Julian Burns King (Bar No. 298617)
Julian@KingSiegel.com
Elliot J. Siegel (Bar No. 286798)
Elliot@KingSiegel.com
KING & SIEGEL LLP
724 South Spring Street, Suite 201
Los Angeles, California 90014
tel: (213) 465-4802
fax: (213) 465-4803

Navid Barahmand (Bar No. 340934)
navid@barahmandlaw.com
BARAHMAND LAW GROUP
7324 Sepulveda Boulevard, Suite B
Van Nuys, CA 91405
tel: (818) 574-3355
fax: (818) 573-3757
Attorneys for Plaintiff and Putative Class

Per local Rule, This case is assigned to Judge Treat, Charles S, for all purposes.

SUMMONS ISSUED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

Sophia Marie Aguirre, individually and on behalf of all similarly situated individuals;

Plaintiffs,

vs.

Shift4 Payments, LLC, a Delaware Limited Liability Company; **Jared Isaacman**, an individual; and **Does 1-10**, inclusive;

Defendants.

CASE NO. C24-01636

CLASS ACTION COMPLAINT FOR:

1) **Failure to Pay Minimum Wages;**
2) **Failure to Pay Overtime Wages;**
3) **Failure to Provide Meal Periods or Premium Pay in Lieu Thereof;**
4) **Failure to Provide Rest Periods or Premium Pay in Lieu Thereof;**
5) **Failure to Provide a Legal Paid Vacation Policy;**
6) **Failure to Provide and Maintain Accurate Records;**
7) **Failure to Reimburse Necessary Business Expenses;**
8) **PAGA Penalties; and**
9) **Violation of California Business & Professions Code §§ 17200, et seq.**

Jury Trial Requested

Plaintiff hereby brings this action on behalf of herself and all other similarly situated current and former employees, by and through her counsel of record, and alleges as follows:

PARTIES

1. At all relevant times for this Complaint, Plaintiff **Sophia Marie Aguirre** ("Plaintiff") is and has been a resident of Contra Costa County, California. Plaintiff began her employment in or around April 2023 where she is currently employed as an hourly, non-exempt employee of Defendants. Plaintiff is and was subject to the policies and practices described in this Complaint at all times during her employment at Shift4 Payments, LLC.

2. Defendant **Shift4 Payments, LLC** ("Shift4") is a Delaware limited liability company whose main business is processing credit card payments. On information and belief, Shift4 employs at least 100 hourly, non-exempt employees. Shift4's principal place of business is 3501 Corporate Parkway; Center Valley, Pennsylvania 18034.

3. Defendant **Jared Isaacman** ("Mr. Isaacman") is an individual who, on information and belief, resides in Bergen County, New Jersey. Upon information and belief, Mr. Isaacman is the Managing Member of Shift4. Per Labor Code § 558.1, since Mr. Isaacman is a managing agent, director, and/or officer of Shift4 and, upon information and belief, as he caused or directed the acts described herein, he is personally liable for the penalties sought under PAGA for predicate violations of the Labor Code.

4. Plaintiff is not currently aware of the names and true identities of defendants Does 1-10, inclusive (hereinafter "Defendants" together with Defendant Shift4). Plaintiff reserves the right to amend this complaint to allege their true names and capacities when this information is available. Each Doe defendant is responsible for the damages alleged pursuant to each of the causes of action asserted, either through its own conduct, or vicariously through the conduct of others. All further references in this complaint to any of the named Defendants includes the fictitiously named defendants.

5. At all times alleged herein, each Defendant was an agent, servant, joint employer, employee, partner, and/or joint venture of every other Defendant and was acting within the scope of the Defendants' relationship; and the conduct of every Defendant was ratified by each other Defendant.

VENUE AND JURISDICTION

6. The court has jurisdiction over all causes of action in this complaint pursuant to Article VI,

§ 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely on California statutes and law, including the Labor Code and the Business & Professions Code. Because Plaintiff was employed by Defendant and Defendant transacts business within Contra Costa County, Defendant is within the jurisdiction of the court for service of process. Moreover, Business & Professions Code § 17204 provides that any person acting on his or her own behalf may bring an action in any court of competent jurisdiction.

