Section 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as regular paydays. Pursuant to Labor Code Section 204 (a) labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the

1 following month. Pursuant to Labor Code Section 204 (d) the requirements of this Section shall
2 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
3 the wages are paid not more than seven calendar days following the close of the payroll period.
4 Plaintiff and Class were also entitled to be paid twice a month at their regular rates, including all
5 meal period premium wages owed, rest period premium wages owed, and wages owed for hours
6 worked. However, during Class period, Defendants systematically failed and refused to pay the
7 employees all wages due, and failed to pay those wages twice a month, in that employees were
8 not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods
9 not authorized and permitted by Defendants, and all wages for all hours worked.

10 59. Plaintiff and Class Members were required to work overtime in excess of eight (8)
11 hours per workday and in excess of forty (40) hours per workweek but were not paid at the proper
12 overtime rate of pay.

13 60. Labor Code Section 246 (a) an employee who, on or after July 1, 2015, works in
14 California for the same employer for 30 or more days within a year from the commencement of
15 employment is entitled to paid sick days.

16 61. Labor Code Section 246 (i) requires employers to provide an employee with
17 written notice that sets forth the amount of paid sick leave available.

18 62. Defendants' pattern, practice and uniform administration of corporate policy
19 regarding illegal employee compensation as described herein is unlawful and creates an
20 entitlement, pursuant to Labor Code Section 218, to recovery by Plaintiff and the members of the
21 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
22 appropriate rate.

23 63. Pursuant to Labor Code Section 1194.2(a) (which provides that in any action under
24 Labor Code § 1194, an employee shall be entitled to recover liquidated damages), the members
25 of Class seek recovery of liquidated damages on the straight-time portion of uncompensated hours
26 of work (not including the overtime portion thereof) in an amount equal to the wages unlawfully
27 unpaid and interest thereon.

1 64. That calculation of individual damages for Class Members may at some point be
2 required does not foreclose the possibility of taking common evidence on questions regarding
3 their entitlement to overtime compensation. Collins v. Rocha (1972) 7 Cal.3d 232; Hypolite v.
4 Carleson (1975) 52 Cal.App.3d 566; Employment Development Dept. v. Superior Court (1981)
5 30 Cal.3d 256).

6 65. Pursuant to Labor Code Sections 218.6 and 1194(a) and Civil Code Section 3287,
7 Class Members seek recovery of pre-judgment interest on all amounts recovered herein.

8 66. Pursuant to Labor Code Sections 218.5 and/or 1194, Class Members request that
9 the Court award reasonable attorneys' fees and costs incurred by them in this action.

10 **SECOND CAUSE OF ACTION**

11 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

12 **(Against Defendants, DOES 1 through 50, and each of them)**

13 67. Plaintiff and Class Members re-allege and incorporate by reference all preceding
14 paragraphs of this complaint as though fully set forth herein.

15 68. Labor Code Sections 226.7 and 512 provide that no employer shall employ any
16 person for a work period of more than five (5) hours without providing a meal period of not less
17 than thirty (30) minutes within the fifth (5th) hour of work, or employ any person for a work
18 period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30)
19 minutes.

20 69. Labor Code Section 226.7 provides that if an employer fails to provide an
21 employee a meal period in accordance with this Section, the employer shall pay the employee one
22 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
23 period is not provided in accordance with this Section.

24 70. Defendants failed to schedule Plaintiff and Class Members in a manner as to
25 reasonably ensure that Plaintiff and Class Members could take such meal periods within the
26 statutory timeframe. As a result, Plaintiff and Class were often forced to forego their meal
27 periods, work during their meal periods and/or take meal periods after the fifth (5th) hour of their
28 shifts. In so doing, Defendants has intentionally and improperly denied meal periods to Plaintiff

1 and Class Members in violation of Labor Code Sections 226.7 and 512, and other regulations and
2 statutes.

3 71. At all times relevant hereto, Plaintiff and Class have worked more than five (5)
4 hours in a workday.

