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14 Attorneys for Plaintiff CATHERINE VALLE,
15 on behalf of herself and current and former aggrieved employees

16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18
19 **FOR THE COUNTY OF SAN FRANCISCO**

20 CATHERINE VALLE, on behalf of herself and
21 current and former aggrieved employees

22 Plaintiff,

23 vs.

24 FOUNDATION PARTNERS GROUP, LLC;
25 and DOES 1 to 100, inclusive,

26 Defendants.

Case No.: **CGC-24-616764**

PAGA ACTION

**PLAINTIFF CATHERINE VALLE'S
COMPLAINT FOR:**

1. **CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

**07/25/2024
Clerk of the Court**

BY: AUSTIN LAM
Deputy Clerk

COMES NOW Plaintiff CATHERINE VALLE (“Plaintiff”), who alleges and complains on information and belief except as to those allegations relating to plaintiff herself, which are asserted on personal knowledge, against Defendants FOUNDATION PARTNERS GROUP, LLC; and DOES 1 to 100, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”) representative action brought by Plaintiff on behalf of the State of California, herself and other current and former aggrieved employees of Defendants who worked as hourly non-exempt employees in California during the relevant time period seeking civil penalties associated with Defendants’ violation of the Labor Code based on Defendants’ failure to pay wages for all hours worked at the employees’ minimum wage rate or overtime rate, failure to provide all legally required and legally compliant meal and rest periods, indemnification for all necessary expenditures or losses incurred by employees in direct consequence of discharging their duties, failure to pay wages for accrued paid sick time at the regular rate of pay, failure to timely pay earned wages during employment, failure to provide complete and accurate wage statements, failure to timely pay all unpaid wages following separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor and Workforce Development Agency, civil penalties, reasonable attorneys’ fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims of Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees because Plaintiff’s lawsuit seeks civil penalties on behalf of herself, all other current and former aggrieved California-based hourly non-exempt employees, and the State of California in excess of thirty-five thousand dollars (\$35,000); Defendants employed Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees occurred in locations throughout California, including but not limited to San Francisco County, including but not limited to, at San

1 Francisco, CA.

2 **III. PARTIES**

3 3. Plaintiff brings this action as a representative of the Labor and Workforce
4 Development Agency on behalf of herself and other current and former employees subject to
5 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
6 filed include current, former and/or future employees of Defendants who work, worked, or will
7 work for Defendants as direct employees as well as temporary employees employed through temp
8 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
9 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
10 employed by Defendants in an hourly position at Defendants' location in San Francisco County
11 from approximately July 11, 2018, until on or about currently.

12 4. Defendant FOUNDATION PARTNERS GROUP, LLC is authorized to do
13 business within the State of California and is doing business in the State of California and/or that
14 Defendants DOES 1-50 are, and at all times relevant hereto were persons acting on behalf of
15 Defendant FOUNDATION PARTNERS GROUP, LLC in the establishment of, or ratification of,
16 the aforementioned illegal wage and hour practices or policies. Defendant FOUNDATION
17 PARTNERS GROUP, LLC operates in San Francisco County and employed Plaintiff and
18 aggrieved employees in San Francisco County , including but not limited to, at San Francisco, CA.

19 5. Defendants DOES 1 through 50 are corporations or other business entities or
20 organizations of a nature unknown to Plaintiff that employed Plaintiff and aggrieved California
21 non-exempt employees, permitted Plaintiff and aggrieved employees to work, and exercised
22 control over the wages, hours and working conditions of employment of Plaintiff and aggrieved
23 employees.

24 6. Defendants DOES 51 through 100 are individuals unknown to Plaintiff. Each
25 Defendant is sued individually and in their capacity as an agent, shareholder, owner,
26 representative, manager, supervisor, independent contractor and/or employee of each defendant
27 who violated or caused to be violated the minimum wage and overtime provisions of the Labor
28 Code and/or any provision of the Industrial Welfare Commission's wage orders regulating hours

1 and days of work.

