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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
02/10/2025
Clerk of the Court
BY: SAHAR ENAYATI
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

DANAEE DIAZ, on behalf of herself, all
others similarly situated, and the State of
California as a private attorney general,

Plaintiff,

vs.

NIBBI BROS. INC., a California
Corporation; NIBBI BROS.
ASSOCIATES, INC., a California
Corporation; CONSTRUCTION
SECURITY USA, an entity of unknown
form; and DOES 1 through 100, inclusive,

Defendants.

Case No. CGC-24-618053

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. **FAILURE TO PAY OVERTIME WAGES (Lab. Code §§ 200-204, 218.6, 512, 558, 1194, 1198);**
2. **FAILURE TO COMPENSATE FOR ALL HOURS WORKED (Lab. Code §§ 200-204, 216, 225.5, 226, 500, 510, 558, 1197, 1198);**
3. **FAILURE TO PROVIDE MEAL PERIODS (Lab. Code §§ 226.7, 512);**
4. **FAILURE TO PROVIDE REST PERIODS (Lab. Code § 226.7);**
5. **FAILURE TO FURNISH COMPLIANT WAGE AND HOUR STATEMENTS (Lab. Code §§ 226(e), 226.3);**
6. **FAILURE TO REIMBURSE BUSINESS EXPENSES (Lab. Code § 2802);**
7. **FAILURE TO PAY FINAL WAGES ON TIME (Lab. Code §§ 201-204);**
8. **UNFAIR BUSINESS PRACTICES (Bus. & Prof. Code § 17200 *et seq.*); &**
9. **PRIVATE ATTORNEYS GENERAL ACT (Lab. Code § 2698, *et seq.*)**

JURY TRIAL DEMANDED

1 Plaintiff DANAEE DIAZ (“Plaintiff”), on behalf of herself, all others similarly situated
2 (“Class Members”), and the State of California, brings this Complaint against her former
3 employers, Defendants NIBBI BROS. INC., NIBBI BROS. ASSOCIATES, INC.,
4 CONSTRUCTION SECURITY USA, and DOES 1-100, inclusive (“Doe Defendants”)
5 (collectively “Defendants”) and hereby demands a jury trial on all causes of action. Plaintiff’s
6 allegations are as follows:

7 **PLAINTIFF**

8 1. At all times material herein, Plaintiff was and is a competent adult and resident of
9 the State of California. During all times relevant to this Complaint, Plaintiff was employed by
10 Defendants as a non-exempt hourly employee.

11 **DEFENDANTS**

12 2. At all times material herein, Defendant NIBBI BROS. INC was and is a California
13 corporation doing business in the State of California.

14 3. At all times material herein, Defendant NIBBI BROS. ASSOCIATES, INC was
15 and is a California corporation doing business in the State of California.

16 4. At all times material herein, Defendant CONSTRUCTION SECURITY USA was
17 and is an entity of unknown form doing business in the State of California.

18 5. The Defendants identified as DOES 1 through 100, inclusive, were, at all times
19 herein-mentioned, agents, business affiliates, successors- and/or predecessors-in-interest,
20 officers, directors, partners, and/or managing agents of some or each of the remaining Defendants.
21 Plaintiff is informed and believes and, on that basis, alleges that, at all times herein-mentioned,
22 each of the Defendants and the Defendants identified as DOES 1 through 100, inclusive,
23 employed, and/or exercised control over the wages, hours, and/or working conditions of Plaintiff
24 and Class Members throughout California. In doing the acts herein alleged, each Defendant is
25 liable and responsible to Plaintiff and Class Members for the acts of every other Defendant. The
26 true names and capacities of the Doe Defendants, whether individual, corporate, associate or
27 otherwise, are unknown to Plaintiff who therefore sues such Doe Defendants by fictitious names
28 pursuant to California Code of Civil Procedure § 474. Plaintiff is informed and believes that the

1 Doe Defendants are residents of the State of California. Plaintiff will amend this complaint to
2 show such Doe Defendants' true names and capacities when they are known.

3 6. Plaintiff is informed and believes and thereon alleges that, unless otherwise
4 indicated, each Defendant was the agent and/or employee of every other Defendant within the
5 course and scope of said agency and/or employment, with the knowledge and/or consent of said
6 Defendant.

7 7. Plaintiff is informed and believes and thereon alleges that Defendants NIBBI
8 BROS. INC. and NIBBI BROS. ASSOCIATES, INC. are liable for the claims alleged herein as
9 joint employers of Plaintiff and other similarly situated/aggrieved employees, pursuant to
10 California Labor Code Section 218.8, and/or pursuant to California Labor Code Section 2810.3.
11 Plaintiff is informed and believes that Defendants are client employers and that the work
12 performed by Plaintiff and other similarly situated/aggrieved employees was and is labor
13 performed within Defendants' usual course of business.