7. Venue as to Defendant is proper in this Superior Court pursuant to California Code of Civil Procedure § 395. The unlawful acts alleged have directly affected Plaintiff in Contra Costa County, where she was employed by Defendant and earned the wages at issue in this action. Accordingly, this Court maintains appropriate jurisdiction over this dispute.

CLASS ACTION ALLEGATIONS

8. At all times relevant to this complaint, Defendants have consistently denied their non-exempt employees the opportunities to take compliant 30-minute meal periods in accordance with California's Labor Code. Upon information and belief, Class Members, including Plaintiff, were required to skip or interrupt their meal and/or rest periods answer phone calls, otherwise interrupt or cut short their meal and/or rest periods, or remain on duty and under Defendants' control during their meal periods to perform other tasks at Defendants' direction, including their scheduling and staffing practices and policies.

9. Furthermore, as a matter of uniform and systemic policy, Defendants only authorized non-exempt employees working a shift in excess of ten hours to receive a single thirty-minute meal period break rather than the two they are entitled to under law.

10. In the same manner, and as a matter of uniform and systemic policy, Defendant requires non-exempt employees to continue working during their rest periods answering phone calls, otherwise interrupting or cut short their rest periods, or remain on duty and under Defendants' control during their rest periods to perform other tasks at Defendants' direction, including their scheduling and staffing practices and policies.

11. Furthermore, as a matter of uniform and systemic policy, Defendants only authorized non-exempt employees working shifts in excess of six hours to receive a single ten-minute break rather than

the two they are entitled to under law.

12. In failing to authorize and/or permit meal and rest periods, Defendants have also implemented a uniform policy of denying compensation in lieu of meal and rest periods to its non-exempt employees, notwithstanding its actual knowledge that such employees were uniformly denied compliant meal and rest periods.

13. Defendants further failed to compensate employees for all time worked time when employees were forced to interrupt and/or work through their meal periods but were clocked out under Defendants' time-keeping system (and therefore treated as not working). This resulted in employees being denied both straight time and overtime pay, where applicable, for the time during which they were on call or under Defendants' control despite being off the clock for timekeeping purposes.

14. As a matter of uniform and systemic policy, Defendants required non-exempt employees to utilize their personal cell phones for work-related purposes, including answering client calls, answering texts and calls from their supervisors while at work or on a break, for purposes of scheduling and re-scheduling future work, being assigned tasks, and general administrative matters. Defendants further failed to compensate their non-exempt employees for reasonable costs associated with utilizing their personal cell phones for work-related purposes. Defendants similarly required non-exempt employees working in remote positions to utilize their own internet services for work-related purposes without reimbursing the reasonable costs associated with their internet services.

15. As a matter of uniform and systemic policy, Defendants failed to provide its non-exempt employees with accurate itemized wage statements in accordance with California's Labor Code. Upon information and belief, Defendants failed to furnish Plaintiff, or Class Members, either semimonthly or at the time of each payment of wages, either as a detachable part of the check or separately, an accurate, itemized statement in writing showing sick pay, gross wages earned, all deductions, and the net wages earned by Plaintiff for the inclusive dates for which the Plaintiff worked, including the unpaid premium payments owed to Plaintiff and the Class Members for their missed meal and rest breaks.

16. Plaintiff therefore brings this action on behalf of herself and as a class action on behalf of the following defined Class:

Non-Exempt Employee Class:

All persons who worked at least one 3.5-hour shift as a non-exempt employee for Defendants in the State of California from the period four years prior to the filing of the Action and the date of trial ("Class").

17. Common methods of proof exist for determining these issues on a class-wide basis, including but not limited to, Defendants' employment records, payroll records, timesheets, policies, and disciplinary records.

18. **Numerosity.** Plaintiff is informed and believes that, during the class period, at least 100 Class Members have been employed as non-exempt employees by Defendants within the state of California. The number of Class Members is sufficiently numerous such that joinder of all members is impossible or impracticable.

19. **Typicality.** Plaintiff's claims are typical of all Class Members. Plaintiff, like all other Class Members, was subjected to the policies and practices set forth above. Plaintiff's job duties were typical of Class Members in all relevant respects.