2 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
3 sues said defendants by said fictitious names and will amend this complaint when the true names
4 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
5 permitted by law or by the Court. Each fictitiously named defendant is in some manner
6 responsible for the events and allegations set forth in this complaint.

7 8. Plaintiff makes the allegations in this complaint without any admission that, as to
8 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
9 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

10 **FIRST CAUSE OF ACTION**

11 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
12 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

13 **(Against all Defendants by Plaintiff on behalf of Themselves, the State of California, and**
14 **Other Current and Former Aggrieved Employees)**

15 9. Plaintiff incorporates by reference and re-alleges each and every allegation
16 contained in this pleading as though fully set forth herein.

17 10. During Plaintiff's employment and continuing through the present, Plaintiff alleges
18 Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 246, 510, 512,
19 1194, 1197, 2802, and the applicable Wage Orders.

20 11. Specifically, Defendants have committed the following violations of California
21 Labor Code:

22 12. **Failure to pay wages for all hours worked at the legal minimum wage:**
23 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
24 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
25 which includes all time that an employee is under control of the employer and all time the
26 employee is suffered and permitted to work. This includes the time an employee spends, either
27 directly or indirectly, performing services which inure to the benefit of the employer.

28 13. Labor Code sections 1194 and 1197 require an employer to compensate employees

1 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
2 Wage Orders.

3 14. In this case, Plaintiff and other current and former aggrieved California-based
4 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
5 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
6 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
7 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
8 not limited to,

9 (a) From the start of the class period until 2021, Defendant automatically deducted 30
10 minutes from Plaintiff and other current and former aggrieved California-based hourly non-
11 exempt employees’ daily hours worked and attributed that time to an unpaid meal break despite
12 that Defendant routinely required employees to miss their meal breaks.

13 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
14 non-exempt employees who worked remotely to travel to Defendants place of business, retrieve
15 computer equipment, travel back home, and set up computer equipment at home without being
16 paid for that time;

17 (c) Requiring Plaintiff and other current and former aggrieved California-based hourly
18 non-exempt employees to undergo a multi-step boot-up and login procedure prior to being able to
19 clock in for the start of their shift without being paid for that time. Assuming everything went
20 smoothly, this log in procedure required Plaintiff and other current and former aggrieved
21 California-based hourly non-exempt employees who worked remotely to complete the following
22 tasks off-the-clock:

- 23 i. Turn on or wake up the laptop computer provided by Defendants;
24 ii. Wait for the computer to complete initial booting and take the user to log in
25 screen;
26 iii. Enter log in credentials to log on the computer;
27 iv. Wait additional time for the computer to continue booting and complete the
28 loading of its operating system;

- v. Navigate, minimize, exit, or address a host of application windows that routinely appear on screen upon start-up;
- vi. Launch a “VPN” application and wait for it to load;
- vii. Turn on or enable the “VPN” application;
- viii. Run the “ADP” application that is required to clock in;
- ix. Enter login credentials and click “Sign In”;
- x. Navigate the application interface and look for the “Clock In” button, which does not always appear in the same part of the screen each session;
- xi. Click “My Time,” to proceed to the screen with the clock in button;
- xii. Finally, click “Clock In,” to clock in for the start of the shift;

(d) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to routinely work off-the-clock to take and respond to communications from Defendants’ management and clients without being paid for that time.

15. Therefore, Defendants suffered, permitted, and required Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to be subject to Defendants’ control without paying wages for that time. This resulted in Plaintiff and other current and former aggrieved California-based hourly non-exempt employees working time for which they were not compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable Wage Order.

16. **Failure to pay wages for overtime hours worked at the overtime rate of pay:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all “hours worked,” which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services that inure to the benefit of the employer.

17. Labor Code sections 510 and 1194 require an employer to compensate employees a higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

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2 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
3 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
4 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
5 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
6 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
7 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
8 seventh day of a workweek shall be compensated at the rate of no less than twice the
9 regular rate of pay of an employee. Labor Code § 510.