5 72. By virtue of Defendants' failure to schedule Plaintiff and Class Members in such
6 a way as to provide a timely and/or work free meal period to Plaintiff and Class Members, Plaintiff
7 and Class Members have suffered, and will continue to suffer, damages in an amount which is
8 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
9 ascertained according to proof at trial.

10 73. Plaintiff, individually and on behalf of Class Members, requests recovery of meal
11 period compensation pursuant to Labor Code Section 226.7 for the four (4) years prior to filing
12 this complaint, as well as the assessment of any statutory penalties against Defendants in a sum
13 as provided by the Labor Code and/or other statutes.

14 **THIRD CAUSE OF ACTION**

15 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

16 **(Against Defendants, DOES 1 through 50, and each of them)**

17 74. Plaintiff and Class Members re-allege and incorporate by reference all preceding
18 paragraphs of this complaint as though fully set forth herein.

19 75. The IWC Wage Orders and Labor Code Section 226.7 provides that employers
20 must authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest
21 time per four (4) work hours or major fraction thereof.

22 76. Labor Code Section 226.7, subdivision (b) provides that if an employer fails to
23 provide an employee rest period in accordance with this Section, the employer shall pay the
24 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
25 that the rest period is not provided.

26 77. Defendants failed and/or refused to implement a policy by which Plaintiff and
27 Class Members could receive rest periods and/or work free rest periods. By and through its
28 actions, Defendants intentionally and improperly denied rest periods to Plaintiff and Class

Members in violation of Labor Code Sections 226.7 and 512.

78. At all times relevant hereto, Plaintiff and Class have worked more than four (4) hours in a workday.

79. By virtue of the Defendants' unlawful failure to provide rest periods to Plaintiff and Class Members, Plaintiff and Class Members have suffered, and will continue to suffer, damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

80. Plaintiff, individually and on behalf of employees similarly situated, requests recovery of rest period compensation pursuant to Labor Code Section 226.7 for the four (4) years prior to filing this Complaint, as well as the assessment of any statutory penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or any other statute.

FOURTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements

(Against Defendants, DOES 1 through 50, and each of them)

81. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

82. Labor Code Section 1174, subdivision (d) requires an employer to keep at a central location in California, or at the plant or establishment at which the employee is employed, payroll records showing the hours worked daily by, and the wages paid to, each employee.

83. Labor Code Section 226, subdivision (a) requires an employer to provide employees—either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash—an accurate itemized wage statement in writing showing

(1) gross wages earned, (2) total hours worked by the employee . . . , (4) all deductions . . . , (5) net wages, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the

1 legal entity that is the employer . . . , and (9) all applicable hourly rates in
2 effect during the pay period and corresponding number of hours worked at
3 each hourly rate by the employee

4 84. Moreover, the IWC Wage Orders require that every employer shall keep accurate
5 information with respect to each employee, including time records showing when each employee
6 begins and ends each work period, when each employee takes a meal period, the total daily hours
7 worked by each employee and the total hours worked in each payroll period, and applicable rates
8 of pay.

9 85. Plaintiff is informed and believes that Defendants willfully and intentionally
10 failed to make and/or keep records which accurately reflect the total hours worked by Plaintiff
11 and Class. Specifically, Defendant failed to maintain accurate time records and falsified
12 Plaintiff's and Class Members' time records. Plaintiff and Class Members were paid in
13 accordance with the handwritten timesheets completed by their supervisors based on their
14 scheduled shift start and end time. Defendants refused to permit Plaintiff and Class Members to
15 complete those timesheets or review their time. Most importantly, Defendant failed to keep
16 accurate payroll records and to provide wage statements to Plaintiff and Class Members, and
17 Plaintiff believes that Defendants' records do not accurately reflect when Plaintiff and Class
18 worked during their meal and rest periods and/or took untimely meal periods or worked for hours
19 not paid.

20 86. Labor Code Section 226, subdivision (e) provides that if an employer knowingly
21 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
22 the total hours worked by the employee, causing the employee injury, then the employee is
23 entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial
24 violation and one hundred dollars (\$100.00) for each subsequent violation, up to four thousand
25 dollars (\$4,000.00). Plaintiff is informed and believes that Defendants willfully failed to make
26 or keep accurate records for Plaintiff and Class.

