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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HEATHER PARKER, individually and on behalf of all other similarly situated employees and/or Aggrieved Employees; Plaintiff, vs. **LENDMARK FINANCIAL SERVICES, LLC**, a Georgia Limited Liability Company, and **DOES 1 through 20**, inclusive. Defendants.	Case No. 24STCV22568 **PAGA REPRESENTATIVE ACTION COMPLAINT:** **1)** Civil Penalties Under PAGA [Cal. Lab. Code § 2699 et seq.]

COMPLAINT

NOW COMES Plaintiff HEATHER PARKER (hereafter "PARKER" or "Plaintiff") on behalf of herself as an individual and on behalf of all other Aggrieved Employees, for her complaint against Defendants LENDMARK FINANCIAL SERVICES, LLC, a Georgia Limited Liability Company, and DOES 1 through 20 (hereinafter collectively referred to as "Defendants"), based on information and belief, alleges as follows:

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INTRODUCTION

1. Plaintiff brings this action individually, and on behalf of the State of California and other aggrieved persons, against Defendant Lendmark Financial Services, LLC, and DOES 1 through 20 (collectively referred to as "Defendants") for civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. ("PAGA") stemming from Defendants' failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to properly pay meal and rest premiums, failure to properly pay overtime, failure to maintain accurate records of hours worked and meal periods, failure to timely pay final wages, failure to furnish accurate wage statements, waiting time penalties, and failure to produce requested employment records.

2. For over 50 years, California's courts and Legislature have recognized that this State's wage-and-hour laws serve a compelling public interest of fostering a stable job market. Wages are not ordinary debts. Because of the economic position of the average worker and his or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that employees are promptly paid the minimum/overtime wages that the Legislature has required for employees. So fundamental are California's wage-and-hour laws that the Legislature has criminalized certain types of violations. In extending extra protection to deter violations of these underlying statutes-since Plaintiffs are not seeking general and/or special damages, restitution, or other damages other than civil penalties-California has enacted PAGA to permit an individual to bring an action for PAGA penalties only; which is the precise and sole nature of this action.

3. All California employees during the relevant period who are or were harmed by Defendants' unlawful practices are "Aggrieved Employees." The Aggrieved Employees worked for Defendants as hourly-paid or non-exempt employees within the applicable period.

4. Plaintiff brings this action against Defendants seeking only to recover penalties on behalf of Plaintiff individually, on behalf of certain Aggrieved Employees that worked for Defendants, and on behalf of the State of California. Plaintiff does not seek to recover anything other than penalties as permitted by California Labor Code Section 2699 at this time. To the extent that statutory violations are mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages for those violations, but simply penalties as permitted by California Labor Code Section 2699, declaratory relief, and injunctive relief for Plaintiff individually, and certain Aggrieved Employees as permitted by the PAGA.

5. Defendant LENDMARK FINANCIAL SERVICES, LLC is a commercial lender and is in the business of selling loans. Defendants employ numerous employees throughout the State of California at various physical locations. Plaintiff brings this class action lawsuit against Defendants for alleged violations of the California Labor Code and Business and Professions Code. As described herein, Plaintiff alleges that Defendants failed to pay all minimum wages and overtime owed to Plaintiff and certain Aggrieved Employees because they were required to work "off the clock." In addition to failing to pay all amounts owed, Defendants failed to calculate the "regular rate of pay" correctly in order to calculate overtime. In addition, Plaintiff alleges that Defendant's meal and rest break period policies and practices failed to allow and permit Plaintiff and certain Aggrieved Employees to take all lawful and timely meal and rest breaks. To the extent that Defendants paid meal and/or rest period premiums, Defendants failed to pay such premium wages at the proper "regular rate of pay." Plaintiff further alleges that Defendants failed to provide Plaintiff and certain Aggrieved Employees with accurate written itemized wage statements in violation of Labor Code § 226(a), and failed timely to pay all final wages upon separation of employment in violation of Labor Code §§ 201-203. Plaintiff also alleges that Defendants failed timely to provide her personnel and employment records required by California Labor Code sections 226, 432, and 1198.5.

6. Plaintiff, on behalf of herself and certain Aggrieved Employees, hereby brings this representative action for recovery of unpaid wages and penalties under California Labor Code §§ 201-23 204, 210, 226(a), 226(a)(6), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1199, and applicable Industrial Welfare Commission Wage Orders ("Wage Orders").

7. Based on these alleged Labor Code violations, Plaintiff now brings this class action and representative action to recover unpaid wages, restitution, penalties, and other related relief for herself individually and on behalf of all other similarly situated employees and/or Aggrieved Employees.