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11 18. In this case, Defendants failed to pay Plaintiff and other current and former
12 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
13 worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

14 (a) From the start of the class period until 2021, Defendant automatically deducted 30
15 minutes from Plaintiff and other current and former aggrieved California-based hourly non-
16 exempt employees' daily hours worked and attributed that time to an unpaid meal break despite
17 that Defendant routinely required employees to miss their meal breaks.

18 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
19 non-exempt employees who worked remotely to travel to Defendants place of business, retrieve
20 computer equipment, travel back home, and set up computer equipment at home without being
21 paid for that time;

22 (c) Requiring Plaintiff and other current and former aggrieved California-based hourly
23 non-exempt employees to undergo a multi-step boot-up and login procedure prior to being able to
24 clock in for the start of their shift without being paid for that time. Assuming everything went
25 smoothly, this log in procedure required Plaintiff and other current and former aggrieved
26 California-based hourly non-exempt employees who worked remotely to complete the following
27 tasks off-the-clock:

- 28 i. Turn on or wake up the laptop computer provided by Defendants;
- ii. Wait for the computer to complete initial booting and take the user to log in
screen;
- iii. Enter log in credentials to log on the computer;
- iv. Wait additional time for the computer to continue booting and complete the

loading of its operating system;

- v. Navigate, minimize, exit, or address a host of application windows that routinely appear on screen upon start-up;
- vi. Launch a “VPN” application and wait for it to load;
- vii. Turn on or enable the “VPN” application;
- viii. Run the “ADP” application that is required to clock in;
- ix. Enter login credentials and click “Sign In”;
- x. Navigate the application interface and look for the “Clock In” button, which does not always appear in the same part of the screen each session;
- xi. Click “My Time,” to proceed to the screen with the clock in button;
- xii. Finally, click “Clock In,” to clock in for the start of the shift;

(d) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to routinely work off-the-clock to take and respond to communications from Defendants’ management and clients without being paid for that time.

19. Furthermore, overtime is based upon an employee’s regular rate of pay. “The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee.” See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

20. In this case, Plaintiff alleges that when she and other current and former aggrieved California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay them overtime wages at the proper overtime rate of pay due to Defendants’ failure to include all remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration such as, employee of the month bonus and sales bonus, for example, when calculating Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’ regular rate of pay for the purpose of paying overtime.

21. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt

1 employees were under the control of Defendants but were not compensated. To the extent that the
2 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
3 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
4 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
5 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
6 sections 510, 1194 and 1198, and the applicable Wage Order.

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8 **22. Failure to pay wages to hourly non-exempt employees for workdays that**
9 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
10 current and former aggrieved California-based hourly non-exempt employees regularly worked
11 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

12 **23.** California law requires an employer to authorize or permit an employee an
13 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
14 all duties and the employer relinquishes control over the employee's activities prior to the
15 employee's sixth hour of work. Labor Code §§ 226.7, 512, and 1198; Wage Order 4 at § 11;
16 *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not
17 employ an employee for a work period of more than ten (10) hours per day without providing the
18 employee with a second such meal period of not less than thirty (30) minutes prior to the start of
19 the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the
20 meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on
21 duty" meal period is only permitted when: (1) the nature of the work prevents an employee from
22 being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal
23 periods.

24 **24.** If an employer fails to provide an employee a meal period in accordance with the
25 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
26 for each workday that a legally required and compliant meal period was not provided. Labor Code
27 §§ 226.7 and 1198; Wage Order 4 at § 11.

28 **25.** In this case, Defendants failed to authorize or permit legally required and compliant
meal periods to Plaintiff and other current and former aggrieved California-based hourly non-

1 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
2 limited to,

3 (a) From the start of the class period until 2021, Defendant automatically deducted 30
4 minutes from Plaintiff and other current and former aggrieved California-based hourly non-
5 exempt employees' daily hours worked and attributed that time to an unpaid meal break despite
6 that Defendant routinely required employees to miss their meal breaks.