14 8. Plaintiff is informed and believes and, based thereon, alleges that, within the four
15 years prior to the filing of this Complaint (the "Class Period"), Defendants have employed over
16 five hundred Class Members who are entitled to, *inter alia*, timely payment for all hours worked,
17 including minimum wages and overtime rate of pay, meal and rest periods, and accurate
18 timekeeping and payroll documents, among other things.

19 **JURISDICTION AND VENUE**

20 9. This Court is the proper Court, and this action is properly filed in the Superior
21 Court for the State of California, County of San Francisco, because Plaintiff performed work for
22 Defendants in the County of San Francisco and Defendants employ Class Members in this
23 County.

24 10. This Court has jurisdiction over the Plaintiff's and Class Members' claims for
25 unpaid wages, meal and rest period violations, interest thereon, related penalties, injunctive and
26 other equitable relief, and attorneys' fees and costs pursuant to, *inter alia*, the applicable
27 California Industrial Welfare Commission, Wage Order, Title 8 of the California Code of
28 Regulations, Labor Code §§ 202, 203, 226, 226.7, 510, 512, 558, 1194, 1197, 1198, 2698-99, *et*

1 *seq.*, 2802, and/or California Code of Civil Procedure section 1021.5.

2 11. This Court also has jurisdiction over the Plaintiff's and Class Members' claims for
3 injunctive relief and restitution of ill-gotten benefits arising from Defendants' unlawful, unfair,
4 and/or fraudulent business practices under California Business and Professions Code § 17200 *et*
5 *seq.*

6 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 12. Plaintiff has satisfied all administrative requirements prior to adding a claim
8 pursuant to the Private Attorneys General Act, California Labor Code § 2698 *et seq.* On June 13,
9 2024, Plaintiff gave written notice by online filing to the Labor and Workforce Development
10 Agency ("LWDA") of Defendants' violations of various provisions of the California Labor Code
11 as alleged in this First Amended Complaint. On June 13, 2024, Plaintiff gave written notice by
12 certified mail to Defendants of Defendants' violations of various provisions of the California
13 Labor Code as alleged in this Complaint. Cal. Lab. Code § 2699.3(a)(1). Plaintiff has also paid
14 the \$75.00 filing fee to the LWDA. By August 17, 2024 – 65 days after Plaintiff gave written
15 notice to the LWDA - the LWDA did not respond. Cal. Lab. Code § 2699.3(a)(2)(A). Plaintiff
16 is therefore entitled to pursue her penalty claims pursuant to California Labor Code section 2699
17 *et seq.*, the Private Attorneys General Act. Cal. Lab. Code § 2699.3(a)(2)(C).

18 **FACTS COMMON TO PLAINTIFF'S CLASS ACTION CAUSES OF ACTION**

19 13. At all times relevant to the Complaint, Plaintiff was employed by Defendants as a
20 non-exempt hourly employee. Plaintiff is informed and believes that Defendants, individually
21 and collectively, exercised control over Plaintiff's wages, hours, and/or working conditions,
22 suffered and permitted Plaintiff to perform work for their benefit, and engaged Plaintiff to perform
23 work for them by, among other things, directing and supervising Plaintiff's work.

24 14. At all times relevant, Plaintiff and Class Members were non-exempt hourly
25 employees. As such, Plaintiff and Class Members were and are eligible for minimum wages and
26 overtime compensation.

27 15. Plaintiff and Class Members were not properly paid for all hours that they spent
28 working, including overtime hours worked despite routinely and consistently working more than

1 8 hours per day and 40 hours per week in violation of the California Labor Code. However,
2 Defendants failed to pay all overtime wages owing to Plaintiff and Class Members, and Plaintiff
3 and Class Members were underpaid for overtime.

4 16. At all times relevant, Plaintiff and Class Members were frequently not provided
5 with an opportunity to take a legally compliant meal period prior to the end of their fifth hour of
6 work. Plaintiff and Class Members routinely were required to miss their meal periods entirely,
7 work through their meal periods, or were required to take a truncated meal period. Plaintiff and
8 Class Members never received second meal periods when they worked shifts of 10 hours or more.

9 17. At all times relevant, Defendants failed to relieve Plaintiff and Class Members of
10 employer control during rest periods. Plaintiff and Class Members never received third rest
11 periods when they worked shifts of 10 hours or more.

12 18. Pursuant to California law, an employee is entitled to one ten-minute rest period if
13 required to work at least three and one-half hours, two ten-minute rest periods if required to work
14 more than six hours, and three ten-minute rest periods if required to work more than ten hours.
15 Pursuant to California law, an employee is entitled to one thirty-minute meal period if required to
16 work at least five hours and two thirty-minute meal periods if required to work at least ten hours.

