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 Superior Court of California
 County of Los Angeles
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David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANDREA GARCIA MARROQUIN, as an
 individual and on behalf of all others similarly
 situated,

Plaintiff,

vs.

ROCKSTAR STAFFING LLC, a California
 Limited Liability Company; MANHATTAN
 BEACH HOTEL TRS, LLC D.B.A.
 WESTDRIFT, a Delaware Limited Liability
 Company; and DOES 1 through 100,

Defendants.

CASE NO.: 24STCV14170

**FIRST AMENDED CLASS AND
 REPRESENTATIVE ACTION
 COMPLAINT:**

- (1) **FAILURE TO PAY ALL OVERTIME
 WAGES (LABOR CODE §§ 204, 510,
 558, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
 (LABOR CODE §§ 1182.12, 1194,
 1194.2, 1197);**
- (3) **MEAL PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7, 512, 558);**
- (4) **REST PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7, 516, 558);**
- (5) **FAILURE TO REIMBURSE
 NECESSARY BUSINESS EXPENSES
 (LABOR CODE §§ 2802, 2804);**
- (6) **WAGE STATEMENT VIOLATIONS
 (LABOR CODE §226 *et seq.*);**
- (7) **UNFAIR COMPETITION (BUS &
 PROF CODE § 17200 *et seq.*); and**
- (8) **CIVIL PENALTIES UNDER THE
 PRIVATE ATTORNEYS GENERAL
 ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
 UNLIMITED CIVIL CASE**

1 Plaintiff Andrea Garcia Marroquin (“Plaintiff”), on behalf of herself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Rockstar Staffing LLC, a California Limited Liability Company;
4 Manhattan Beach Hotel TRS, LLC d.b.a. Westdrift, a Delaware Limited Liability Company; and
5 Does 1 through 100, inclusive (collectively “Defendants”), and on information and belief alleges
6 as follows:

7 **JURISDICTION**

8 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
9 action for recovery of unpaid wages, penalties, and unreimbursed expenses under California
10 Labor Code §§ 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
11 2802, 2804, and 2698 *et seq.*, and California Business and Professions Code § 17200 *et. seq.*
12 (“Unfair Competition Law”), and Industrial Welfare Commission Wage Order 5 (“Wage Order
13 5”) in addition to seeking declaratory relief, injunctive relief, and restitution. This Complaint is
14 brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
15 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
16 this Court’s jurisdictional minimum.

17 **VENUE**

18 2. Venue is proper in this judicial district pursuant to California Code of Civil
19 Procedure §§ 395(a) and 395.5, as Defendants’ principal place of business is located in the
20 County of Los Angeles. Defendants own, maintain offices, transact business, have an agent or
21 agents within the County of Los Angeles, and/or otherwise are found within the County of Los
22 Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of
23 process.

24 **THE PARTIES**

25 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
26 Plaintiff was, and currently is, a California resident, residing in the County of Los Angeles.
27 During the four years immediately preceding the filing of the Complaint in this action, and within
28 the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was

1 employed by Defendants as a non-exempt employee in Los Angeles County. Plaintiff was, and
2 is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or
3 property, and has been deprived of the rights guaranteed to her by California Labor Code §§ 204,
4 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698
5 *et seq.*, Unfair Competition Law, and Wage Order 5 which sets employment standards for the
6 "Public Housekeeping Industry."

7 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
8 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
9 continue to do) business within the County of Los Angeles by operating a hotel, and employed
10 Plaintiff and other, similarly situated non-exempt employees within Los Angeles County and the
11 state of California and, therefore, were (and are) doing business in Los Angeles County and the
12 State of California.

13 5. Plaintiff does not know the true names or capacities, whether individual, partner,
14 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
15 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
16 further amend this Complaint when such true names and capacities are discovered. Plaintiff is
17 informed and believes, and based thereon alleges, that each of said fictitious defendants, whether
18 individual, partner, or corporate, were responsible in some manner for the acts and omissions
19 alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) to be subject
20 to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

21 6. Plaintiff is informed and believes, and thereon alleges, that all Defendants,
22 however designated whether by real or fictitious name, were and are in some manner responsible
23 for the events, happenings, occurrence and instrumentalities upon and about which these claims
24 are made. At all relevant times mentioned herein, Defendants were and are the employers of
25 Plaintiff and all members of the Classes.