20. **Adequacy.** There are no material conflicts between the claims of the representative Plaintiff and Class Members that would make class certification inappropriate. Plaintiff understands her obligation to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is invested in redressing Defendants' illegal practices on behalf of all Class Members. Moreover, Plaintiff has retained competent counsel experienced in both class action and employment litigation. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement, and will vigorously assert the claims of all Class Members. Plaintiff has incurred, and will continue to incur, costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

21. **Existence and Predominance of Common Issues.** Common questions of law and fact exist as to all Class Members and predominate over issues affecting individual Class Members, including, but not limited to:

a. Whether Defendants had a common policy and/or practice of requiring Plaintiff and Class Members to remain under Defendants' control and direction while off-the-clock;

b. Whether Defendants were required to pay Plaintiff and Class Members at least minimum wages for all time spent under its control and direction;

c. Whether Defendants paid Plaintiff and Class Members all owed minimum wages;

d. Whether Defendants' policies and/or practices required Class Members to work over eight hours per day or over forty hours per week without being paid all legally required overtime compensation;

e. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and Class Members required overtime wages;

f. Whether Defendants have a common policy and/or practice of authorizing compliant meal periods to all non-exempt employees;

g. Whether Defendants have a common policy and/or practice of permitting compliant rest periods to all non-exempt employees;

h. Whether Defendants have a common policy and/or practice of depriving Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;

i. Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;

j. Whether Defendants paid Plaintiff and Class Members all required premium wages for non-compliant meal and/or rest periods;

k. Whether Defendants have a common policy and/or practice of depriving Plaintiff and Class Members earned paid time off and/or vacation hours;

l. Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class Members earned paid time off and/or vacation hours;

m. Whether Defendants have a common policy and/or practice of failing to maintain accurate payroll records in the State of California;

n. Whether Defendants unlawfully and/or willfully failed to maintain accurate payroll records in the State of California;

o. Whether Defendants have a policy and/or practice of failing to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;

p. Whether Defendants unlawfully and/or willfully failed to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;

q. Whether Defendants have a common policy and/or practice of failing to reimburse Plaintiff and Class Members for reasonable business expenses;

r. Whether Plaintiff and Class Members sustained damages as a result of any of the aforementioned violations, and, if so, the proper measure of those damages, including interest, penalties, costs, attorneys' fees, and equitable relief; and

s. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq*., by violating the above provisions of law.

22. **<u>Superiority.</u>** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are small compared to the burden and expense of individual prosecution of the complex and expensive litigation necessary to address Defendants' conduct. Even if Class Members themselves could afford individual litigation, the court system would be overwhelmed by individual lawsuits if all Class Members sought redress. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; it allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and it provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Plaintiff contemplates providing individual notice to members of the Class through Defendants' records.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198

Failure to Pay Minimum Wages

(Plaintiff and Class Against Defendants)

23. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

24. California law requires employers to compensate employees for all time that an employee is "suffered or permitted to work," which includes all time "when any employer 'directs, commands or restrains' an employee*." See, e.g., Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 583 (2000), as modified (May 10, 2000); see also Code Regs. tit. 8, § 11070 ("'Hours worked' means 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.").

25. Defendants failed to compensate Plaintiff and the Class for all hours worked because Defendants had a policy and/or practice whereby they required and/or pressured Class Members to work under Defendants' control while off-the-clock such that this time was not recorded for payroll purposes and went unpaid. Upon information and belief, Defendants failed to pay Class Members all minimum wages for other compensable time as yet unknown by Plaintiff.

26. Furthermore, Defendants required its non-exempt employees to work through their legally mandated meal and/or rest period or remain on duty and under Defendants' control during their meal and/or rest periods to perform other tasks at Defendants' directions due to Defendants' policies and practices, including their scheduling and staffing practices and policies. Since Class Members were clocked out during this time for their meal periods, this time was not recorded for payroll purposes and went unpaid.

27. Accordingly, Defendants failed to pay Plaintiff and Class Members for all hours worked where they were under the control of Defendants.

28. As a result of Defendants' failure and refusal to comply with California law, Plaintiff and Class Members are entitled to recover actual and liquidated damages for the unpaid time, plus injunctive relief and reasonable attorney's fees and costs. Lab. Code §§ 1194, 1197.1.