7 (b) Failing to provide Plaintiff and other current and former aggrieved California-based
8 hourly non-exempt employees timely, uninterrupted, duty-free meal breaks of at least 30 minutes
9 for every five hours worked.

10 (c) Failing to provide Plaintiff and other current and former aggrieved
11 California-based hourly non-exempt employees a second uninterrupted duty-free meal period of
12 no less than thirty (30) minutes for each workday that Plaintiff and other current and former
13 aggrieved California-based hourly non-exempt employees work shifts over ten (10) hours.

14 26. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
15 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
16 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
17 workday that Plaintiff and/or other current and former aggrieved California-based hourly non-
18 exempt employees did not receive legally required and compliant meal periods, in violation of
19 Labor Code section 226.7.

20 27. Finally, on occasions when Defendants paid Plaintiff and other current and former
21 aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed,
22 short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1)
23 additional hour of pay at Plaintiff's and other current and former aggrieved California-based
24 hourly non-exempt employees' regular rate of compensation. Specifically, Defendants maintained
25 a policy, practice, and/or procedure of failing to include all remuneration such as employee of the
26 month bonus and sales bonus, for example, when calculating Plaintiff's and other current and
27 former aggrieved California-based hourly non-exempt employees' regular rate of pay for the
28 purpose of paying meal period premium wages.

1 28. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
2 and/or other current and former aggrieved California-based hourly non-exempt employees not
3 receiving wages to compensate them for workdays during which Defendants did not provide them
4 with meal periods in compliance with California law.

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6 29. **Failure to pay wages to hourly non-exempt employees for workdays that**
7 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
8 current and former aggrieved California-based hourly non-exempt employees regularly worked
9 shifts of more than three-and-a-half (3.5) hours.

10 30. California law requires every employer to authorize and permit an employee a rest
11 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
12 Code § 226.7; Wage Order 4 at § 12. Under California law, "[e]mployees are entitled to 10
13 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
14 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
15 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
16 § 226.7; Wage Order 4 at § 12. Rest periods, insofar as practicable, shall be in the middle of each
17 work period. Wage Order 4 at § 12. Additionally, the rest period requirement "obligates employers
18 to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM Security*
19 *Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve
20 employees of all duties and relinquish control over how employees spend their time. *Id.*

21 31. If the employer fails to authorize or permit a required rest period, the employer
22 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
23 the employer did not authorize or permit a legally required rest period. Labor Code § 226.7; Wage
24 Order 4 at § 12.

25 32. In this case, Defendants failed to authorize or permit all legally required and
26 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
27 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
28 limited to,

1 (a) Failing to provide Plaintiff and other current and former aggrieved
2 California-based hourly non-exempt employees with net ten (10) minute rest breaks for every four
3 (4) hours worked or major fraction thereof.

4 (b) Failure to provide third rest breaks when employees worked shifts more
5 than 10 hours

6 33. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
7 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
8 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
9 workday they did not receive legally required and compliant rest periods, in violation of Labor
10 Code section 226.7.

11 34. Finally, on occasions when Defendants did pay Plaintiff and other current and
12 former aggrieved California-based hourly non-exempt employees a “premium” wage for late,
13 missed, short, on-premise, on-duty, and/or interrupted rest periods, Defendants failed to pay the
14 one (1) additional hour of pay at Plaintiff’s and other current and former aggrieved California-
15 based hourly non-exempt employees’ regular rate of compensation. Specifically, Defendants
16 maintained a policy, practice, and/or procedure of failing to include all remuneration employee of
17 the month bonus and sales bonus, for example, when calculating Plaintiff’s and other current and
18 former aggrieved California-based hourly non-exempt employees’ regular rate of pay for the
19 purpose of paying rest period premiums.

20 35. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
21 and other current and former aggrieved California-based hourly non-exempt employees not
22 receiving wages to compensate them for workdays in which Defendants did not provide them with
23 rest periods in compliance with California law.