26 7. At all times herein mentioned, each of said Defendants participated in the doing
27 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
28 Defendants, and each of them, were the agents, servants, and employees of each and every one

1 of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
2 were acting within the course and scope of said agency and employment. Defendants, and each
3 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
4 omissions complained of herein.

5 8. At all times mentioned herein, Defendants, and each of them, were members of
6 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
7 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
8 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
9 members of the Classes.

10 **GENERAL FACTUAL ALLEGATIONS**

11 9. Defendant Rockstar Staffing operates a hotel staffing agency in California.
12 Defendant Manhattan Beach Hotel TRS, LLC d.b.a. Westdrift operates a hotel in California.
13 Plaintiff has been employed by Defendants as a non-exempt employee from approximately June
14 2023, until commencing a medical leave of absence in approximately February 2024. Unless
15 otherwise specified, all allegations herein occurred during Plaintiff's employment with
16 Defendants.

17 10. Defendants have failed to compensate Plaintiff and other non-exempt employees
18 for all hours actually worked, including all hours subject to the control of Defendants and/or
19 suffered or permitted to work, resulting in unpaid minimum and overtime wages. Specifically,
20 Defendants require Plaintiff and other non-exempt employees to clock in and out using a
21 timeclock located by the entrance. Upon information and belief, Plaintiff and other non-exempt
22 employees had to wait in line to clock in and out, but Defendants have failed to compensate
23 Plaintiff and other non-exempt employees for the time spent waiting in line while subject to the
24 control of Defendants. As a result, Defendants have failed to compensate Plaintiff and other non-
25 exempt employees for all minimum and overtime wages owed.

26 11. Plaintiff has routinely worked in excess of 8.0 hours per workday and/or 40.0
27 hours per workweek but has not received overtime compensation equal to one and one-half times
28 her regular rate of pay for working overtime hours. Specifically, Plaintiff and other non-exempt

employees earn non-discretionary incentive bonuses and other forms of pay that cannot be excluded from the regular rate of pay as a matter of law, including but not limited to, payments denoted in their wage statements as “Referral Bonus” (hereinafter collectively referred to as “Incentive Pay”). As a result of paying Plaintiff and other non-exempt employees Incentive Pay, Defendants have failed to properly calculate the regular rate of pay in pay periods when both Incentive Pay was earned and overtime hours were worked, resulting in unpaid overtime wages.

12. Defendants have failed to provide Plaintiff and other non-exempt employees with all legally compliant meal periods due to Defendants’ unlawful meal period policies and practices that fail to provide timely, uninterrupted, duty-free 30-minute meal periods before the end of the fifth hour of work. Specifically, Defendants have failed to provide a “net” of 30-minute meal periods as required by law for the same reasons discussed below pertaining to rest periods. For meal periods, Defendants require Plaintiff and other non-exempt employees to clock-in and out for their purported meal periods at a timeclock that was approximately five (5) minutes away from the rest area. Defendants have failed to account for the time that Plaintiff and other non-exempt employees are required to walk to reach the designated rest area after clocking-out and walk back from the designated rest area before clocking-in, thereby shortening their purported meal periods to less than 30 minutes “net” in the designated rest area away from the employee’s workstation. As a result, Plaintiff and other non-exempt employees have not always received an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code § 226.7.

13. Defendants have maintained unlawful rest period policies and practices that fail to authorize and permit Plaintiff and other non-exempt employees to take duty-free 10-minute rest periods for every four hours worked, or major fraction thereof. Specifically, due to work demands imposed by Defendants, Defendants have failed to authorize and permit Plaintiff and other non-exempt employees to take any legally compliant rest periods. Moreover, on occasions when Plaintiff and other non-exempt employees have taken a rest break, Defendants have failed to authorize and permit rest periods for a “net” of 10 minutes for every four hours worked, or major fraction thereof. Under California law, Defendants are required to authorize and permit a