JURISDICTION AND VENUE

8. The amount of damages sought herein is greater than $25,000; hence this case is within the unlimited jurisdiction of this Court.

9. This Court has jurisdiction over Defendant LENDMARK FINANCIAL SERVICES, LLC because at all times relevant, it is and was authorized to transact, and is transacting business in Los Angeles County, California and elsewhere within the State of California.

10. This Court has jurisdiction over all other Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California or otherwise

intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

11. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5. Plaintiff is informed and believes, and thereon alleges that at all relevant times, Defendants operate business locations within California in the County of Los Angeles; indeed Defendants employed Plaintiff at its business location in Torrance, California. In addition, the acts, events, and omissions complained of herein occurred in Los Angeles County, California.

PARTIES

12. Plaintiff is, and at all times relevant to this action was, over the age of 18 and a resident of Los Angeles County, California.

13. Plaintiff is informed and believes, and thereon alleges, that at all times hereinafter mentioned, Defendant LENDMARK FINANCIAL SERVICES, LLC is a corporation organized under the laws of the State of Georgia.

14. Plaintiff is informed and believes, and thereon alleges that Defendant LENDMARK FINANCIAL SERVICES, LLC at all times relevant herein, was and is authorized to conduct business in the State of California at 20036 Hawthorne Blvd, Torrance, CA 90503 and elsewhere within the State of California.

15. At all times relevant herein, Plaintiff was employed by Defendants in the County of Los Angeles at 20036 Hawthorne Blvd, Torrance, CA 90503.

16. Plaintiff does not know the true names of Defendants Does 1 through 20, inclusive, and therefore sues them by those fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and Aggrieved Employees as alleged herein. The names, capacities, and relationships of Defendant Does 1 through 20, inclusive, will be alleged by amendment to this Complaint when the same are known to Plaintiff.

17. Plaintiff reserves the right to seek leave to amend this complaint to add new Plaintiff, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

18. Plaintiff is informed and believes and thereon alleges, that at all times mentioned in this Complaint, each Defendant was acting as the agent, employee, partner, alter ego, co-conspirator or joint venturer of each of the remaining Defendants, and was acting in concert with each remaining

Defendant in doing the things herein alleged, and, at all times, was acting within the course and scope of such agency, employment, partnership, joint venture, or concert of action.

19. Plaintiff is informed and believes and thereon alleges that at all relevant times each of the Defendants was the integrated enterprise, joint employer of Plaintiff and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for the conduct of them. Plaintiff performed services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff as employers, either directly or indirectly, and of the manner in which Defendants' business was conducted.

20. Plaintiff is further informed and believes and thereon alleges that all Defendants acted pursuant to and within the scope of the relationships alleged above, that all Defendants knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants and that all Defendants acted pursuant to a conspiracy and agreement to do the things alleged herein.

21. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proof, or persuasion, and Plaintiff reserves all of Plaintiff's rights to plead in the alternative.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

22. Defendants' line of business is selling loans.

23. Plaintiff was employed as a non-exempt Branch Manager at Defendant LENDMARK FINANCIAL SERVICES, LLC's Torrance, California location beginning in 2017 until her separation from employment on January 10, 2024. Plaintiff and certain Aggrieved Employees (including, but not limited to, Branch Managers, Loan Consultants, and all other non-exempt positions) were responsible for all aspects of Defendant's business. However, in their respective roles, Plaintiff and certain Aggrieved Employees were often not afforded all protections and rights conferred under the California Labor Code and applicable Wage Orders.

24. At all relevant times, Plaintiff and certain Aggrieved Employees regularly worked various shifts, many of which were more than 8.0 hours in a workday and 40.0 hours in a workweek.

25. First, at all relevant times, Plaintiff and certain Aggrieved Employees worked regular shifts that lasted longer than 8.0 hours in a workday and resulted in non-exempt employees regularly working more than 40 hours in a workweek. However, Defendants, at times, failed to properly calculate

and pay overtime wages at the proper legal rate due to Defendants' failure to include all forms of compensation/remuneration, including, but not limited to, commissions, non-discretionary bonuses, shift pay, incentives, and all other forms of remuneration in calculating the "regular rate of pay" for purposes of overtime compensation.

26. Under the California Labor Code, courts have consistently held that regularly paid non-discretionary bonuses (and other forms of pay) must be included in determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp*. 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc*. 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgment to Plaintiff under California and federal law on the grounds that Defendant improperly calculated overtime by excluding annual bonuses paid to employees from the "regular rate of compensation"]; see *Walling v. Youngerman- Reynolds Hardwood Co*. (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties but an actual fact. Once the parties have decided upon the amount of wages and the mode of payment, the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§ 778.110 ("production bonus") and 778.111 ("piece-rate").