<u>SECOND CAUSE OF ACTION</u>

California Labor Code §§ 510 and 1198

Failure to Pay Overtime Wages

(Class Against Defendants)

29. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth herein.

30. California Labor Code §§ 510 and 1198 provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

31. Plaintiff and Class Members who work more than eight hours in a day or more than forty hours in a workweek are to be paid at the rate of time and one-half (1½) for all hours worked in excess of eight hours in a day or more than forty hours in a workweek. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including commissions, non-discretionary bonuses and incentive pay. *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 573 (2018), as modified (Apr. 25, 2018).

32. Throughout the Class Period, Plaintiff and other Class Members were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of eight hours on the seventh consecutive day of work in a workweek, and in excess of forty hours in a week.

33. Defendants knew or should have known that Plaintiff and Class Members did not receive overtime compensation. Because Plaintiff and Class Members sometimes worked shifts of more than eight hours a day or forty hours a week, they should have been adequately compensated at their appropriate overtime rate of pay. Accordingly, Defendants' failure to pay overtime compensation resulted in Plaintiff and Class Members being deprived of earned overtime wages.

34. Accordingly, Defendants' failure to pay overtime compensation resulted in Plaintiff and

Class Members being deprived of earned overtime wages. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

California Labor Code §§ 226.7, 512(a), and 1198

Failure to Provide Meal Periods or Premium Pay In Lieu Thereof

(Plaintiff and Class Against Defendants)

35. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth herein.

36. At all times relevant to this complaint, Defendants knew they were obligated to provide legally-compliant meal breaks to its non-exempt employees pursuant to Labor Code §§ 512 and 226.7. Labor Code § 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

37. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC. "An off-duty meal period, therefore, is one in which the employee is relieved of all duty during the 30-minute meal period . . .an employer's obligation is to provide an off-duty meal period: an uninterrupted 30–minute period during which the employee is relieved of all duty." *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035 (2012).

38. Defendants' policies and practices served to deprive the Class of a full 30-minute break period free of employer control or relieved of all duties. Upon information and belief, employees were required to skip breaks, interrupt their breaks, cut them short, take them after the fifth hour of work, work through them, or remain under Defendant's control during breaks due to Defendants' policies and practices.

39. Furthermore, as a matter of uniform and systemic policy, Defendants authorize non-exempt employees working a shift in excess of ten hours to receive only a single thirty-minute meal period

break rather than the two they are entitled to under law.

40. Accordingly, Plaintiff and Class Members were uniformly denied meal periods as a result of Defendants' formal policies and practices. By failing to consistently provide uninterrupted, off-duty 30-minute meal periods, Defendants violated the Labor Code as to Plaintiff and Class Members.

41. Pursuant to Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover from Defendants an additional hour of pay at their regular rates of pay for each shift in which a required meal period was not provided.

FOURTH CAUSE OF ACTION

California Labor Code §§ 226.7 and 1198

Failure to Provide Rest Periods or Premium Pay in Lieu thereof

(Plaintiff and Class Against Defendants)

42. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

43. At all times relevant to this complaint, Defendant knew it was obligated to provide compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

44. Labor Code § 226.7 provides:

> (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
>
> (b) If any employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

45. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any rest or meal period mandated by an applicable order of the IWC, including the Wage Orders. Employers must authorize and permit employees to be relieved of all duty during their rest and meal periods: "A rest period, in short, must be a period of rest." *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 834 (2016).

46. Additionally, the Wage Orders mandate that "[t]he authorize rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

47. Employees must also be free to leave the employer's premises during their rest period. *See id.* at 270 ("In the context of a 10-minute break that employers must provide during the work period, a broad and intrusive degree of control exists when an employer requires employees to remain on call and respond during breaks. An employee on call cannot take a brief walk—five minutes out, five minutes back—if at the farthest extent of the walk she or she is not in a position to respond. Employees similarly cannot use their 10 minutes to take care of other personal matters that require truly uninterrupted time."); *see also* Department of Industrial Relations, "Rest Periods," *available at https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm* ("Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.").