24 36. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
25 **Employment:** California law requires that every employer must indemnify its employees for all
26 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
27 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
28 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §

1 2802.)

2 37. Defendants violated Labor Code Section 2802 by failing to indemnify Plaintiff and
3 other current and former aggrieved California-based non-exempt hourly employees' necessary
4 expenditures they incurred in the discharge of their duties. Specifically, Defendants employed a
5 policy, practice, and procedure included, but were not limited to,

6 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
7 non-exempt employees who work remotely to use or purchase their own tools and/or resources in
8 order to work for Defendants, including but not limited to, the costs of home internet and cell
9 phone voice and data expenses without reimbursing Plaintiff and other current and former
10 aggrieved California-based hourly non-exempt employees for such use.

11 38. Moreover, Defendants employed policies and procedures which ensured Plaintiff
12 and aggrieved employees would not receive indemnification for their employment related
13 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
14 indemnification in compliance with California law.

15 39. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
16 employment related expenses, including but not limited to costs related to use of their personal
17 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

18 40. **Failure to provide sick pay wages:** Defendants had a policy and/or procedure
19 where Plaintiff and other current and former aggrieved California-based hourly non-exempt
20 employees accrued paid sick time.

21 41. Labor Code section 246, subdivision (a), states in relevant part "[a]n employee
22 who...works in California for the same employer for 30 or more days within a year from the
23 commencement of employment is entitled to paid sick days." Additionally, an employee accrues
24 paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked,
25 beginning at the commencement of employment. Labor Code section 246(b).

26 42. Here, Plaintiff and other current and former aggrieved California-based hourly non-
27 exempt employees were employed by Defendants for 30 or more days and were entitled to paid
28 sick days. Defendants, however, lacked a policy, practice, and/or procedure whereby Plaintiffs and

1 other current and former aggrieved California-based hourly non-exempt employees who were
2 employed by Defendants for 30 days or more could accrue paid sick days at the rate of no-less-
3 than one (1) hour per every thirty (30) hours worked, beginning at the commencement of
4 employment as required by Labor Code section 246(b).

5 43. In this case, Plaintiff alleges that when she and other current and former aggrieved
6 California-based hourly non-exempt employees elected to use paid sick time, Defendants failed to
7 pay them sick time wages at the proper sick time rate of pay due to Defendants' failure to include
8 all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a
9 policy, practice, and/or procedure of failing to include all remuneration including but not limited
10 to employee of the month bonus and sales bonus for example, for example, when calculating
11 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees'
12 regular rate of pay for the purpose of paying sick time.

13 44. Defendants' foregoing policy, practice, and/or procedure resulted in Defendants
14 failing to provide Plaintiff and other current and former aggrieved California-based hourly non-
15 exempt employees' paid sick days, in violation of Labor Code section 246.

16 45. **Failure to timely pay earned wages during employment:** In California, wages
17 must be paid at least twice during each calendar month on days designated in advance by the
18 employer as regular paydays, subject to some exceptions. Labor Code § 204(a). Wages earned
19 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th
20 and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of
21 any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other
22 payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within
23 seven (7) calendar days following the close of the payroll period in which wages were earned.
24 Labor Code § 204(d).

25 46. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
26 to timely pay Plaintiff and other current and former aggrieved California-based hourly non-exempt
27 employees their earned wages (including minimum wages, overtime wages, meal period premium
28 wages and/or rest period premium wages), in violation of Labor Code section 204. Defendants'

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aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiff and
other current and former aggrieved California-based hourly non-exempt employees their earned
wages within the applicable time frames outlined in Labor Code section 204.

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47. **Secret payment of lower wages than designated by statute:** Labor Code section
223 provides that, where any statute or contract requires an employer to maintain the designated
wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage
designated by statute or contract. By engaging in the unlawful conduct alleged herein, including
by failing to: pay overtime wages at the applicable legal overtime rate, meal break premiums and
lawful sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7,
246, 510, 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as incorporated by
Labor Code section 1198, Defendants secretly paid a lower wage than designated by statute while
purporting to pay the wages designated by statute, in violation of Labor Code section 223.