27 87. Plaintiff is informed and believes that Defendants' failure to keep accurate payroll
28 records, as described above, violated Labor Code Section 1174, subdivision (d) and Section 226,

subdivision (a), and the applicable IWC Wage Order(s). Pursuant to Labor Code Section 2699, subdivision (f)(2), Plaintiff and Class are entitled to penalties of \$100.00 and for the initial violation and \$200.00 for each subsequent violation for every pay period during which these records and information were not kept by Defendants.

88. Plaintiff is informed and believes that Defendants' failure to keep and maintain accurate records and information, as described above, was willful, and Plaintiff and Class are entitled to statutory penalties pursuant to Labor Code Section 1174.5.

FIFTH CAUSE OF ACTION

Failure to Pay Wages upon Termination of Employment

(Against Defendants, DOES 1 through 50, and each of them)

89. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

90. Plaintiff and certain Class Members who ended their employment with Defendants during the Class Period, were entitled to be promptly paid for all hours worked, including lawful regular time compensation, overtime compensation, double-time compensation, and other premiums, as required by Labor Code Sections 201 through 203. Plaintiff was paid her final paycheck one week after her employment termination date. They are also entitled to meal period and rest period premium pay in accordance with Labor Code Sections 226 and 226.7.

91. Plaintiff and Class Members were not compensated for their unlawful and/or missed meal periods and/or rest periods, and were not paid proper regular time compensation, overtime compensation or double-time compensation in accordance with law as a result of Defendants' Labor Code violations.

92. To date, Class Members who ended their employment with Defendants during the Class Period have not been compensated for all hours worked.

93. Plaintiff and Class Members seek the payment of penalties pursuant to Labor Code Section 203, according to proof.

94. Plaintiff is also entitled to attorneys' fees and costs, pursuant to Labor Code Section 1194, and prejudgment interest.

1 **SIXTH CAUSE OF ACTION**

2 **Failure to Reimburse for Necessary Business Expenditures**

3 **(Against Defendants, DOES 1 through 50, and each of them)**

4 95. Plaintiff and Class re-allege and incorporate by reference all the above paragraphs
5 of this complaint as if fully alleged herein.

6 96. California Labor Code §2802, states "An employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct consequence
8 of the discharge of his or her duties."

9 97. Plaintiff and Class incurred expenses as a direct result of performing their job
10 duties for Defendants, and Defendants has failed to indemnify Plaintiff and Class for these
11 employment-related expenses.

12 98. Defendants knowingly, willingly and intentionally attempted to offset the cost of
13 doing business on the Plaintiff and Class.

14 99. Defendants had a corporate practice and policy of requiring Plaintiff and Class to
15 shoulder the burden of Defendants' cost of doing business by failing to reimburse Plaintiff and
16 Class for necessary expenditures.

17 100. Accordingly, Plaintiff and Class are entitled to an award of "necessary
18 expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's
19 fees and interest.

20 **SEVENTH CAUSE OF ACTION**

21 **Unfair Business Practices**

22 **(Against Defendants, DOES 1 through 50, and each of them)**

23 101. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs
24 of this complaint as though fully set forth herein.

25 102. Business and Professions Code Section 17200 et seq. (also referred to herein as
26 the "Unfair Business Practices Act" or "Unfair Competition Law") prohibits unfair competition
27 in the form of any unlawful, unfair or fraudulent business act or practice.
28

1 103. Business and Professions Code Section 17204 allows “a person who has suffered
2 injury in fact and has lost money or property as a result of the unfair competition” to prosecute a
3 civil action for violation of the Unfair Competition Law (“UCL”).

4 104. Labor Code Section 90.5, subdivision (a) states that it is the public policy of
5 California to vigorously enforce minimum labor standards in order to ensure employees are not
6 required to work under substandard and unlawful conditions, and to protect employers who
7 comply with the law from those who attempt to gain competitive advantage at the expense of their
8 workers by failing to comply with minimum labor standards.