48. Defendants' policies and practices served to deprive the Class of the requisite number of compliant rest periods free of employer control based on their hours worked per shift. Upon information and belief, employees were required to skip breaks, interrupt their breaks, cut them short, work through them, or remain under Defendant's control during breaks due to Defendants' policies and practices.

49. Furthermore, as a matter of uniform and systemic policy, Defendants authorize non-exempt employees working shifts in excess of six hours to receive only a single ten-minute break rather than the two they are entitled to under law.

50. Accordingly, Defendants failed to authorize and permit compliant second rest periods as required by law.

51. Pursuant to the relevant Wage Order and Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover from Defendants an additional hour of pay at their regular rates of pay for each shift that a compliant rest period was not provided. Defendant was aware that its actions were a violation of applicable law but consistently refused to pay premium pay as required by law.

<u>FIFTH CAUSE OF ACTION</u>

California Labor Code § 227.3

Illegal Paid Vacation Policy

(Plaintiff and Class Against Defendants)

52. Plaintiff repeats, repleads, and incorporates by reference all allegations contained in the preceding paragraphs as though fully set forth herein.

53. "It is the public policy of the State of California that vacation pay is protected." DLSE Op. Ltr. (Sept. 24, 1990) at p. 3. More specifically, "[i]t is established that vacation pay is not a gratuity or a gift, but is, in effect, additional wages for services performed." *Suastez v. Plastic Dress-Up Co.*, 31 Cal.3d 774, 779 (1982) (citing *People v. Bishop*, 56 Cal.App.3d 8, 11 (1976)).[1]

54. This policy is encapsulated by Labor Code section 227.3, which provides that, "whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with [the employee's] contract of employment or employer policy respecting eligibility or time served." Lab. Code § 227.3.

55. Because vacation pay qualifies as vested wages, "an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination." *Id.* In interpreting these provisions, the Labor Commissioner and courts are directed to "apply the principles of equity and fairness."

56. The Labor Commissioner has repeatedly found that "California law *requires* that vacation be earned *day-by-day* and that it vest in that manner as well." DLSE Op. Ltr. (Aug. 18, 1993) (emphasis original). "The acceptable methods of granting vacation *must* be based on a proportionate accrual and *cannot have a forfeiture component*." DLSE Op. Ltr. (Mar. 16, 1987) (emphasis added).

[1] In interpreting section 227.3, the court in *Suastez* observed that employers may come up with new and creative ways of depriving employees of earned vacation wages. In light of this concern, "the 'frustration of purpose' doctrine can also afford relief" to employees whose employers impose onerous or inequitable conditions on an employee's right to earned vacation time. In general, the *Suastez* court noted, "California courts have already recognized that the principles of equity and justice weight in favor of granting relief to employees who are denied payment for earned vacation pay." *Suastez*, 31 Cal.3d at 783–84.

57. "If implementation of a 'cap' is a subterfuge to deny employees vacation or vacation benefits, the policy will not be recognized by the Labor Commissioner. DLSE has repeatedly found vacation policies which provide that all vacation must be taken in the year it is earned (or in a very limited period following the accrual period) are unfair and will not be enforced by the Division." DIR, Vacation FAQ *available at* https://www.dir.ca.gov/dlse/faq_vacation.htm.

58. Defendants' PTO policy illegally forced employees to forfeit accrued and vested PTO over time by illegally limiting the amount of carryover under that policy. Under Defendants' PTO policy, as incorporated in their Employee Handbook, employees are expressly prohibited by carrying over any unused vacation time or to receive payment for unused vacation time.

59. Defendants' policy denied Plaintiff and Class Members wages for earned paid time off and/or vacation hours.

60. Defendants knew or should have known that Plaintiff and Class Members were not being adequately and/or fully compensated for all time as required by law.

61. This conduct blatantly and willfully violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

62. Pursuant to California Labor Code section 1194.2, Plaintiff and Class Members are entitled to recover the amount of underpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon, along with other applicable penalties.