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48. **Failure to provide complete and accurate wage statements:** Labor Code section
226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
employee his or her wages, the employer must "furnish each of his or her employees ... an
itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
employee, except for any employee whose compensation is solely based on a salary and who is
exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
the Industrial Welfare Commission, (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 pay period for which the employee is paid, (7) the
name of the employee and his or her 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."

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49. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
and other current and former aggrieved California-based hourly non-exempt employees all wages
earned (including minimum wages, overtime wages, meal period premium wages, and/or rest

1 period premium wages) rendered Plaintiff's and other current and former aggrieved California-
2 based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code
3 section 226(a)(1, 2, 5 & 9).

4
5 **50. Failure to pay employees all wages due at time of termination/resignation:** An
6 employer is required to pay all unpaid wages timely after an employee's employment ends. The
7 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
8 hours of resignation (Labor Code section 202).

9
10 **51.** As a derivative of Plaintiff's allegations above, because Defendants failed to pay
11 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
12 all of their earned wages (including minimum wages, overtime wages, meal period premium
13 wages, and/or rest period premium wages), Defendants failed to pay those employees timely after
14 each employee's termination and/or resignation, in violation of Labor Code sections 201, 202, and
15 203.

16
17 **52.** Labor Code sections 2699, subdivisions (a) and (g), authorize an aggrieved
18 employee, on behalf of himself or herself and other current or former employees, to bring a civil
19 action to recover civil penalties against all Defendants pursuant to the procedures specified in
20 Labor Code section 2699.3.

21
22 **53.** Plaintiff has complied with the procedures for bringing suit specified in Labor
23 Code section 2699.3. On May 20, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA and
24 provided notice to Defendants by certified mail which provided notice of the specific provisions of
25 the Labor Code alleged to have been violated, including the facts and theories to support the
26 violations alleged.

27
28 **54.** Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
parties notice within 65 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
to investigate Plaintiff's claims.

55. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil

1 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a),
2 226.7, 246, 510, 512, and 1194, During Plaintiff's employment and continuing through the
3 present, preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in
4 the following amounts:

5 a. For violations of Labor Code sections 201, 202, 203, 226(a), 226.7, and
6 2802; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
7 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
8 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

9 b. For violations of Labor Code section 226(a), alternatively, two hundred
10 fifty dollars (\$250) for each employee for each pay period for the initial violation, and one
11 thousand dollars (\$1,000) for each subsequent violation, for each underpaid employee for each pay
12 period [penalty amounts established by Labor Code section 226.3].

13 c. For violations of Labor Code section 510 and 512, fifty dollars (\$50) for
14 each employee for each pay period for the initial violation, and one hundred dollars (\$100) for
15 each subsequent violation, for each underpaid employee for each pay period [penalty amounts
16 established by Labor Code section 558].

17 d. For violations of Labor Code section 204, one hundred dollars (\$100) for
18 each failure to pay each employee in any initial violation, and two hundred dollars (\$200) for each
19 subsequent violation, or any willful or intentional violation, for each failure to pay each employee,
20 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
21 section 210].

22 e. For violations of Labor Code section 223, one hundred dollars (\$100) for
23 each failure to pay each employee in any initial violation, and two hundred dollars (\$200) for each
24 subsequent violation, or any willful or intentional violation, for each failure to pay each employee,
25 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
26 section 225.5].

27 56. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
28 reasonable attorneys' fees and costs in connection with his/her claims for civil penalties.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER
AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and
the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations
subject to any permissible tolling, including but not limited to those recoverable under the
California Labor Code, including but not limited to sections 210, 225.5, 226.3, 558, 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable
under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or
appropriate.

Dated: July 25, 2024

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By:



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