17 19. Defendants did not consistently provide meal and rest periods because business
18 needs took precedence, routinely interfering with what should be break periods. If Plaintiff or
19 Class Members failed to address business needs at any time, including during breaks, they were
20 subject to discipline. Despite these policies and practices, Defendants have not paid any missed
21 meal or rest period premiums to Plaintiff or Class Members.

22 20. By requiring Plaintiff and Class Members to work off-the-clock during meal
23 periods, Defendants failed to pay Plaintiff and Class Members for all hours worked.

24 21. Defendants also failed to provide Plaintiff and Class Members with accurate
25 semimonthly itemized statements of the total number of hours worked by each, and all applicable
26 hourly rates in effect during each pay period, in violation of California Labor Code § 226 and/or
27 1174(d). In doing so, Defendants have not only failed to pay their workers the full amount of
28 compensation due, they have, until now, effectively shielded themselves from their employees'

1 scrutiny for their unlawful conduct by concealing the magnitude (e.g., the full number of hours
2 worked) and financial impact of their wrongdoing.

3 22. Defendants also failed to reimburse Plaintiff and Class Members for business
4 expenses that they incurred related to, among other things, the required use of their personal
5 cellular telephones for work-related purposes in violation of California Labor Code § 2802.

6 23. All policies and practices described herein were in place at all of Defendants'
7 business locations in California. As such, all Class Members were subject to these same policies
8 in violation of California law. Plaintiff is informed and believes that Defendants knowingly failed
9 to pay all wages owed (including overtime, minimum, and meal and rest period premium
10 payments), failed to provide meal and rest periods, failed to maintain and provide accurate time
11 and payroll records, failure to reimburse business expenses, and failed to pay final wages to Class
12 Members whose employment has ended, thereby enjoying a significant competitive edge over
13 other companies within its industry. Even after Plaintiff and Class Members were terminated or
14 voluntarily resigned, Defendants still failed to pay all wages owed upon separation, despite the
15 penalty provisions of California Labor Code §§ 201-204. More than 30 days have passed since
16 certain Class Members have left Defendants' employ, entitling those Class Members to the
17 maximum penalties.

18 24. In sum, Defendants failed to maintain time records accurately setting forth the
19 amount of hours that Plaintiff and Class Members worked. Defendants failed to pay for all hours
20 worked, including overtime hours worked. Defendants failed to provide meal and rest periods
21 and failed to make premium payments for missed meal and rest breaks. Defendants failed to issue
22 wage statements accounting for the number of hours actually worked by Plaintiff and Class
23 Members. Defendants failed to reimburse Plaintiff and Class Members for business expenses that
24 they incurred. Defendants also failed to timely pay all wages owing upon separation of
25 employment.

26 25. As a direct and proximate result of Defendants' unlawful conduct, as set forth
27 herein, Plaintiff and Class Members have sustained damages, as described above, including loss
28 of earnings for hours worked on behalf of Defendants, in an amount to be established at trial. As

a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Class Members are entitled to recover penalties/wages for failure to pay wages owed upon termination (pursuant to California Labor Code §§ 201-204 and 227.3), for failure to maintain and provide semimonthly itemized wage statements of hours worked and all applicable hourly rates (pursuant to California Labor Code § 226 and/or 1174) in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Class Members are also entitled to recover attorneys' fees, litigation costs, restitution of ill-gotten gains, and injunctive relief, pursuant to statute.

CALIFORNIA CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action on behalf of herself and as a class action on behalf of the following Classes and Subclass:

Class: *All persons employed by Defendants in the State of California in a non-exempt position who performed work for Defendants at any time within four years prior to the date of the filing of this Complaint.*

Terminated Subclass: *All persons who are eligible for membership in the Class and who are no longer employed by Defendants at any time within four years prior to the date of the filing of this Complaint.*

27. Defendants and their officers and directors are excluded from any class defined in the preceding paragraphs.

28. This action has been brought and may properly be maintained as a class action under California Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable. The classes and subclasses defined herein satisfy all class action requirements:

- a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The Class Members are so numerous that joinder of all Class Members is impractical, if not impossible, insofar as Plaintiff is informed and believes and, on that basis, alleges that the total number of Class Members is, at least, in the hundreds of individuals. Membership in the Classes will be determined by and upon analysis of employee and payroll records, among other records maintained by Defendants.
- b. Commonality: Plaintiff and Class Members share a community of interest in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:

- 1) Whether Defendants violated one or more of California's Wage Orders, the California Labor Code and/or California Business and Professions Code § 17200 *et seq.* by failing to pay overtime wages due to Plaintiff and Class Members at the proper rate of pay;
 - 2) Whether Defendants violated one or more of California's Wage Orders, the California Labor Code and/or California Business and Professions Code § 17200 *et seq.* by failing to pay minimum wages due to Plaintiff and Class Members at the proper rate of pay
 - 3) Whether Defendants violated one or more of California's Wage Orders, the California Labor Code and/or California Business and Professions Code § 17200 *et seq.* by failing to authorize and permit meal periods;
 - 4) Whether Defendants violated one or more of California's Wage Orders, the California Labor Code and/or California Business and Professions Code § 17200 *et seq.* by failing to authorize and permit rest periods;
 - 5) Whether Defendants violated one or more of California's Wage Orders, the California Labor Code and/or California Business and Professions Code § 17200 *et seq.* by failing to pay Plaintiff and Class Members for all hours worked, including overtime hours worked;
 - 6) Whether Defendants violated California Labor Code § 2802 and/or California Business and Professions Code § 17200 *et seq.* by failing to reimburse Plaintiff and Class Members for necessary business expenses that they incurred.
 - 7) Whether Defendants violated California Labor Code §§ 201-204 by failing to pay all wages due and owing to Plaintiff and Class Members upon separation of employment;
 - 8) Whether Defendants violated California Labor Code § 226 by failing to provide accurate semi-monthly itemized wage statements to Plaintiff and Class Members stating the total hours worked and all applicable hourly rates in effect during each relevant pay period, among other things.
- c. Typicality: Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and all Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of state law, as alleged herein.
- d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes, or may make it, impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests. Additionally, a class action will allow resolution of multiple claims in one forum where evidence is shared which will conserve judicial resources and the resources of the parties.
- e. Adequacy of Representation: Plaintiff is an adequate representative of the Classes, in that Plaintiff's claims are typical of those of the Classes and

Plaintiff has the same interests in the litigation of this case as Class Members. Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel experienced in wage and hour litigation in California. Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Classes as a whole. Plaintiff anticipates no management difficulties in this litigation.

29. This action is appropriate and practical as a class action because the prosecution of individual actions for each Class Member would likely result in inconsistent and varying rulings that could and likely would impede the interests of other Class Members in protecting their rights, as well as potentially establishing incompatible patterns of conduct for Defendants.

FIRST CAUSE OF ACTION
FAILURE TO PROPERLY PAY OVERTIME WAGES
(Lab. Code §§ 200-204, 218.6, 512, 558, 1194, 1198; IWC Wage Orders)
(*On behalf of Plaintiff and All Class Members against Defendants*)

30. Plaintiff and Class Members incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

31. Plaintiff and Class Members were employed by Defendants within the State of California.

32. Labor Code § 510 defines a day's work as 8 hours and states that any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the regular rate of pay. Pursuant to Labor Code § 1194(a), a plaintiff may bring a civil action for overtime wages to recover wages, interest, penalties, attorney's fees, and costs.

33. Plaintiff and Class Members are not exempt from receiving overtime compensation. Defendants required Plaintiff and Class Members to work in excess of 8 hours per day, and/or in excess of 40 hours per week without paying the applicable overtime rates.

34. Plaintiff and Class Members were entitled to receive one-and-one half times their regular rate of pay for each hour worked past 8 hours in one day, one-and-one half times their regular rate of pay for each hour worked past 40 hours in one week, and twice the regular rate of pay for each hour worked past 12 hours in one day and for all hours over 8 during their seventh consecutive day of work in one week.

1 35. Defendants violated Labor Code §§ 510, 1194, and 1198 and IWC Wage Orders
2 when they failed to pay Plaintiff and Class Members the proper overtime rate for work performed
3 in excess of 8 hours per day and/or for work performed in excess of 40 hours per week, within
4 the time frame set forth under the law. By requiring Plaintiff and Class Members to work off-the-
5 clock, Defendants violated these same provisions. As a consequence for violating Labor Code §§
6 510, 1194, 1198, and IWC Wage Orders, Defendants are liable to Plaintiff and Class Members
7 for unpaid overtime wages.

8 36. At all relevant times, Defendants were aware of, and were under a duty to comply
9 with the wage and overtime provisions of the California Labor Code, including, but not limited
10 to California Labor Code §§ 200 *et seq.*, 510, 1194, and 1198. Defendants violated Labor Code
11 § 204 when they failed to pay Plaintiff and Class Members all wages earned for labor in excess
12 of the normal work period no later than the pay day for the next regular payroll period.

13 37. Plaintiff and Class Members seek and are entitled to interest on all due and unpaid
14 wages pursuant to Labor Code § 218.6.

15 38. Pursuant to Labor Code § 1194, Plaintiff and Class Members seek to recover in a
16 civil action the unpaid balance of the full amount of the unpaid overtime compensation, including
17 interest thereon, reasonable attorneys' fees, and costs of suit.