1 “net” rest period of 10-minutes that begins when the employee reaches a rest area away from his
2 or her workstation and must be uninterrupted during the duration of the rest period. *See e.g.*,
3 Division of Labor Standards Enforcement Manual (“DLSE Manual”) §45.3.3; *Vaquero v.*
4 *Stoneledge Furniture LLC*, (2017) 9 Cal.App.5th 98, 111-112 (citing DLSE Manual § 45.3.3 for
5 the proposition that “the rest period begins when the employee reaches an area away from the
6 workstation that is appropriate for rest”); *Augustus v. ABM Security Services, Inc.*, (2016) 2
7 Cal.5th 257, 260 (“[D]uring required rest periods, employers must relieve their employees of all
8 duties and relinquish any control over how employees spend their break time”). Specifically, as
9 with meal periods, Defendants only authorize and permit Plaintiff and other non-exempt
10 employees to take rest periods of exactly 10 minutes in length, beginning the moment they leave
11 their workstation and requiring Plaintiff and other non-exempt employees to return to their
12 workstations by the completion of the 10-minutes. However, after leaving their workstations,
13 Plaintiff and other non-exempt employees are required to walk to and from the rest area, a
14 distance of approximately five (5) minutes, thereby shortening their purported rest periods to
15 less than 10 minutes “net” in the designated rest area away from the employee’s workstation.
16 Further, on occasions when Plaintiff and other non-exempt employees were not authorized and
17 permitted to take all lawful rest periods to which they were entitled, Defendants have regularly
18 failed to pay Plaintiff and other non-exempt employees an additional hour of premium pay at
19 their respective regular rates of pay for each workday in which a rest period violation occurred,
20 as required by Labor Code section 226.7.

21 14. Defendants have also failed to reimburse Plaintiff and other non-exempt
22 employees for the use of their personal cellular phones for necessary work activities, as required
23 by Labor Code § 2802. Specifically, for a portion of the relevant time period, Defendants
24 required Plaintiff and other non-exempt employees to communicate with coworkers and their
25 supervisors regarding work-related matters through their personal cellular phones. However,
26 Defendants fail to reimburse Plaintiff and other non-exempt employees for a reasonable portion
27 of their monthly cellular phone bills despite requiring the use of their personal cellular phones
28 for business purposes, as required by *Cochran v. Schwan’s Home Service, Inc.*, (2014) 228

1 Cal.App.4th 1137.

2 15. As a result of Defendants' failure to pay all minimum wages, overtime wages,
3 and meal and rest period premium wages owed, Defendants maintained inaccurate payroll
4 records, and issued inaccurate wage statements to Plaintiff and other non-exempt employees.

5 **CLASS ACTION ALLEGATIONS**

6 16. **Class Definitions:** Plaintiff brings this action on behalf of herself and the
7 following Classes pursuant to Code of Civil Procedure § 382:

8 a. The Overtime Class consists of consists of all of Defendants' current and former
9 non-exempt employees in California who worked more than 8.0 hours per day
10 and/or 40.0 hours per workweek and (i) received Incentive Pay; and/or (ii) were
11 subject to Defendants' timekeeping policies and/or practices for non-exempt
12 employees, during the four years immediately preceding the filing of this action
13 through the present.

14 b. The Minimum Wage Class consist of all Defendants' current and former non-
15 exempt employees in California who were subject to Defendants' timekeeping
16 policies and/or practices, during the four years immediately preceding the filing
17 of this action through the present.

18 c. The Meal Period Class consists of all Defendants' current and former non-exempt
19 employees in California who worked at least one shift in excess of 5.0 hours
20 without a meal period of at least 30-minutes commencing before the end of the
21 fifth hour of work, during the four years immediately preceding the filing of this
22 action through the present.

23 d. The Rest Period Class consists of all Defendants' current and former non-exempt
24 employees in California who worked at least one shift in excess of 3.5 hours,
25 during the four years immediately preceding the filing of this action through the
26 present.

27 e. The Reimbursement Class consists of all of Defendants' current and former non-
28 exempt employees in California who were subject to Defendants' reimbursement

policies/practices, during the four years immediately preceding the filing of this action through the present.