9 105. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)
10 years prior to the filing of this lawsuit, Defendants have committed acts of unfair competition as
11 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent
12 business practices and acts described in this Complaint including but not limited to violations of
13 Labor Code Sections 201-204, 226, 226.7, 510, 558, 1174.5, 1194, 1197.1, 1198, 2802, 2699(f)(2)
14 as well as other statutes.

15 106. The violations of these laws and regulations, as well as of the fundamental
16 California public policies protecting workers, serve as unlawful predicate acts and practices for
17 purposes of Business and Professions Code Section 17200 et seq.

18 107. The acts and practices described above constitute unfair, unlawful and fraudulent
19 business practices, and unfair competition, within the meaning of Business and Professions Code
20 Section 17200 et seq. Among other things, the acts and practices have forced Plaintiff and other
21 similarly situated employees to labor for many consecutive hours without receiving the meal and
22 rest periods and overtime compensation to which they are entitled by law, while enabling
23 Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

24 108. As a result of Defendants’ acts, Plaintiff and Class Members have suffered injury
25 in fact in being denied their statutorily entitled meal and rest periods and full compensation for
26 hours worked.

27 109. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
28 and Class have suffered lost wages in an amount to be proven at trial.

1 110. Business and Professions Code Section 17203 provides that a court may make
2 such orders or judgments as may be necessary to prevent the use or employment by any person
3 of any practice which constitutes unfair competition. Injunctive relief is necessary and
4 appropriate to prevent Defendants from repeating its unlawful, unfair and fraudulent business acts
5 and business practices alleged above.

6 111. Business and Professions Code Section 17203 provides that the Court may restore
7 to any person in interest any money or property that may have been acquired by means of such
8 unfair competition. Plaintiff and Class are entitled to restitution pursuant to Business and
9 Professions Code Section 17203 for all wages and payments unlawfully withheld from
10 employees, including the fair value of the meal and rest periods taken away from them during the
11 four-year period prior to the filing of this Complaint, as well as for all expenses or losses incurred
12 by Plaintiff and Class in direct consequence of the discharge of his or her duties, or of his or her
13 obedience to the directions of the employer.

14 112. Business and Professions Code Section 17202 provides, “Notwithstanding Section
15 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
16 forfeiture, or penal law in a case of unfair competition.” Plaintiff and Class are entitled to enforce
17 all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code
18 Section 17202.

19 113. Plaintiff’s success in this action will enforce important rights affecting public
20 interest, and in that regard, Plaintiff sues on behalf of the general public, as well as herself and
21 other similarly situated employees. Plaintiff and Class seek and are entitled to restitution, civil
22 penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

23 114. Plaintiff herein takes upon herself enforcement of these laws and lawful claims.
24 There is a financial burden involved in pursuing this action. The action is seeking to vindicate a
25 public right, and it would be against the interests of justice to penalize Plaintiff by forcing her to
26 pay attorneys’ fees from the recovery in this action. Attorneys’ fees are appropriate pursuant to
27 Code of Civil Procedure Section 1021.5 and otherwise.

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 **Violation of California Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.***

3 **(Against Defendants, DOES 1 through 50, and each of them)**

4 115. Plaintiff re-alleges and incorporates by reference all preceding paragraphs herein,
5 as if fully alleged herein.

6 116. Plaintiff seeks recovery of penalties under the Labor Code Private Attorney
7 General Act of 2004 (“PAGA.”) (Labor Code sections 2698 *et seq.*)

8 117. PAGA permits an “aggrieved employee” to recover penalties on behalf of
9 himself/herself and other employees subject to violations of the Labor Code, including violations
10 of sections 201-204, 226, 226.7, 246, 510, 512, 1174, 1194, and 2802, as well as the applicable
11 Wage Order.

12 118. Plaintiff is informed and believes Defendants at all relevant times employed one
13 or more employees.

14 119. For those code sections that provide for the recovery of civil penalties, Plaintiff
15 will seek on behalf of all aggrieved employees those penalties. For those sections of the Labor
16 Code that do not specifically provide for civil penalties, Plaintiff will seek civil penalties of one
17 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
18 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
19 subsequent violation pursuant to Labor Code section 2699, subdivision (f).

20 120. Section 2699, subdivision (a) provides that civil penalties may be “recovered
21 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
22 current or former employees.” (Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g),
23 provides that an employee who prevails in a civil action under section 2699 shall be entitled to an
24 award of reasonable attorneys’ fees and costs.

25 121. The State of California, Plaintiff and aggrieved employees are, therefore, entitled
26 to civil penalties, attorneys’ fees and costs, according to proof.

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Class Certification

1. That this action be certified as a class action with respect to the First, Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action;

2. That Plaintiff be appointed as the representative of the Class; and
3. That counsel for Plaintiff be appointed as Class Counsel.

4. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 204, 246, 510, 1194, 1198 and applicable IWC Wage Orders by willfully failing to pay all wages due;

5. For general unpaid wages as may be appropriate;
6. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
7. For liquidated damages;
8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,
9. For such other and further relief as the Court may deem equitable and appropriate.

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

11. For unpaid meal period premium wages as may be appropriate;
12. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

1 13. For reasonable attorneys' fees under California Code of Civil Procedure §
2 1021.5, and for costs of suit incurred herein; and

3 14. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 As to the Third Cause of Action

6 15. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

8 16. For unpaid rest period premium wages as may be appropriate;

9 17. For pre-judgment interest on any unpaid compensation commencing from the
10 date such amounts were due;

11 18. For reasonable attorneys' fees under California Code of Civil Procedure §
12 1021.5, and for costs of suit incurred herein; and

13 19. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 As to the Fourth Cause of Action

16 20. That the Court declare, adjudge and decree that Defendants violated the record
17 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders,
18 and willfully failed to provide accurate itemized wage statements thereto;

19 21. For penalties and actual damages pursuant to California Labor Code § 226(e);

20 22. For injunctive relief to ensure compliance with this Section, pursuant to
21 California Labor Code § 226(h);

22 23. For reasonable attorneys' fees and for costs of suit incurred herein; and

23 24. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 As to the Fifth Cause of Action

1 25. That the Court declare, adjudge and decree that Defendants violated California
2 Labor Code §§ 201, 202, 203 by willfully failing to pay all compensation owed at the time
3 of termination of the employment;

4 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
5 employees who have left Defendants' employ;

6 27. For pre-judgment interest on any unpaid wages from the date such amounts were
7 due;

8 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

9 29. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 As to the Sixth Cause of Action

12 30. That the Court declare, adjudge and decree that Defendants violated Labor Code
13 § 2802 and the IWC Wage Orders;

14 31. For general unpaid wages and reimbursement of business expenses as may be
15 appropriate;

16 32. For pre-judgment interest on any unpaid compensation commencing from the
17 date such amounts were due;

18 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

19 34. For such other and further relief as the Court may deem equitable and
20 appropriate.
21

22 As to the Seventh Cause of Action

23 35. That the Court declare, adjudge and decree that Defendants violated California
24 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked,
25 failing to provide meal periods, failing to maintain accurate records of meal periods, failing
26 to authorize and permit rest periods, and failing to maintain accurate records of all hours
27
28

1 worked and meal periods, failing to furnish accurate wage statements, and failing to
2 indemnify necessary business expenses;

3 36. For restitution of unpaid wages to Plaintiff and all Class Members and
4 prejudgment interest from the day such amounts were due and payable;

5 37. For the appointment of a receiver to receive, manage and distribute any and all
6 funds disgorged from Defendants and determined to have been wrongfully acquired by
7 Defendants as a result of violations of California Business & Professions Code §§ 17200 *et*
8 *seq.*;

9 38. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Code of Civil Procedure § 1021.5;

11 39. For injunctive relief to ensure compliance with this Section, pursuant to
12 California Business & Professions Code §§ 17200, *et seq.*; and,

13 40. For such other and further relief as the Court may deem equitable and
14 appropriate.
15

16 As to the Eighth Cause of Action

17 41. That the Court declare, adjudge and decree that Defendants violated the
18 California Labor Code by failing to pay wages for all hours worked, sick pay, failing to
19 provide meal periods, failing to maintain accurate records of meal periods, failing to
20 authorize and permit rest periods, failing to maintain accurate records of all hours worked
21 and meal periods, failing to indemnify necessary business expenses, failing to pay final
22 wages at termination, and failing to furnish accurate wage statements;

23 42. For all civil penalties pursuant to California Labor Code § 2699, *et seq.*, and all
24 other applicable Labor Code provisions;

25 43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
26 California Labor Code § 2699;
27
28

1 44. .For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 As to all Causes of Action

5 45. For any additional relief that the Court deems just and proper.

6
7 Dated: June 17, 2024

TUNYAN LAW, APC

8 
9 _____

10
11 Lilit Tunyan
Artur Tunyan

12 Attorneys for Plaintiff ANA BERNAL
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: June 17, 2024

Thurs

Artur Tunyan

- 35 -

Exhibit “A”



Lilit Tunyan, Esq.
535 N Brand Blvd. Suite 285
Glendale, CA 91203
Tel: (323) 402-5050
ltunyan@tunyanlaw.com

APRIL 10, 2024

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Kuangyi Tsai
Agent for Service of Process for
Onus Global Fulfillment Solutions LLC
1175 E Francis Street
Ontario, CA 91761

VIA CERTIFIED MAIL

Return Receipt Requested

ChihMin Chen
Agent for Service of Process for
MoonSheng LLC
15801 McIntosh Avenue
Chino, CA 91708

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Bernal v. Onus Global Fulfillment Solutions LLC, et al.*

To Whom It May Concern:

Please be advised that my office has been retained by Ana Bernal ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employers Onus Global Fulfillment Solutions LLC and MoonSheng LLC ("Defendants"). The purpose of this letter is to comply with PAGA and set forth the facts

and theories of California Labor Code violations which Plaintiff alleges Defendants engaged in with respect to Plaintiff and all of Defendants' aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendants in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees of Defendants suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendants

Defendants own and operate an industry, business, and establishment within the State of California, including San Bernardino County. As such, Defendants are subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendants as a laborer from approximately September 2020 to March 1, 2024, primarily in San Bernardino County. Defendants classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendants, Plaintiff typically worked 5-6 days per week, and over 8 hours each workday.

Throughout Plaintiff's employment, Defendants committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory time period, Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked. Defendants regularly used a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendants' operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, Defendants frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. Throughout the statutory period, despite having an electronic timekeeping system, Defendants failed to maintain accurate time records and falsified Plaintiff's and the Aggrieved Employees' time records. Plaintiff and the Aggrieved Employees were paid in accordance with the handwritten timesheets completed by their supervisors based on their scheduled shift start and end time. Defendants refused to permit Plaintiff and the Aggrieved Employees to complete those timesheets or review their time. Defendants also refused to pay Plaintiff and the Aggrieved Employees in accordance with the actual time recorded on an electronic timekeeping system. Instead, Defendants falsified Plaintiff's and the Aggrieved Employees time by inputting not more than scheduled eight hours in a single day in the handwritten timesheets, despite the fact that Plaintiff and the Aggrieved Employees regularly worked in excess of 8 hours per day, depriving Plaintiff and the Aggrieved Employees of wages, including overtime wages. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked, and Defendants failed to provide Plaintiff and the Aggrieved Employees with wage statements listing their hourly pay, hours worked, and deductions as required under California Labor Code. Throughout the statutory period, Defendants also maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work "off-the-clock". During the statutory period Defendants required Plaintiff and the Aggrieved Employees to arrive earlier than their scheduled time to make sure they clocked in to work using a face reader not later than their scheduled start time considering an approximately five-minute walking distance from to the area where the face reader was located but refused to pay for the time spent for walking to the timeclock equipment. Additionally, Defendants often time required Plaintiff and the Aggrieved Employees to arrive an hour earlier than their scheduled shift start time to unload stuff but refused to pay for that time. Lastly, Plaintiff and the Aggrieved Employees were also required to wash their uniform off-the-clock after their scheduled shift hours but were not compensated for that time. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendants did not have adequate written policies or practices providing and recording meal periods for Plaintiff and the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing of meal periods. Defendants did not require Plaintiff and the Aggrieved Employees to record their meal periods by using the face reader they used to clock in and out from work. Moreover, Defendants falsified Plaintiff's and the Aggrieved Employees records by automatically deducting 30 minutes from their hours and listing 30 minutes as meal periods without specifying the timing of the meal periods regardless meal periods were taken or not. Plaintiff and the Aggrieved Employees were not allowed to review those handwritten timesheets completed by their supervisors or record their actual meal periods on those timesheets or on Defendants' electronic timekeeping system. Moreover, in those occasions when Plaintiff and the Aggrieved Employees had an opportunity to take their first meal periods, Defendants instructed them to take their first meal periods after the end of the fifth hour of work and to wrongfully combine their first meal periods with rest periods. Additionally, Plaintiff's and the Aggrieved Employees' meal periods were cut short by the walking distance to the break area. Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendants, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing of rest periods. Defendants did not schedule rest periods every 4 hours or a major fraction. Instead, Defendants wrongfully required Plaintiff and the Aggrieved employees to combine their 30-minute first meal periods with their first rest period instead of taking a separate meal periods and separate rest periods. Defendants failed to inform Plaintiff and the Aggrieved Employees about their entitlement to first, second and third rest periods. Additionally, Plaintiff and the Aggrieved Employees were never authorized or taken their second or third rest periods or separate first rest periods. Accordingly, Defendants' policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records

showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Throughout the statutory period, Defendant failed to maintain accurate time records and falsified Plaintiff's and the Aggrieved Employees' time records. Plaintiff and the Aggrieved employees were paid in accordance with the handwritten timesheets completed by their supervisors based on their scheduled shift start and end time. Defendants refused to permit Plaintiff and the Aggrieved Employees to complete those timesheets or review their time.

Defendants' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement, which included the purchase of pens, markers, pencils, staples, measuring tapes as well as maintenance of the uniforms. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendants, and Defendants have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. Plaintiff was paid her final paycheck one week after her employment termination date. During the relevant time period, Defendants failed, and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly

rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Labor Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

Defendants intentionally and willfully failed to provide employees with wage statements. Defendants paid Plaintiff and the Aggrieved Employees with a check but failed to provide a wage statement listing their hourly pay, hours worked, net and gross wages, payroll deductions, pay period as required by California law.

As a result of Defendants violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However,

during all such times, Defendants systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Provide Paid Sick Leave and Written Notice of Available Paid Sick Leave

Labor Code § 246 (a) an employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days.

Labor Code § 246 (i) requires employers to provide an employee with written notice that sets forth the amount of paid sick leave available.

During the statutory period, Defendants maintained a policy and practice of failing to provide Plaintiff and the Aggrieved Employees with the paid sick leave as well as to provide a written notice of accrued paid sick leave. On information and belief, Defendants' failure to provide an employee with written notice that sets forth the amount of paid sick leave available was not a single, isolated incident, but was instead part of Defendants' policy and practice that applied to the Aggrieved Employees.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to provide any information on accrued sick leave.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendants violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;

4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 204 by failing to pay all earned wages two times per month;
9. Labor Code § 246 by failing to provide paid sick leave and written notice of available paid sick leave.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendants on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendants or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Wednesday, April 10, 2024 9:52:01 AM

4/10/2024

LWDA Case No. LWDA-CM-1021433-24
Law Firm : Tunyan Law, APC
Plaintiff Name : Ana Bernal
Employer: Onus Global Fulfillment Solutions LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

USPS TRACKING #



9590 9402 8114 2349 9459 94



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

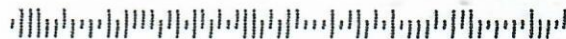
United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•



TUNYAN LAW, APC

535 N. Brand Blvd. STE 285
Glendale, CA 91203



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

KUANGYI TSAI
AGENT FOR SERVICE OF PROCESS FOR
ONUS GLOBAL FULFILLMENT SOLUTIONS LLC
1175 E FRANCIS STREET
ONTARIO, CA 91761



9590 9402 8114 2349 9459 94

2. Article Number (Transfer from service label)

9589 0710 5270 0112 6463 84

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail
Mail Restricted Delivery
00)

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

USPS TRACKING#



9590 9402 8114 2349 9459 87

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

**TUNYAN LAW, APC**535 N. Brand Blvd. STE 285
Glendale, CA 91203First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CHIHMIN CHEN
AGENT FOR SERVICE OF PROCESS FOR
MOONSHENG LLC
15801 MCINTOSH AVENUE
CHINO, CA 91708

9590 9402 8114 2349 9459 87

2. Article Number (Transfer from service label)

9589 0710 5270 0112 6463 91

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

4/13

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Mail Restricted Delivery (00) | |

Domestic Return Receipt



VERDUGO VIEJO
101 N VERDUGO RD
GLENDALE, CA 91206-9998
(800)275-8777

04/10/2024 11:32 AM

Product	Qty	Unit Price	Price
---------	-----	------------	-------

First-Class Mail® Letter	1		\$1.16
--------------------------	---	--	--------

Chino, CA 91708
Weight: 0 lb 2.10 oz
Estimated Delivery Date
Fri 04/12/2024
Certified Mail® \$4.40

Tracking #: 9589 0710 5270 0112 6463 91
Return Receipt \$3.65
Tracking #: 9590 9402 8114 2349 9459 87

Total \$9.21

First-Class Mail® Letter	1		\$1.16
--------------------------	---	--	--------

Ontario, CA 91761
Weight: 0 lb 2.10 oz
Estimated Delivery Date
Fri 04/12/2024
Certified Mail® \$4.40

Tracking #: 9589 0710 5270 0112 6463 84
Return Receipt \$3.65
Tracking #: 9590 9402 8114 2349 9459 94

Total \$9.21

Grand Total: \$18.42

Credit Card Remit \$18.42

Card Name: VISA
Account #: XXXXXXXXXXXX7105
Approval #: 07564G
Transaction #: 695
AID: A0000000031010 Contactless
AL: VISA CREDIT
CHASE VISA

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit www.usps.com USPS Tracking or call 1-800-222-1811.

Preview your Mail
Track your Packages
Sign up for FREE @

<https://informedelivery.usps.com>

All sales final on stamps and postage.
Refunds for guaranteed services only.
Thank you for your business.

Tell us about your experience.
Go to: <https://postalexperience.com/Pos>
or scan this code with your mobile device,



U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Chino, CA 91708 OFFICIAL USE

Certified Mail Fee	\$4.40
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$1.16
Total Postage and Fees \$9.21

Sent To
Street and Apt. No., or P
City, State, ZIP+4®
PS Form 3800, January 2023

CHIHMEN CHEN
AGENT FOR SERVICE OF PROCESS FOR
MOONSHENG LLC
15801 MCINTOSH AVENUE
CHINO, CA 91708

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Ontario, CA 91761 OFFICIAL USE

Certified Mail Fee	\$4.40
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$1.16
Total Postage and Fees \$9.21

Sent To
Street and Apt. No., or P
City, State, ZIP+4®
PS Form 3800, January 2023

KUANGYI TSAI
AGENT FOR SERVICE OF PROCESS FOR
ONUS GLOBAL FULFILLMENT SOLUTIONS LLC
1175 E FRANCIS STREET
ONTARIO, CA 91761

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On the date indicated below, I served the document described as: **FIRST AMENDED COMPLAINT** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

***Attorneys for Defendants ONUS GLOBAL FULFILLMENT SOLUTIONS LLC and
MOONSHENG LLC***

[✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via electronic mail. I did not receive an error message.

Executed on June 17, 2024, at Glendale, California.

Thurs

Signature