27. By Defendants' policy of requiring Plaintiff and certain Aggrieved Employees, at times, to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the lawful rate of one-half (1 1/2) their "regular rate of pay," Defendants willfully violated the provisions of Labor Code § 510 and the applicable Wage Orders.

28. Similarly, at all relevant times, Defendants maintained policies and practices that forced Plaintiff and certain Aggrieved Employees, at times, to work through meal periods while off-the-clock as well as before and after work shifts.

29. Similarly, at all relevant times, Defendants also failed, at times, in its obligation to provide Plaintiff and certain Aggrieved Employees the legally required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b), which requires that "[a]n 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... at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment." Labor Code § 246(1)(1) provides that paid

sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek."

30. Additionally, Labor Code § 246(1)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." Finally, Labor Code §246(i) requires employers to "provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages."

31. Here, at all relevant times, Defendants, at times, failed in its obligation to provide Plaintiff and certain Aggrieved Employees the legally required paid sick days at the legal rate, including all forms of compensation, pursuant to Labor Code §§ 246(a), (b). As such, Defendants paid sick time below the "regular rate of pay" as required by Labor Code §§ 246(1) (1-2).

32. Moreover, at all relevant times, Plaintiff and certain Aggrieved Employees, at times, were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to Defendants' meal period policies/practices, operational requirements, and work demands, Plaintiff and certain Aggrieved Employees often could not take timely and uninterrupted net 30-minute first meal periods before the end of the fifth hour of work. Further, when Plaintiff worked more than 10.0 hours in a shift, she was not always allowed and permitted to take a mandated second meal period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders. Indeed, Plaintiff's and certain Aggrieved Employees' meal periods were often interrupted and/or lasted fewer than 30 minutes due to Defendants' meal period policies/procedures, operational requirements, and work demands.

33. In addition, for each missed or non-compliant meal period, Defendants, at times, failed and continues to fail to maintain a mechanism by which non-exempt employees were paid meal period premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code § 226.7.

34. Accordingly, due to Defendants' meal period practices, Plaintiff and certain Aggrieved Employees were also regularly denied legally compliant meal periods in violation of Labor Code §§ 226.7, 510, 516, and applicable Wage Orders.

35. Next, at all relevant times, Plaintiff and certain Aggrieved Employees were not provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to Defendants' rest period policies/practices, operational requirements, staffing shortages, and work demands. As a result, Plaintiff and certain Aggrieved Employees, at times, were, and are, often unable to take a net 10-minute duty-free rest period for every major fraction of four hours worked. This includes a second rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in a workday.

36. By not relieving all non-exempt employees of all duties during rest periods, Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc*. (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."] (*Emphasis added*). In *Augustus*, the California Supreme Court expressly rejected the employer's assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained: "that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties." *Id*. at 273. Each time non-exempt employees could not take a compliant rest period, Defendants failed and continues to fail to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

37. Accordingly, due to Defendants' rest period policies/practices, non-exempt employees were regularly denied legally compliant rest breaks in violation of Labor Code § 226.7, 512, and applicable Wage Orders.

38. As a result of Defendants' failure to pay Plaintiff and certain Aggrieved Employees for all regular wages, overtime wages, sick pay wages, Defendants' failure to adequately pay for all overtime/sick pay wages at the appropriate legal rate, and Defendants' failure to pay all meal, rest period premiums at the "regular rate of pay," Defendants issued wage statements which failed to identify the gross wages learned accurately, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

39. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each

violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

40. Thus, for the violations of Labor Code section 226 described above, Plaintiff and certain Aggrieved Employees may also recover Labor Code § 226.3 penalties for Defendants' violations of Labor Code § 226(a). Consequently, because Defendants failed to comply with Labor Code § 226(a), Plaintiff and certain Aggrieved Employees would be entitled to recover penalties under Labor Code § 226(e).

41. Because Defendants failed, at times, to pay all overtime, sick pay wages, and meal and rest period premiums at the "regular rate of pay," Defendants also failed to pay Plaintiff and certain Aggrieved Employees all wages owed at her time of separation from employment in violation of Labor Code §§ 201-203. Thus, Plaintiff is entitled to recover waiting time penalties under Labor Code §§ 201-203.

42. Defendants received a request from Plaintiff to provide her copies of her personnel files and records pertaining to her employment pursuant to California Labor Code sections 1198.5 and 226(b). Defendants failed to provide, and continues to refuse to provide, Plaintiff copies of her time punches and other records required by the above referenced code sections. Thus, Plaintiff is entitled to a payment pursuant to 1198.5(k). Upon information and belief, Plaintiff alleges that Defendants have taken the same action with regard to other non-exempt employees who have made requests for their personnel files and records pertaining to their employment.

A. <u>Failure to Pay Minimum and Straight Time Wages for All Hours Worked</u>

43. "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.

44. At all relevant times herein mentioned, Defendants, at times, knowingly failed to pay to Plaintiff and Aggrieved Employees, or some of them, compensation for all hours they worked. By Defendants' failure to pay compensation for each hour worked as alleged above, Defendants willfully violated the provisions of California Labor Code § 1194, and any additional applicable Wage Orders, which require such compensation to non-exempt employees.

B. <u>Failure to Pay all Earned Wages Twice Per Month</u>

45. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of

action, Plaintiff and Aggrieved Employees were entitled to be paid twice a month at rates required by law, including minimum and straight time wages. However, Defendants failed and refused, at times, to pay Plaintiff and Aggrieved Employees, or some of them, all such wages due and failed to pay those wages twice a month.

C. <u>Failure to Pay Overtime Wages</u>

46. California Labor Code § 510 provides that employees in California shall not be employed more than eight 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.

47. California Labor Code §§ 1194 and 1198 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, California Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

48. At all times relevant hereto, Plaintiff and Aggrieved Employees, or some of them, have at times worked more than eight hours in a workday and/or more than forty (40) hours in a workweek, as employees of Defendants.

49. At all times relevant hereto, Defendants failed, at times, to pay Plaintiff and Aggrieved Employees, or some of them, overtime compensation for the hours they have worked in excess of the maximum hours permissible by law as required by California Labor Code §§ 510 and 1198.

50. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of overtime compensation due to Plaintiff and Aggrieved Employees.

D. <u>Failure to Provide Meal Periods and/or Pay Premium Payments</u>

51. Under California law, Defendants have an affirmative obligation to relieve the Plaintiff and Aggrieved Employees of all duty in order to take their first daily meal periods no later than at the end of Plaintiff's and Aggrieved Employees fifth hour of work in a workday, and to take their second meal periods no later than at the end of the tenth hour of work in the workday. California Labor Code § 512, and Section 11 of the applicable Wage Orders require that an employer provide unpaid meal periods of at least thirty (30) minutes for each five-hour period worked. It is a violation of California Labor Code § 226.7 for an employer to require any employee to work during any meal period mandated under any Wage Order.

52. Despite these legal requirements, Defendants, at times, failed to provide Plaintiff and Aggrieved Employees, or some of them, with both meal periods as required by California law. By their failure to permit and authorize Plaintiff and Aggrieved Employees, or some of them, to take all meal periods as alleged above (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted meal periods), Defendants willfully violated the provisions of California Labor Code § 226.7 and the applicable Wage Orders.

53. Under California law, Plaintiff and Aggrieved Employees are entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s), plus interest thereon. Defendants failed to pay premium payments at the proper "regular rate of pay."

54. To the extent that Defendants paid premium payments for meal break violation Defendants failed properly to calculate the regular rate of pay.

E. <u>Failure to Authorize and Permit Rest Periods and/or Pay Premium Payments</u>

55. Defendants are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). California Labor Code § 512, the applicable Wage Orders require that the employer permit and authorize all employees to take paid rest periods of ten minutes each for each 4-hour period worked. Thus, for example, if an employee's work time is six 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. It is a violation of California Labor Code § 226.7 for an employer to require any employee to work during any rest period mandated under any Wage Order.

56. Despite these legal requirements, Defendants at times failed to authorize Plaintiff and Aggrieved Employees, or some of them, to take rest breaks, regardless of whether employees worked more than four hours in a workday. By Defendants' failure to permit and authorize Plaintiff and Aggrieved Employees to take rest periods as alleged above (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted rest periods), Defendants willfully violated the provisions of California Labor Code § 226.7 and the applicable Wage Orders.

57. Under California law, Plaintiff and Aggrieved Employees are entitled to be paid one hour of premium wages rate for each workday he or she was not provided with all required rest break(s), plus interest thereon. Defendants failed to pay the premium payments at the proper "regular rate of pay."

58. To the extent that Defendants paid premium payments for rest break violation Defendants failed properly to calculate the regular rate of pay.

F. Failure to Provide Accurate Itemized Wage Statements

59. At all material times set forth herein, California 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.

60. Defendants have, at times, intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiff and Aggrieved Employees, or some of them, the failure to list the true "total hours worked by the employee," and the failure to list the true net wages earned.

61. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and Aggrieved Employees have suffered injury and damage to their statutorily protected rights.

62. Specifically, Plaintiff and the members of Aggrieved Employees have been injured by Defendants' intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a).

63. Calculation of the true wage entitlement for Plaintiff and Aggrieved Employees is difficult and time consuming. As a result of this unlawful burden, Plaintiff and Aggrieved Employees were also injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

G. Waiting Time Penalties

64. At all times herein set forth, California 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.

65. Within the applicable statute of limitations, the employment of many other members of Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants at times failed, and continues to fail, to pay terminated Class Members, without abatement, all wages required to be paid by California Labor Code §§ 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

66. Defendants' failure to pay Plaintiff and certain Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

67. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with §§ 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.

H. Failure to Provide Personnel Records and/or Records Pertaining to Employment

68. Pursuant to California Labor Code § 226, current and former employees have the right to inspect or receive a copy of their records pertaining to their employment, upon reasonable request to their employer. Under this statute, an employer that receives a request to inspect or receive a copy of records pertaining to a current or former employee must comply with the request as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request.

69. Pursuant to California Labor Code § 1198.5(a), every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. Under this statute, upon written request from a current or former employee or his or her

representative, an employer must make the contents of those personnel records available for inspection or provide a copy of the personnel records to the current or former employee, or his or her representative, not later than thirty (30) calendar days from the date the employer receives the written request, subject to some limited exceptions. Failure to comply with these requests allows for a civil penalty seven hundred fifty dollars ($750), pursuant to Labor Code §§ 1198.5(k) and 226(f).

70. As set forth above, Plaintiff and Aggrieved Employees are current and former employees of Defendants.

71. Plaintiff sent a written request through Plaintiff's counsel to Defendants for her payroll records, timecards, and personnel records.

72. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely produce the required records requested by Plaintiff.

73. On information and belief, Defendants' failure to provide Plaintiff and other members of Aggrieved Employees with their requested employment records is not an isolated incident but was instead consistent with Defendants' practice that applied to Plaintiff and Aggrieved Employees, or some of them.

74. Pursuant to California Labor Code § 1198.5, Plaintiff and Aggrieved Employees are entitled to a penalty of seven hundred fifty dollars ($750) from Defendants for each class member who experienced a violation, injunctive relief in the form of compliance with section 1198.5, and attorneys' fees and costs.

75. Pursuant to California Labor Code § 226, Plaintiff and Aggrieved Employees are entitled to a penalty of seven hundred fifty dollars ($750) from Defendants, injunctive relief in the form of compliance with section 226, and attorneys' fees and costs.

76. Wherefore Plaintiff prays for judgment as set forth herein.

FIRST CAUSE OF ACTION

(By All Plaintiffs Against All Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq.)

77. Plaintiff incorporates by reference and re-allege all preceding paragraphs as though fully set forth herein.

78. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable IWC Orders.

79. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself or himself and other current or former employees pursuant to the procedures specified in Section 2699.3."

80. Plaintiff gave written notice by online filing pursuant to California Labor Code § 2699.3 to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff and certain current and former Aggrieved Employees, or some of them, including the facts and theories to support the violations. Plaintiff also paid the filing fee. Plaintiff's LWDA PAGA case number is LWDA-CM-1031179-24 (*Heather Parker v. Lendmark Financial Services, LLC*). The Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants' Labor Code violations discussed in the notice. Plaintiff hereby commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699 .3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code§§ 210,226.3, 1174.5, 1197.1, and 2699.

81. Based on the conduct described in this Complaint, Plaintiffs are entitled to an award of civil penalties individually, on behalf of the State of California and certain similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

82. In addition, Plaintiff seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g)(l), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

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PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of the State of California, and on behalf of all similarly Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay for all hours worked (minimum, straight time, and overtime wages), failing to provide meal periods and/or issuing proper premium payments, failing to authorize and permit rest periods and/or issuing proper premium payments, failing to pay all earned wages twice per month, failing to maintain accurate records of hours worked and meal periods, failing to timely pay final wages, failing to furnish accurate wage statements, and failing to produce requested employment records;
2. An award of civil penalties on behalf of Plaintiffs, individually, and on behalf of the State of California, and all similarly Aggrieved Employees pursuant to PAGA;
3. Pre-judgment and post-judgment interest at the maximum rate allowed;
4. Attorneys' fees and costs reasonably incurred;
5. Injunctive and declaratory relief to the extent allowed by PAGA; and,
6. Such other and further relief that the Court deems proper.

ROBERT L. SHIPLEY, A.P.L.C.

Dated: August 30, 2024

By:______________________

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HEATHER PARKER