- f. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who received a wage statement during the one year immediately preceding the filing of this action through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

18. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants lawfully paid premium wages for all overtime hours worked to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198;
- ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants correctly paid meal and/or rest period premium payments for non-compliant meal and/or rest periods pursuant to Labor Code § 226.7;
- vi. Whether Defendants failed to reimburse members of the Reimbursement Class

for all necessary business expenses incurred pursuant to Labor Code §§ 2802 and 2804; and

- vii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226.

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping policies/practices, meal and rest period policies/practices, and expense reimbursement policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff, like the members of the Classes, was employed by Defendants in California during the applicable statute of limitations period and was deprived of all minimum wages owed, overtime wages owed, was not provided all legally required meal and rest periods, was not reimbursed for all necessary business expenses, and did not receive compliant wage statements.

21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to represent the members of the Classes and Plaintiff fully and adequately. Plaintiff's attorneys have prosecuted and defended numerous wage and hour class actions in state and federal courts in the past, and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

22. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws, and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and

1 conditions of employment. The nature of this action and the format of laws available to Plaintiff
2 and members of the Classes make the class action format a particularly efficient and appropriate
3 procedure to redress the violations alleged herein. If each employee was required to file an
4 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
5 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
6 their vastly superior financial and legal resources. Moreover, requiring each member of the
7 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
8 employees who would be disinclined to file an action against their former and/or current
9 employer for real and justifiable fear of retaliation and permanent damages to their careers at
10 subsequent employment. Further, the prosecution of separate actions by the individual class
11 members, even if possible, would create a substantial risk of inconsistent or varying verdicts or
12 adjudications with respect to the individual class members against Defendants herein; and which
13 would establish potentially incompatible standards of conduct for Defendants; and/or legal
14 determinations with respect to individual class members which would, as a practical matter, be
15 dispositive of the interest of the other class members not parties to adjudications or which would
16 substantially impair or impede the ability of the class members to protect their interests. Further,
17 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
18 individual prosecution considering all of the concomitant costs and expenses attending thereto.
19 As such, the Classes identified herein are maintainable under Code of Civil Procedure § 382.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY ALL OVERTIME WAGES**

22 **(AGAINST ALL DEFENDANTS)**

23 23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24 24. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
25 and 1198, which provide that non-exempt employees are entitled to all overtime wages and
26 compensation for hours worked, and provide a private right of action for the failure to pay all
27 overtime compensation for overtime work performed.

28 25. At all times relevant herein, Defendants were required to properly compensate

1 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
2 hours worked pursuant to Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an
3 employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay”
4 for work in excess of eight hours per workday and/or in excess of forty hours of work in the
5 workweek. Wage Order 5, § 3 also requires an employer to pay an employee double the
6 employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work
7 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants
8 caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the
9 Overtime Pay Class at one and one-half times their regular rate of pay for such hours.

10 26. The foregoing policies and practices alleged herein are unlawful and create
11 entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for
12 the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil
13 penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216,
14 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

15 **SECOND CAUSE OF ACTION**

16 **MINIMUM WAGE VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

18 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 28. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
20 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
21 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
22 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
23 attorneys’ fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
24 wages and interest accrued thereon.

25 29. At all relevant times herein, Defendants failed to conform their pay practices to
26 the requirements of the law by failing to compensate Plaintiff and members of the Minimum
27 Wage Class for all hours worked including, but not limited to, all hours they were subject to the
28 control of Defendants and/or suffered or permitted to work under the California Labor Code and

1 Wage Order 5.

2 30. California Labor Code § 1198 makes unlawful the employment of an employee
3 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and
4 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage
5 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated
6 damages in an amount equal to the wages due and interest thereon.

7 31. As a direct and proximate result of Defendants' unlawful conduct as alleged
8 herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but
9 not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are
10 entitled to recover economic and statutory damages and penalties and other appropriate relief as
11 a result of Defendants' violations of the California Labor Code and Wage Order 5.