18 **SECOND CAUSE OF ACTION**
19 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**
20 (Lab. Code §§ 200-204, 216, 225.5, 226, 500, 510, 558, 1197, 1198)
 (On behalf of Plaintiff and All Class Members against all Defendants)

21 39. Plaintiff and Class Members incorporate in this cause of action each and every
22 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
23 herein.

24 40. Defendants were required to compensate Plaintiff and Class Members for all hours
25 worked pursuant to the applicable Industrial Welfare Commission Wage Order and Labor Code
26 §§ 200-204, 216, 225.5, 500, 510, 558, 1197, and 1198.

27 41. Plaintiff and Class Members routinely performed work for Defendants "off-the-
28 clock" which resulted in Defendants underpaying Plaintiff and Class Members because they did

not accurately record the hours that Plaintiff and Class Members spent working.

42. Defendants refused to compensate Plaintiff and Class Members for some and/or all of the wages earned (including overtime and minimum wages), in violation of the applicable California Wage Order, Title 8 of the California Code of Regulations and the California Labor Code.

43. At all relevant times, Defendants were aware of, and were under a duty to comply with the wage and overtime provisions of the California Labor Code, including, but not limited to California Labor Code §§ 200-204, 216, 225.5, 500, 510, 558, 1197, and 1198. Plaintiff and Class Members have been deprived of their rightfully earned compensation as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff and Class Members are entitled to recover compensation for all hours worked, in addition to reasonable attorney's fees and costs of suit.

44. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Class Members have sustained damages, including loss of earnings for hours worked, including overtime hours worked, on behalf of Defendants, in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

**THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS**

(Lab. Code §§ 226.7, 512; IWC Wage Orders)
(On behalf of Plaintiff and All Class Members against Defendants)

45. Plaintiff and Class Members incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

46. At all relevant times, Defendants were aware of and were under a duty to comply with California Labor Code §§ 226.7 and 512.

47. California Labor Code § 226.7(b-c) provides that "(b) [a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission. . . . (c) If an employer fails to provide an employee a meal or rest or recovery period

1 in accordance with a state law, including, but not limited to, an applicable statute or applicable
2 regulation, standard, or order of the Industrial Welfare Commission . . . the employer shall pay
3 the employee one additional hour of pay at the employee's regular rate of compensation for each
4 work day that the meal or rest period is not provided."

5 48. California Labor Code § 512(a) provides that "[a]n employer shall not employ an
6 employee for a work period of more than five hours per day without providing the employee with
7 a meal period of not less than 30 minutes, except that if the total work period per day of the
8 employee is no more than six hours, the meal period may be waived by mutual consent of both
9 the employer and employee. An employer shall not employ an employee for a work period of
10 more than 10 hours per day without providing the employee with a second meal period of not less
11 than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal
12 period may be waived by mutual consent of the employer and the employee only if the first meal
13 period was not waived."

14 49. Section 11 of the applicable Wage Order provides that "(A) [n]o employer shall
15 employ any person for a work period of more than five (5) hours without a meal period of not less
16 than 30 minutes . . . (B) [a]n employer may not employ an employee for a work period of more
17 than ten (10) hours per day without providing the employee with a second meal period of not less
18 than 30 minutes . . . and (D) [i]f an employer fails to provide an employee a meal period in
19 accordance with the applicable provisions of this order, the employer shall pay the employee one
20 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
21 period is not provided."

22 50. Defendants routinely failed to authorize and permit meal periods by failing to
23 inform Plaintiff and Class Members of their entitlement to meal periods. Despite Plaintiff and
24 Class Members routinely missing their meal periods or having to take short or interrupted meal
25 periods in order to complete their work, Defendants never provided Plaintiff and Class Members
26 with meal period premium payments.

27 51. By failing to provide uninterrupted and unrestricted meal periods, Defendant
28 violated California Labor Code §§ 226.7 and 512, and section 11 of the applicable IWC Wage

Order.

52. By failing to consistently (1) provide meal breaks within the first five hours of a work shift, and (2) provide uninterrupted thirty-minute meal periods, Defendants violated the California Labor Code and section 11 of the applicable IWC Wage Order.

53. At all relevant times herein, Defendants required Plaintiff and Class Members to work shifts of more than ten (10) hours without a second meal period of not less than 30 minutes. Defendants thus required Plaintiff and Class Members to work for longer hours than those fixed, or under conditions prohibited by order of the IWC, in violation of those orders.

54. Despite failing to authorize and permit compliant meal periods, Defendants failed to compensate Plaintiff and Class Members for missed meal periods as required by Cal. Labor Code §§ 226.7, 512, and other applicable sections of the Labor Code and applicable Industrial Wage Order. Plaintiff is informed and believes, and on that basis alleges, that Defendants have never paid one hour of premium compensation to Plaintiff and/or Class Members for missed meal periods.

55. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and Class Members have sustained damages, including unpaid meal period premiums, in an amount to be established at trial.

56. Plaintiff and Class Members are not exempt from meal period requirements.

57. Plaintiff and Class Members did not willfully waive, through mutual consent with Defendants, any such meal periods.

58. Plaintiff and Class Members have been deprived of their rightfully earned compensation for meal periods as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff and Class Members are entitled to recover such amounts pursuant to California Labor Code § 226.7(b), plus interest thereon, attorneys' fees, and costs of suit.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS

(Lab. Code § 226.7; IWC Wage Orders)
(On behalf of Plaintiff and All Class Members against Defendants)

59. Plaintiff and Class Members incorporate in this cause of action each and every

1 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
2 herein.

3 60. At all relevant times, Defendants were aware of and were under a duty to comply
4 with California Labor Code § 226.7.

5 61. California Labor Code § 226.7(b-c) provides that “(b) [a]n employer shall not
6 require an employee to work during a meal or rest or recovery period mandated pursuant to an
7 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
8 Commission. . . . (c) If an employer fails to provide an employee a meal or rest or recovery period
9 in accordance with a state law, including, but not limited to, an applicable statute or applicable
10 regulation, standard, or order of the Industrial Welfare Commission . . . the employer shall pay
11 the employee one additional hour of pay at the employee’s regular rate of compensation for each
12 work day that the meal or rest period is not provided.”

13 62. Section 12 of the applicable Wage Order provides that “(A) [e]very employer shall
14 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
15 the middle of each work period. The authorized rest period time shall be based on the total hours
16 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
17 thereof . . . (B) [i]f an employer fails to provide an employee a rest period in accordance with the
18 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at
19 the employee’s regular rate of compensation for each workday that the rest period is not provided.”

20 63. Defendants routinely failed to authorize and permit rest periods by failing to
21 inform Plaintiff and Class Members of their entitlement to rest periods and also by requiring them
22 to work through rest periods.

23 64. By failing to provide uninterrupted and unrestricted rest periods, Defendants
24 violated California Labor Code § 226.7, and section 12 of the applicable IWC Wage Order.

25 65. At all relevant times herein, Defendants required Plaintiff and Class Members to
26 work for shifts of more than ten (10) hours without a timely third rest period. Defendants failed
27 to compensate Plaintiff and Class Members for missed rest periods as required by Cal. Labor
28 Code § 226.7, and other applicable sections of the Labor Code and applicable Industrial Wage

Order. Defendants thus required Plaintiff and Class Members to work for longer hours than those fixed, or under conditions prohibited by order of the IWC, in violation of those orders.

66. Despite failing to authorize and permit compliant rest periods, Defendants refused to provide Plaintiff and Class Members with one hour of compensation for these violations as mandated by California law. Plaintiff is informed and believes, and on that basis alleges, that Defendants have never paid a one hour of premium compensation to Plaintiff and/or Class Members for missed rest breaks.

67. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and Class Members have sustained damages, including unpaid rest period premiums, in an amount to be established at trial.

68. Plaintiff and Class Members are not exempt from rest period requirements.

69. Plaintiff and Class Members have been deprived of their rightfully earned compensation for rest periods as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff and Class Members are entitled to recover such amounts pursuant to California Labor Code § 226.7(b), plus interest thereon, attorneys' fees, and costs of suit.

FIFTH CAUSE OF ACTION
FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS
(Lab. Code §§ 226(e), 226.3)
(On behalf of Plaintiff and All Class Members against Defendants)

70. Plaintiff and Class Members incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

71. California Labor Code § 226(a) requires an employer to furnish its employees with accurate itemized wage statements in writing, showing: (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the 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.

72. Defendants failed to provide Plaintiff and Class Members with timely and accurate wage and hour statements showing: (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and/or (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.

73. Plaintiff and Class Members were injured by Defendants' failure to provide wage statements, because, *inter alia*, Plaintiff and Class Members were not paid for all hours worked at the appropriate rate of pay, including overtime hours worked, and thus suffered monetary damages due to Defendants' policies and practices alleged herein.

74. Defendants are liable for damages and statutory penalties pursuant to California Labor Code § 226, in amounts to be established at trial, as well as attorneys' fees and costs, pursuant to statute.

SIXTH CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES

(Lab. Code §2802)

(On behalf of Plaintiff and Class Members against Defendants)

75. Plaintiff and Class Members incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

76. California Labor Code § 2802 requires an employer to reimburse its employees for

1 all necessary business expenditures incurred by the employee in direct consequence of the
2 discharge of his or her job duties or in direct consequence of his or her obedience to the direction
3 of the employer.

4 77. Defendants have intentionally and willfully failed to reimburse Plaintiff and Class
5 Members for all necessary business related expenses and costs. Plaintiff and Class Members are
6 entitled to recover from Defendants their business related expenses and costs incurred during the
7 course and scope of their employment, plus interest accrued from the date on which the employee
8 incurred the necessary expenditures at the same rate as judgments in civil actions in the State of
9 California.

10 **SEVENTH CAUSE OF ACTION**
11 **FAILURE TO PAY FINAL WAGES ON TIME**

(Lab. Code §§ 201-204)

12 *(On behalf of Plaintiff and Terminated Subclass Members against Defendants)*

13 78. Plaintiff and Class Members incorporate in this cause of action each and every
14 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
15 herein.

16 79. California Labor Code § 201 provides that all earned and unpaid wages of an
17 employee who is discharged are due and payable immediately at the time of discharge. California
18 Labor Code § 202 provides that all earned and unpaid wages of an employee who resigns are due
19 and payable immediately if the employee provided at least seventy-two hours' notice; otherwise,
20 wages of an employee who resigns are due within seventy-two hours of resignation.

21 80. At all relevant times herein, Defendants failed to pay Terminated Subclass
22 Members, including Plaintiff, all accrued wages and other compensation owing immediately upon
23 termination or within seventy-two hours of resignation, as required by the California Labor Code.

24 81. Based on Defendants' conduct as alleged herein, Defendants are liable for statutory
25 penalties pursuant to California Labor Code § 203 in amounts to be established at trial, as well as
26 attorneys' fees and costs, pursuant to statute.

EIGHTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(Bus. & Prof. Code § 17200 *et seq.*)

(On behalf of Plaintiff and All Class Members against Defendants)

82. Plaintiff and Class Members incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

83. Plaintiff -- on behalf of herself, on behalf of the general public, and on behalf of Class Members -- brings this unfair business practices claim pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and Class Members. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Cal. Code of Civil Procedure § 1021.5.

84. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

85. Business & Professions Code § 17200, *et seq.* prohibits unlawful and unfair business practices.

86. California’s wage and hour laws express fundamental public policies. Providing employees with proper wages and compensation are fundamental public policies of the State of California. Labor Code § 90.5(a) articulates the public policies of California to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and their employees from competitors who lower their costs by failing to comply with minimum labor standards.

87. Defendants have violated statutes and public policies as alleged herein. Through the conduct alleged herein, Defendants have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200, *et seq.*, depriving Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and privileges guaranteed

1 to all employees under law.

2 88. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
3 violation of Business & Professions Code § 17200, *et seq.*

4 89. Defendants, by engaging in the conduct herein alleged, either knew or in the
5 exercise of reasonable care, should have known that the conduct was unlawful. As such, it is a
6 violation of Business & Professions Code § 17200, *et seq.*

7 90. As a proximate result of Defendants' conduct, Plaintiff and Class Members have
8 been damaged in a sum as may be proven.

9 91. Unless restrained, Defendants will continue to engage in the unlawful conduct as
10 alleged above. Pursuant to the Business & Professions Code, this Court should make such orders
11 or judgment, including the appointment of a receiver, as may be necessary to prevent the use or
12 employment by Defendants, their agents, or employees, of any unlawful or deceptive practices
13 prohibited by the Business & Professions Code, and/or, including by not limited to, restitution
14 and disgorgement of profits which may be necessary to restore Plaintiff and Class Members the
15 money Defendants have unlawfully failed to pay.

16 **NINTH CAUSE OF ACTION**
17 **VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**
18 (Lab. Code § 2698 *et seq.*)
(On behalf of Plaintiff and all Class Members against Defendants)

19 92. Plaintiff and Class Members incorporate in this cause of action each and every
20 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
21 herein.

22 93. Plaintiff is an "aggrieved employee" under the California Labor Code Private
23 Attorneys General Act ("PAGA") as he was employed by Defendants during the applicable
24 statutory period and suffered one or more of the Labor Code violations alleged herein. As such,
25 he seeks to recover, on behalf of herself and all other current and former aggrieved employees of
26 Defendants, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

27 94. Plaintiff seeks to recover the PAGA civil penalties through a representative action
28 as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th

969 (2009).

95. Plaintiff alleges that Defendants violated the provisions detailed herein, and thus seeks to enforce civil penalties against Defendants for these violations. The PAGA allows a private individual to recover civil penalties previously only recoverable by the State. Although some of the labor provisions referenced herein do not themselves provide the amount of any penalty, the PAGA states that for all provisions of the Labor Code for which no civil penalty is established, including but not limited to the provisions referenced herein, the penalty shall be 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. Accordingly, these are the penalties that Plaintiff seeks to enforce to the extent civil penalties are not already provided for in the Labor Code. If the Labor Code already provides penalties for particular violations, Plaintiff seeks those penalties.

96. Plaintiff is also entitled to recover for herself, other aggrieved employees, and the State of California, civil penalties pursuant to California Labor Code § 210 in the amount of \$100 per employee per initial violation of the timely payment requirements of California Labor Code § 204 and \$200 per employee for each subsequent violation, plus 25% of the amount unlawfully withheld. Plaintiff seeks to pursue remedies pursuant to PAGA for these violations.

97. California Labor Code § 226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation under California Labor Code § 226(a).

98. Pursuant to California Labor Code § 203, for an employer who willfully fails to pay any wages of an employee who is discharged or quits, that employee's wages shall continue as a penalty from the due date at the same rate until paid, but shall not continue for more than thirty (30) days. California Labor Code § 256 imposes a civil penalty in an amount not exceeding thirty (30) days pay as waiting time under the terms of California Labor Code § 203.

99. California Labor Code § 558 Provides: "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

1 provision regulating hours and days of work in any order of the Industrial Welfare Commission
2 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
3 each underpaid employee for each pay period for which the employee was underpaid in addition
4 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
5 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
6 was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages
7 recovered pursuant to this section shall be paid to the affected employee.”

8 100. Under California Labor Code § 1174.5, Defendants are subject to a civil penalty
9 of five hundred dollars (\$500) for failing to keep records as required by section 1174(d).

10 101. California Labor Code § 2698 *et seq.* imposes a civil penalty of one hundred
11 dollars (\$100) per pay period, per aggrieved employee for the initial violation of California Labor
12 Code §§ 204, 510, 512, 1174, 1194, 1198 and two hundred dollars (\$200) for each aggrieved
13 employee per pay period for each subsequent violation.

14 102. Plaintiff has fully complied with the procedural requirements specified in
15 California Labor Code § 2699.3 as to each of the alleged violations. Plaintiff is therefore entitled
16 to pursue her penalty claims pursuant to California Labor Code section 2699 *et seq.*, the Private
17 Attorneys General Act. Cal. Lab. Code § 2699.3(a)(2)(C).

18 103. Enforcement of statutory provisions to protect workers and to ensure proper and
19 prompt payment of wages is a fundamental public interest. Plaintiff’s successful enforcement of
20 important rights affecting the public interest will confer a significant benefit upon the general
21 public. Private enforcement of these rights is necessary, as no public agency has pursued
22 enforcement.

23 104. As a result of the violations alleged, Plaintiff, as an aggrieved employee on behalf
24 of herself and other similarly situated employees employed by Defendants, seeks all civil penalties
25 available pursuant to California Labor Code § 2699, including all civil penalties, attorneys’ fees,
26 expenses, and costs of suit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying this action as a class action on behalf of the classes defined herein;

2. For an order designating Plaintiff as representative of the Classes as described herein;

3. For an order appointing Counsel for Plaintiff as Class Counsel;

4. That this Court award damages, restitution, statutory penalties, and civil penalties to be paid by Defendants for the causes of action alleged herein;

5. That this Court award actual damages, compensatory damages, compensation for all hours worked but not paid, special damages according to proof, and general damages in amounts according to proof and in no event in an amount less than the jurisdictional limit of this court, as well as restitutionary relief to Plaintiff and Class Members of all monies due to Plaintiff and Class Members from the unlawful business practices of Defendants;

6. That this Court award all available injunctive relief, including that available under Labor Code section 226(h) and Business and Professions Code § 17203;

7. That this Court award penalties and liquidated damages including, but not limited to, those available under Labor Code §§ 203, 226, 226.7, and 1194.2;

8. For waiting time penalties pursuant to Labor Code sections 203 and 206;

9. For penalties pursuant to Labor Code sections 201, 226, 556, 1174(d), 1194, 1194.2, and 2698 *et seq.*, and any and all other provisions of the Labor Code which provide for penalties as a result of the conduct alleged herein;

10. For statutory penalties pursuant to, among others, the Private Attorney General Act;

11. That this Court award statutory attorneys' fees and costs, including reasonable attorneys' fees and expert fees, including those available under Labor Code §§ 218.5, 226(e)(1), 226(h), 1194, and 2698 *et seq.*, and other provisions of the Labor Code, Government Code, and

1 “private attorney general” statutes contained in Code of Civil Procedure section 1021.5;

2 12. That this Court award prejudgment and post-judgment interest according to any
3 applicable provision of law or as otherwise permitted by law; and

4 13. That this Court award such other and further relief as the Court deems just and
5 proper.

6 **JURY DEMAND**

7 Plaintiff hereby demands a jury trial on all issues and causes of action.

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9 Respectfully submitted,
Dated: February 10, 2025 EMPLOYMENT LAWYERS

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13 _____
14 Leonard Emma
15 Cody Stroman
16 Attorneys for Plaintiff
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