SIXTH CAUSE OF ACTION

California Labor Code §§ 226(a)/(f)/(h), 226.3, and 1174(d)

Failure to Provide and Maintain Accurate Records

(Plaintiff and Class Against Defendants)

63. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

64. Labor Code § 226 requires employers to furnish employees with an accurate, itemized statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the employee (for hourly-paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the employee and the last four

digits of her or her social security number; (7) the name and address of the legal entity that is the employer; *and* (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

65. At all times relevant to this complaint, Defendants' failure to list the correct hours of work and pay premium wages for missed meal and rest periods, regular and/or overtime wages for work-off-the-clock rendered Class Members' wage statements inaccurate by failing to accurately reflect gross and net wages earned.

66. Injury. Defendant knowingly and intentionally failed to comply with Labor Code § 226, causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly situated were injured by these failures because, among other things, they were confused about whether they were paid properly and/or they were misinformed about how much compensation was owed.

67. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result of not being provided with an accurate itemized wage statement is entitled to recover the greater of all actual damages suffered or fifty ($50) dollars for the initial violation and one-hundred ($100) dollars for each subsequent violation, up to $4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others similarly situated are entitled to injunctive relief to ensure Defendants' compliance with Labor Code § 226, as well as attorney's fees and costs of suit.

SEVENTH CAUSE OF ACTION

California Labor Code § 2802

Failure to Reimburse Necessary Business Expenses

(Plaintiff and Class Against Defendants)

68. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in this paragraph, all the allegations of this Complaint.

69. Labor Code section 2802 provides that "[a]n employer shall indemnify her or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her or her duties, or of her or her obedience to the directions of the employer." Lab. Code § 2802. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th

1137, 1144 (2014).

70. Defendants required Class Members to utilize their personal cell phones for work-related purposes, including answering texts and calls from their supervisors while at work or on a break, being assigned tasks, and general administrative matters. Defendants further failed to compensate their non-exempt employees for reasonable costs associated with utilizing their personal cell phones for work-related purposes. Defendants also required non-exempt employees working in remote positions to utilize their own internet services for work-related purposes without reimbursing the reasonable costs associated with their internet services.

71. Defendants further failed to reimburse a reasonable portion of the Class Members' cellphone and internet related expenses despite requiring the use of the device and/or applications that required a data plan. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 ("We hold that when employees must use their personal cell phones for work related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.").

72. By unlawfully failing to pay Plaintiff and Class Members, Defendants are liable for a reasonable portion of the incurred expenses, to be determined upon trial, plus reasonable attorneys' fees and costs. Lab. Code § 2802.

EIGHTH CAUSE OF ACTION

California Labor Code §§ 558, 2698, et seq.

Private Attorneys General Act ("PAGA") Penalties

(Plaintiff and Class Against Defendants)

73. Plaintiff incorporates by reference all the allegations of this Complaint as though fully set forth herein.

74. Entitlement to Penalties. Under the California Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as a private attorney general, on behalf of herself and other current or former employees as well as the general public, to recover penalties for an employer's violations of the Labor Code and IWC Wage Orders. These penalties are in addition to any other relief available under the Labor Code and are allocated seventy-five percent to the

Labor and Workforce Development Agency and twenty-five percent to the affected employees.

75. These penalties may be "stacked" separately for each of Defendants' violations of the Labor Code. *See, e.g.*, *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17 n.77 (C.D. Cal. June 22, 2012) ("[F]ederal courts applying California law have concluded that stacking is appropriate."); *see also O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal. June 30, 2016) ("Finally, Plaintiff ignore the potential for stacking of PAGA penalties related to wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest breaks, minimum wage and overtime, and workers' compensation.").

76. Plaintiff is an "aggrieved employee" under PAGA, as she was employed by Defendant during the applicable statutory period and suffered the Labor Code violations alleged herein. Accordingly, she seeks to recover, on behalf of herself and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, including civil penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 227.3, 510, 512, 558, 1182.12, 1174, 1194, 1197, 1197.1, 1198, 2802, the relevant Industrial Wage Order, and California Code of Regulations, tit 8 § 3364, plus reasonable attorneys' fees and costs.

77. Representative Action. Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims.

78. Labor Code § 2699(a), which is part of PAGA, provides:

> 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 themselves or themselves and other current or former employees pursuant to the procedures specified in § 2699(a).

79. Penalties. Labor Code § 2699(f), which is part of PAGA, provides:

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

80. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to be paid by Defendant and allocated as required by PAGA in the following formula: (a) in an amount set forth as a civil penalty in the underlying statute; or (b) $100 per initial violation per employee per pay period, and $200 for each subsequent violation per employee per pay period.

81. Labor Code sections 1194.2 and 1197.1 authorizes employees to recover liquidated damages in an amount equal to the wages unlawfully withheld and interest thereon. Labor Code 1197.1 also authorized civil penalties as follows: $100 for any initial violation intentional committed per employee per pay period in which a violation occurs, and $250 per subsequent violation per employee per pay period in which a violation occurs, regardless of whether the first violation was intentional.

82. Plaintiff is also entitled to recover for herself, other aggrieved employees, and the State of California, civil penalties pursuant to Labor Code § 210 (entirely independent and apart form, any other penalty provided in this article) in the amount of $100 per employee per initial violation of the timely payment requirements of Labor Code § 240 (semimonthly payments) and $200 per employee for each subsequent violation, plus 25% of the amount unlawfully withheld.

83. Labor Code § 558 provides:

> (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
>
> > (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid

(2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid.

84. Plaintiff, the aggrieved employees, and the State of California are entitled to recover the maximum civil penalties allowed by law for the violations of the Labor Code and the relevant IWC Wage Order as alleged in this Complaint.

85. Procedural Requirements Met. Plaintiff electronically filed a notice of claims with the LWDA contemporaneously with this Complaint and sent a copy to Defendants by certified mail. Plaintiff has not received notice from the LWDA that it was exercising jurisdiction over the allegations set forth in the notice. As of 65 days from date of electronic filing, all requirements for administrative exhaustion for bringing these PAGA claims will have been met. Labor Code § 2699.3(a)(2).

NINTH CAUSE OF ACTION

California Business and Professions Code §§ 17200, et seq.

Unfair Competition Law

(Plaintiff and Class Against Defendants)

86. Plaintiff repeats and incorporate by reference every allegation in this complaint as if fully set forth herein.

87. Defendants are a "person" as defined by California Business & Professions Code § 17201, as each is a natural person, corporation, firm, partnership, joint stock company, and/or association.

88. Unlawful Business Practices. Defendants' knowing violations of the Labor Code, relevant IWC Wage Order, and California Code of Regulations, tit 8, § 3364 constitute an unlawful business practice as set forth in Business & Professions Code § 17200, *et seq.*[1]

89. Defendants' failure to abide by the laws discussed herein provide Defendant an unfair advantage over their competitors at the expense of their workers. Instead, Defendant cuts corners in the

---

[1] In *Solus Industrial Innovations, Inc. v. Superior Court of Orange County,* 4 Cal.5th 316 (2018), the California Supreme Court held that employees can sue their employers for workplace safety violations under the State's consumer protection laws, including California's Unfair Competition Law.

name of higher profits and at the expense of employee well-being. Defendants' action thereby constitutes an unfair, fraudulent, and/or unlawful business practice under Business & Professions Code § 17200, *et seq*.

90. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to stop Defendants' willful and ongoing misconduct, and to seek restitution of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices described herein. In addition, Plaintiff seeks an award of costs and attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

DEMAND FOR JURY TRIAL

91. Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays judgment as follows:

A. For an Order:
   a. Certifying the Class;
   b. Appointing Plaintiff as representative of the Class;
   c. Appointing Plaintiff's counsel as Class Counsel;

B. For actual and liquidated damages according to proof at trial;

C. For statutory and civil penalties and special damages, according to proof at trial;

D. For pre- and post-judgment interest on monetary damages;

E. For preliminary and permanent injunctive relief;

F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law; and

G. For such other relief as this Court deems just and proper.

Dated: June 21, 2024

Respectfully submitted,

KING & SIEGEL LLP

By: Elliot J. Siegel

Elliot J. Siegel, Esq.
Attorneys for Plaintiff and Putative Class

Dated: June 21, 2024

BARAHMAND LAW GROUP

By: */s/ Navid Barahmand*
Navid Barahmand, Esq.
Attorney for Plaintiff and Putative Class