12 32. The foregoing practices and policies are unlawful and create an entitlement to
13 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the
14 unpaid amount of minimum wages owing, including interest thereon, liquidated damages,
15 statutory and civil penalties, attorney's fees, and costs of suit according to California Labor Code
16 §§ 204, 558, 1194, 1197, and 1198, Wage Order 5, and Code of Civil Procedure § 1021.5.

17 **THIRD CAUSE OF ACTION**

18 **MEAL PERIOD VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

20 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 failed in their affirmative obligation to provide all of their non-exempt employees in California,
23 including Plaintiff and members of the Meal Period Class, with all legally compliant meal
24 periods in accordance with the mandates of the California Labor Code and Wage Order 5, § 11.
25 Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and
26 members of the Meal Period Class at their respective regular rates of pay, in accordance with
27 California Labor Code §§ 204, 210, 226.7, and 512.

28 35. As a result, Defendants are responsible for paying premium compensation for

meal period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 5, including interest thereon, statutory penalties, civil penalties, and costs of suit.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

37. Wage Order 5, § 12 and California Labor Code §§ 226.7, 516, 558, and 1198 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

38. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required and legally compliant rest periods, and failed to pay rest period premium wages when rest periods were not authorized and permitted.

39. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

41. At all relevant times herein, Defendants were subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer.”

42. At all relevant times herein, Defendants were subject to Labor Code § 2804, which states that “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive

any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

43. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Classes were damaged in sums, which will be shown according to proof.

44. Plaintiff and members of the class are entitled to attorney’s fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff is entitled to interest, which shall accrue from the date on which Plaintiff incurred the necessary expenditure.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

45. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

46. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with wage statements that complied with the requirements of Labor Code § 226(a).

47. Defendants’ failure to furnish Plaintiff with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages owed and all meal and rest period premium wages owed, and deprived Plaintiff of the information necessary to identify the discrepancies in Defendants’ reported data.

48. Defendants’ failures create an entitlement to recovery by Plaintiff and members of the Classes in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys’ fees, and costs of suit according to California Labor Code § 226 *et seq.*

///

(AGAINST ALL DEFENDANTS)

50. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 by failing to pay Plaintiff and the Classes all overtime and minimum wages owed; failing to provide Plaintiff and the Classes lawful meal periods; failing to authorize and permit Plaintiff and the Classes lawful rest periods; failing to reimburse Plaintiff and the Classes for all necessary business expenses; and failing to furnish accurate and complete itemized wage statements in violation of § 226 *et seq.*

52. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore all monies withheld, acquired and/or converted by the Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

54. Plaintiff was compelled to retain the services of counsel to file this court action to protect Plaintiff's interests and those of the Class, to obtain restitution, to secure injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff is entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

55. Plaintiff re-alleges and incorporates by reference all previous paragraph.

56. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- c. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at these employees’ respective regular rates of compensation for meal period violations in violation

of Labor Code §§ 226.7, 512, and 558;

- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- g. Failing to pay other aggrieved employees sick time pay at their regular rate of compensation in violation of Labor Code § 246;
- h. Failing to timely pay the aggrieved employees all final wages owed upon separation from employment in violation of Labor Code §§ 201-203;
- i. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code §§ 558 and 1174; and
- j. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204.

57. On June 6, 2024, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 56 (a)-(j). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

1 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts
2 or practices declared by this Court to be in violation of California Business and Professions Code
3 § 17200 *et seq.*;

4 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
5 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
6 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
7 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
8 violation pursuant to Labor Code § 210 for each failure to pay each employee; (2) \$50.00 for
9 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
10 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
11 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
12 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
13 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
14 subsequent violation per employee per pay period for those violations of the Labor Code for
15 which no civil penalty is specifically provided, based on the Labor Code violations identified in
16 Paragraph 56 (a)-(j);

17 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor
18 Code § 218.6, and Civil Code §§ 3287 and 3289;

19 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
20 §§ 218.5, 226, 1194 *et seq.*, 2802(c), and 2698 *et seq.*, and Code of Civil Procedure § 1021.5;
21 and

22 14. For such other and further relief the Court may deem just and proper.

23
24 Dated: August 12, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

25 By:


Fletcher W. Schmidt
Attorney for Plaintiff

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Dated: August 12, 2024

By:

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FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT