

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
Jasmine J. Badawi (Bar No. 335433)
LIPELES LAW GROUP, APC
880 Apollo St., Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252
kevin@kallaw.com
thomas@kallaw.com
jasmine@kallaw.com

Attorney for Plaintiff,
MARTHA HASSLER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF CONTRA COSTA**

MARTHA HASSLER, an individual, on
her own behalf and on behalf of all others
similarly situated,

Plaintiff,

v.

FUTURES EXPLORED, INC., a California
non-profit corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: C24-01991

[Assigned for all purposes to Hon. Charles S.
Treat, in Dept. 12]

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- 1. FAILURE TO PAY OVERTIME (Cal. Labor Code §§ 510, 511, 558, 1194, 1194.3, 1198; Wage Order No. 4);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 4);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4);**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 4);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; Wage Order No. 4);**
- 6. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. Labor Code §§201-203; Wage Order No. 4);**
- 7. FAILURE TO PROVIDE SICK LEAVE (Cal. Labor Code §246);**

- 1 8. FAILURE TO MAKE PROPER
2 DISCLOSURE IN VIOLATION OF THE
3 FCRA (15 U.S.C 1681b(b)(2)(A));
4 9. FAILURE TO PROVIDE
5 EMPLOYMENT RECORDS (Cal. *Labor*
6 *Code* §1198.5);
7 10. UNFAIR COMPETITION (Cal. *Bus. &*
8 *Prof. Code* §§17200 *et seq.*); and
9 11. PRIVATE ATTORNEY GENERAL ACT
10 (“PAGA”)

11 **DEMAND FOR A JURY TRIAL**

12 Action Filed: July 29, 2024

13 All allegations in this First Amended Complaint are based upon information and belief
14 except for those allegations which pertain to the Plaintiff named herein and her counsel. Each
15 allegation has evidentiary support or is likely to have evidentiary support after a reasonable
16 opportunity for further investigation and discovery.

17 Martha Hassler (“Plaintiff”) alleges the following:

18 1. This is a class action brought under California law by an individual who was
19 employed by Futures Explored, Inc. (“FE” or “Defendant”) (along with DOES 1 through 100,
20 collectively “Defendants”). Plaintiff brings this action on behalf of herself and others similarly
21 situated to recover wages from Defendant due to Defendant’s systematic failure to pay overtime
22 wages, pay minimum wages, provide meal and rest breaks (or pay the statutory compensation
23 due), issue accurate wage statements, pay all wages upon termination, provide sick leave, failure
24 to make proper disclosure in violation of the FCRA and provide Plaintiff’s personnel file.

25 2. Plaintiffs have worked as Community Support Leaders and other employees for
26 Defendant in California. While working, Plaintiffs have been forced to endure stressful and illegal
27 workplace conditions created by Defendant’s efforts to maximize profits and tightly control labor
28 costs.

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3. Plaintiff, like her co-workers whom Defendant also employed during the applicable limitations period, spend their workdays as Community Support Leaders and other employees, under illegal and highly regimented circumstances. That regimen results from Defendant's insistence to strictly monitor and curtail labor costs, which Defendant accomplishes by not paying for all labor costs, failing to pay overtime time wages, failing to pay minimum wages, failing to provide meal and rest breaks (or pay the statutory compensation due), failing to issue accurate wage statements, failing to pay all wages on termination, failing to provide sick leave, failing to make proper disclosure in violation of the FCRA, failing to produce personnel records and by using other unlawful stratagems to ensure that labor costs remain artificially low.

4. Plaintiff brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to, overtime wages, premium pay for failure to afford proper meal/rest breaks, wages due to discharged or quitting employees, penalties for failure to provide accurate itemized wage statements, damages for failure to provide sick leave, damages/penalties for violation of the FCRA and interest, attorneys' fees, costs, and expenses.

5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for himself and all members of the Class, to compensate these workers for the unpaid wages and to protect current and future workers of Defendant from being subjected to similar wage theft and otherwise unlawful working conditions.

6. Plaintiff also brings an action seeking relief for Defendant's violations of California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair business practices, as well as injunctive relief.

7. Plaintiff now seeks to amend her Complaint to add a cause of action pursuant to PAGA under Labor Code §§ 2699, et seq.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this First Amended Complaint under the Code of Civil Procedure

§410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business & Professions Code* §§ 17200 *et seq.* Plaintiff Martha Hassler brings this First Amended Complaint on her own behalf and on behalf of all persons in the Class as defined in paragraph 17 below.

9. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Contra Costa and because Defendant owned and operated their business in the County of Contra Costa.

THE PARTIES

PLAINTIFF

10. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Antioch, California;
- (b) Employed as an hourly employee for Defendant in Antioch, California;
- (c) Did not receive overtime wages in violation of *Labor Code* §§510, 511, 558, 1194, 1194.3, 1198 and the applicable Wage Orders;
- (d) Did not receive minimum wages as required by *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and the applicable Wage Orders;
- (e) Did not receive the meal periods as required by *Labor Code* §266.7 and the applicable Wage Orders;
- (f) Did not receive the rest periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (g) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (h) When terminated from her employment, did not receive her final paycheck within the time limits prescribed by *Labor Code* §201;
- (i) Was not provided sick leave as required by *Labor Code* §246;
- (j) Was not provided proper disclosure in violation of the FCRA; and
- (k) Was not provided her personnel records. Each of these was a violation of the *Labor Code*.

DEFENDANT

11. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant FE is, and at all times mentioned herein was:

- (a) A California non-profit corporation, with a principal place of business at 2150 John Glenn Drive, Suite 300, Concord, CA 94531. Defendant has been authorized to do business and has been doing business in the County of Contra Costa;
- (b) The former employer of Plaintiff and the current and former employer of the putative Class members;
- (c) Paid Plaintiff and all Class members on an hourly basis;
- (d) Failed to pay Plaintiff and all putative Class members overtime wages;
- (e) Failed to pay Plaintiff and all putative Class members minimum wages;
- (f) Failed to provide Plaintiff and all putative Class members with meal and rest periods, failed to provide Plaintiff and all putative Class Members with accurate itemized wage statements;
- (g) Failed to issue final paychecks timely to Plaintiff and all putative Class members;
- (h) Failed to provide sick leave to Plaintiff and all putative Class members;
- (i) Failed to provide proper disclosure to Plaintiff and all putative Class members in violation of the FCRA; and
- (j) Failed to provide Plaintiff with her requested personnel records. Each of these was a violation of the *Labor Code*.

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of Civil Procedure* § 474. Plaintiff will seek leave to amend her Complaint to allege the true names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

1 13. Plaintiff is informed and believes, and based on that information and belief alleges,
2 that Defendant DOES 1 through 100 are persons, corporations or other entities which reside in or
3 are authorized to do, or are otherwise doing, business in the State of California. Specifically,
4 DOES 1 through 100 maintain offices, operate businesses, employ persons, and conduct business
5 in the County of Contra Costa. Each of the Defendants DOES 1 through 100 was the managerial
6 agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter ego and/or
7 representative of one or more of the other Defendants named herein, and acting with permission,
8 authorization, and/or ratification and consent of the other Defendants.

9 14. Plaintiff is informed and believes, and based on that information and belief alleges,
10 that the Defendants named in this First Amended Complaint, including DOES 1 through 100,
11 inclusive, are responsible in some manner for one or more of the events and happenings that
12 proximately caused the injuries and damages hereinafter alleged.

13 15. Plaintiff is informed and believes, and based on that information and belief alleges,
14 that Defendants named in this Complaint, including DOES 1 through 100, inclusive, are, and at
15 all times mentioned herein were, the agents, servants, and/or employees of each of the other
16 Defendants and that each Defendant was acting within the course and scope of her, hers or its
17 authority as the agent, servant and/or employee of each of the other Defendants. Consequently,
18 all of the Defendants are jointly and severally liable to the Plaintiff, and the Class, for the damages
19 sustained as a proximate result of their conduct.

20 16. Plaintiff is informed and believes, and based on that information and belief alleges,
21 that the Defendants named in this First Amended Complaint, including DOES 1 through 100,
22 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
23 themselves and entered into a combination and systemized campaign of activity to *inter alia*
24 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in derogation
25 of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, in each of
26 the Defendants, the acts being negligently and/or intentionally inflicted. Their conspiracy, and
27 Defendants' concerted actions, were such that, to Plaintiff's information and belief, and to all
28 appearances, Defendants, and each of them, represented a unified body so that the actions of one

Defendant were accomplished in concert with, and with the knowledge, ratification, authorization and approval of each of the other Defendants.

CLASS ALLEGATIONS

A. The Definition of the Class

17. The Class (“the Class”) is defined as follows:

(a) “All current and former employees who were hourly paid employees of Defendant and worked for Defendant in California at any time during the period commencing on the date that is four (4) years prior to the filing of this Complaint and continuing through the present date (the “Class Period”).”

(b) “All persons who were hourly paid employees of Defendant and worked for Defendant in California and left the employ of Defendant at any time during the period commencing on the date that is within one (1) year prior to the filing of this Complaint and continuing through the present date (the “Class Period”).”

18. Plaintiff reserves her right under Rule 3.765 of the California Rules of Court to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

B. Maintenance of the Action

19. Plaintiff brings this action individually and on behalf of himself and as representative of all similarly situated persons under *Business & Professions Code* §§ 17203 and 17204 and *Code of Civil Procedure* § 382.

C. The Class Requisites

20. At all material times, Plaintiff was a member of the Class.

21. The Class action meets the statutory prerequisites for maintaining a class action under Code of Civil Procedure § 382 in that:

(a) The persons who comprise the Class are so numerous that the joinder of all those persons is impracticable, and the disposition of their claims as a Class will benefit the parties and the Court;

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
2 that are raised in this First Amended Complaint are common to the Class and
3 will apply uniformly to every Class member;
- 4 (c) The claims of the representative Plaintiff are typical of the claims of each
5 Class member. Plaintiff, like all Class members, has sustained damages
6 arising from Defendant's violations of the laws of the State of California.
7 Plaintiff, and the Class members, were and are similarly or identically
8 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
9 pattern of misconduct engaged in by the Defendant;
- 10 (d) The representative Plaintiff has, and will continue to, fairly and adequately
11 represent and protect the interests of the Class and has retained counsel who
12 are competent and experienced in class action litigation. There are no
13 material conflicts between the claims of the representative Plaintiff and the
14 Class members that would make class certification inappropriate. Counsel
15 for the Class will vigorously assert the claims of all Class members.

16 22. The persons who comprise the Class are so numerous that joining all of them is
17 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
18 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
19 will fairly and adequately protect the interests of the Class she seeks to represent. Plaintiff does
20 not have any interests that are antagonistic to the Class she seeks to represent. Counsel for
21 Plaintiff are experienced, qualified and generally able to conduct complex class action
22 litigation.

23 23. The Court should permit the action to be maintained as a class action under *Code*
24 *of Civil Procedure* § 382 because:

- 25 (a) The questions of law and fact common to the Class predominate over any
26 question affecting only individual members;
- 27 (b) A class action is superior to any other available method for fairly and
28 efficiently adjudicating the claims of the Class;

- 1 (c) The Class members are so numerous that it is impractical to bring all of
2 them before the Court;
- 3 (d) Plaintiff and other Class members will not be able to obtain effective and
4 economic legal redress unless the action is maintained as a class action;
- 5 (e) There is a community of interest in obtaining appropriate legal and
6 equitable relief for the statutory violations, and in obtaining adequate
7 compensation for the damages and injuries for which Defendant is
8 responsible in an amount sufficient to adequately compensate the Class
9 members;
- 10 (f) Without Class certification, the prosecution of separate actions by
11 individual Class members would create a risk of:
- 12 i. Inconsistent or varying adjudications for individual Class members
13 that would establish incompatible standards of conduct for
14 Defendant; and/or,
- 15 ii. Adjudication for individual Class members that would, as a practical
16 matter, dispose of other non-party members' interests, or that would
17 substantially impair or impede the non-parties' ability to protect their
18 interests, by, for example, potentially exhausting the funds available
19 from Defendant, and
- 20 (g) Defendant has acted or refused to act on grounds generally applicable to the
21 Classes, making final injunctive relief appropriate for the Class, as a whole.

22 24. Plaintiff contemplates eventually issuing notice to the proposed Class Members
23 that would set forth the subject and nature of the action. The Defendant's own business records
24 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that any
25 further notices may be required, Plaintiff would contemplate using additional media and/or
26 mailing.

27 **GENERAL ALLEGATIONS**
28

1 25. At all times material hereto, Defendant has been and is a non-profit corporation
2 that supports mentally disabled adults.

3 26. Plaintiff and members of the Class were employed as Community Support Leaders
4 and other non-exempt employees in California at various times during the Class Period.

5 27. The employment by FE of Plaintiff and Class members is governed by Industrial
6 Welfare Commission Wage Order No. 4, which covers those persons employed in the
7 professional, technical, clerical, mechanical and similar occupations.

8 **THE CONDUCT**

9 28. Plaintiff seeks relief from Defendant's uniform policies and practices of denying
10 Plaintiff and members of the Class wages and compensation owed under California law.

11 29. Starting on or about January 19, 1997, and continuing to January 9, 2024,
12 Defendant employed Plaintiff on an hourly basis as a Community Support Leader in Antioch,
13 California.

14 30. While employed by Defendant as a Community Support Leader, Plaintiff was paid
15 \$27.26 per hour.

16 **OFF-THE-CLOCK WORK**

17 31. Employers must compensate non-exempt employees for "off-the-clock" work
18 (before punching in or after punching out on a time clock) if the employers knew or should have
19 known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22
20 Cal. 4th 575, 585.

21 32. Defendant required Plaintiff and the Class to regularly perform compensable tasks
22 off-the-clock for which they did not receive any compensation. Specifically, Plaintiff and Class
23 members were required to be vaccinated for COVID-19 twice for 1 hour each time. Further,
24 Plaintiff and Class members were required to use their personal cell phones three times per week
25 to coordinate with program participants' outings for the next day. The calls took 15 minutes off
26 the clock on their personal cell phones.

27 33. As a result, and because they improperly treated such off-the-clock work as non-
28 compensable, Defendant failed to compensate Plaintiff and the Class for such time.

1 **FAILURE TO PAY OVERTIME WAGES**

2 34. Under California law, non-exempt employees, as defined by Wage Order 4, are
3 entitled to premium wages for overtime worked. Under California law, an hourly paid employee
4 is entitled to overtime pay when they exceed eight hours of work in a single day, exceed 40
5 hours of work in a week or work seven days in a row.

6 35. At all times during the relevant time period, Plaintiff and the Class routinely
7 worked schedules such that they were due pay at overtime due to off-the-clock work. During this
8 period, it was the practice and policy of Defendant to not pay employees overtime wages. Monies
9 for unpaid overtime remain due and owing.

10 **EXCLUSION OF BONUSES AND GIFTS FROM THE REGULAR RATE OF PAY**

11 36. California law uses the terms “compensation” and “pay” interchangeably and
12 requires that all applicable remuneration, including but not limited to, commissions, and/or non-
13 discretionary bonuses, and/or gift cards and/or cash payments based on sales numbers, etc., be
14 included when calculating an employee's regular rate of pay.

15 37. Defendant failed to properly pay and calculate wages due to excluding non-
16 discretionary bonuses and gifts from the regular rate of pay calculations. Such bonus and gift
17 payments are required under California law to be included in an employee’s regular rate of pay
18 for wage calculation. Defendant failed to do so, thereby failing to pay employees their full wages
19 as required under the Labor Code.

20 38. Plaintiff and members of the Class received bonuses and gifts that must be
21 included when calculating their regular rates of pay for purposes of wages. However, Defendant
22 failed to correctly calculate Plaintiff and members of the Class’s regular rate of pay to include all
23 applicable remuneration, including, but not limited to, bonuses and gifts.

24 39. Plaintiff’s paystub dated September 22, 2023, shows Plaintiff was paid “Paid
25 Special Gift” at the same time as “Overtime,” paid at exactly the base rate; therefore, it is unclear
26 whether it was incorporated into the Overtime pay rate. Thus, Plaintiff’s and Class members' gifts
27 may not have been incorporated into the overtime rate.
28

1 40. Further, Plaintiff's paystubs dated 8/9/2023, 8/24/2023, 9/8/2023, 9/22/2023 and
2 10/6/2023 show that Plaintiff was paid "Bonus Paid Holiday" under YTD. As a result, there may
3 be regular rate issues.

4 41. Additionally, Plaintiff's paystubs dated 8/9/2023, 8/24/2023, 9/8/2023, 9/22/2023
5 and 10/6/2023 show that Plaintiff was paid "Paid Gift – New Years" under YTD. However,
6 Plaintiff was paid for 2 hours of base pay. Thus, this may also cause regular rate issues.

7 42. Plaintiff's paystub dated June 23, 2023, shows that Plaintiff was paid "Salary
8 Addition" at the same time as "Overtime," paid at exactly 1.5 times the base rate. Thus, "Salary
9 Addition" was not incorporated into the Overtime pay rate.

10 **FAILURE TO PAY MINIMUM WAGES**

11 43. Under California law, non-exempt employees, as defined by IWC Wage Order
12 No. 4, are entitled to minimum wages. Labor Code Section 1197 states the California requirement
13 that employees must be paid at least the minimum wage fixed by the Commission or by any
14 applicable state or local law, and any payment of less than the minimum wage is unlawful.
15 Similarly, Labor Code Section 1194 entitles "any employee receiving less than the legal
16 minimum wage...is entitled to recover in a civil action the unpaid balance of the full amount of
17 this minimum wage." IWC Wage Order No. 4 obligates employers to pay each employee
18 minimum wages for all hours worked.

19 44. These minimum wage standards apply to each hour employees worked or were
20 subject to control by the employer for which they were not paid. Therefore, an employer's failure
21 to pay for any particular hour of time worked by an employee or subject to the employer's control
22 is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results
23 in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th
24 314, 324 (2005).

25 45. Plaintiff and the Class were not paid minimum wages due to Defendant's failure
26 to afford proper meal/rest breaks.

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28 ///

1 46. At all times during the relevant time period, Plaintiff and the Class routinely
2 worked schedules such that they were due pay at minimum wage rates. During this period, it was
3 the practice and policy of Defendant to not pay employees minimum wages. Monies for unpaid
4 minimum wages remain due and owing.

5 **INTERRUPTED/NOT AFFORDED MEAL BREAKS**

6 47. Plaintiff and the Class members were routinely not afforded proper meal breaks.
7 At least three times per week, meal breaks were not afforded because Plaintiff and Class members
8 were required to remain on duty when they had a group of program participants on an outing.
9 Further, meal breaks were interrupted at least once per month. Plaintiff and Class members were
10 required to keep their personal cell phones on during their meal breaks, and they would be
11 interrupted by calls.

12 **REST BREAKS NOT AFFORDED/INTERRUPTED**

13 48. Plaintiff and the Class members were required to keep their personal cell phones
14 on during their rest breaks. At least once per month, Plaintiff and Class members' rest breaks
15 were interrupted by phone calls. Three times per week, Plaintiff and Class members had to work
16 during their rest periods when they had a group of program participants on an outing.

17 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

18 49. As a result of Defendant's failure to pay employees required overtime wages,
19 minimum wages and failure to afford meal/rest breaks, the wage statements issued to the
20 employees did not comply with *Labor Code* §226 and California Industrial Welfare Commission
21 ("IWC") Wage Order 4 in that they did not accurately reflect all wages earned and due and owing.

22 **FAILURE TO PAY WAGES DUE UPON TERMINATION AND/OR RESIGNATION**

23 50. As a further result of Defendant's failure to pay employees at required overtime
24 wage rates due to off-the-clock work, minimum wages and for meal/rest breaks not properly
25 afforded, when the employees left their employ, they were not timely paid all wages due them,
26 as required by *Labor Code* §§ 201, 202 and Wage Order 4. Further, it was the practice of
27 Defendant to not pay employees the final paychecks within the time periods mandated by *Labor*
28 *Code* §§201, 202 and Wage Order 4.

1 **FAILURE TO PROVIDE SICK LEAVE**

2 51. Defendant failed to provide sick leave. Plaintiff's paystubs show she accrued 1
3 hour of "Sick Accrual Hours" for less than 30 hours worked and sometimes more than 30 hours
4 worked.

5 **FAILURE TO PROVIDE PROPER DISCLOSURE IN VIOLATION OF THE FCRA**

6 52. Defendant failed to provide proper disclosure in violation of the FCRA because it
7 did not provide Plaintiff and Class members with a stand-alone authorization for performing the
8 background checks.

9 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

10 53. Defendant failed to allow Plaintiff to timely inspect her personnel records and
11 payroll file.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY OVERTIME WAGES**

14 **(Labor Code §§ 510, 558, 1194, 1194.3, 1198, IWC Wage Order 4 By Plaintiff Against**
15 **Defendant and Does 1 through 100)**

16 54. Plaintiff and the Class reallege and incorporate by reference all of the allegations
17 set forth in this First Amended Complaint.

18 55. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab. Code
19 §§510, 1194, and 1198, and IWC Wage Order No. 4, Defendant was required to compensate
20 Plaintiff with premium pay for all overtime work performed, for hours worked in excess of eight
21 (8) hours per day and/or forty (40) hours per week and for the first eight (8) hours on the seventh
22 (7th) consecutive day of any work week.

23 56. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
24 who had not been paid overtime compensation could recover the unpaid balance of the full
25 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
26 fees and costs of suit.

27 57. California Labor Code section 510, subdivision (a), states in relevant part:
28

Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

58. Further, California Labor Code section 1198 provides,

The maximum hours of work and the standard conditions of labor fixed by the Commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

59. Pursuant to IWC Wage Order No. 4-2001, § 3, "Employment beyond eight (8) hours in any workday is permissible provided the employee is compensated for such overtime at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek."

60. California Labor Code section 558 provides in pertinent part:

(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 in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee...

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

61. As alleged above, Defendant required Plaintiff and the Class to regularly perform compensable tasks off-the-clock for which they did not receive any compensation.

62. Throughout Plaintiff's employment, Defendant failed and refused to pay and properly calculate overtime compensation to Plaintiff and Class Members as required by law.

63. The foregoing overtime compensation is owed and unpaid. As a direct and proximate result of Defendant's failure and refusal to pay overtime, Plaintiff and Class Members suffered damages in an amount to be proven at trial.

64. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover Plaintiff's attorneys' fees, costs and interest.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

**(IWC Wage Order No. 4; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs
Against Defendant and Does 1 through 100)**

65. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

66. Labor Code §§ 1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

67. *Labor Code* § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order 4-2001 also obligates employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any

particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

68. Pursuant to IWC Wage Order No. 4, Defendant is required to pay the members of the Class for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

69. Furthermore, pursuant to *Labor Code* § 1198, "[t]he maximum hours of work and the standard conditions of labor fixed by the Commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

70. Defendant failed to satisfy minimum wage requirements because they improperly failed to afford Plaintiff and Class members meal/rest breaks in violation of *Labor Code* §§ 226.7, 1197, 1198 and IWC Wage Order No. 4.

71. Defendant's pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement, pursuant to *Labor Code* § 218, to recovery by Plaintiff and the members of the Class in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the appropriate rate.

72. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for the time associated with the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

1 73. Plaintiff and the other Class Members suffered and continue to suffer losses
2 related to the use and enjoyment of compensation due and owing to them as a direct result of
3 Defendant's unlawful acts and Labor Code violations in an amount to be shown according to
4 proof at trial and within the jurisdictional limitations of this Court.

5 74. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
6 Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them,
7 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY FOR MEAL BREAKS**

10 **(Labor Code § 226.7 and IWC Wage Order No. 4 By Plaintiff Against Defendant and**
11 **Does 1 through 100)**

12 75. Plaintiff and the Class reallege and incorporate by reference all of the allegations
13 set forth in this First Amended Complaint.

14 76. California Labor Code §226.7(a) prohibits an employer from requiring an
15 employee to work during any meal period mandated by an applicable Industrial Wage Order.
16 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
17 employee to work during a meal or rest break or recovery period mandated pursuant to an
18 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
19 Commission..."

20 77. California Labor Code §1198 makes unlawful the employment of an employee
21 under conditions the IWC prohibits.

22 78. IWC Order No. 4-2001(11)(A) provides, in relevant part: "No employer shall
23 employ any person for a work period of more than five (5) hours without a meal period of not
24 less than 30-minutes, except that when a work period of not more than six (6) hours will complete
25 the day's work the meal period may be waived by mutual consent of the employer and the
26 employee."
27
28

1 79. IWC Order No. 4-2001 (11)(c) further provides, in relevant part: "Unless the
2 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
3 considered an 'on duty' meal period and counted as time worked."

4 80. Section 512(a) of the California Labor Code provides, in relevant part, that:

5 An employer may not employ an employee for a work period of more than five
6 hours per day without providing the employee with a meal period of not less than
7 30-minutes, except that if the total work period per day of the employee is no
8 more than six hours, the meal period may be waived by mutual consent of both
9 the employer and employee. An employer may not employ an employee for a
10 work period of more than 10 hours per day without providing the employee with
11 a second meal period of not less than 30-minutes, except that if the total hours
worked is no more than 12 hours, the second meal period may be waived by
mutual consent of the employer and the employee only if the first meal period
was not waived.

12 81. The Labor Code and Wage Order provisions cited above require California
13 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
14 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
15 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
16 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
17 the fifth hour of their shifts.

18 82. As alleged herein, Plaintiff and the members of the Class were routinely required
19 to work through their meal period at the fifth hour of their shifts at the direction of Defendant
20 and/or with their endorsement, encouragement, knowledge and acquiescence.

21 83. Further, meal periods were routinely interrupted and/or not afforded.

22 84. Under California law, employers must also record their employees' meal periods:
23 "Every employer shall keep accurate information with respect to each employee, including the
24 following: ... Meal periods ... shall also be recorded. Meal periods during which operations cease
25 ... need not be recorded." IWC Order No. 4, § (7)(A)(3). Where the employer has failed to keep
26 records required by statute, the consequences of such failure should fall on the employer, not the
27 employee. In such a situation, imprecise evidence by the employee can provide a sufficient basis
28 for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727 (1988). Inasmuch as Defendant

1 had an obligation under the record-keeping requirements of the Wage Order to track meal periods
2 unless "all work ceases," Defendant knew or should have known its employees were regularly
3 not afforded proper meal periods during the Class Period.

4 85. Defendant has a policy or practice of failing to ensure that Plaintiff and members
5 of the Class take the meal periods required by California Labor Code §226.7 and IWC Wage
6 Order No. 4-2001 §11.

7 86. By their actions in not affording Plaintiff and Class Members proper meal periods
8 Defendant violated Cal. Lab. Code §226.7(b) and section 11 of the Wage Order in the amount of
9 one additional hour of pay at the employee's regular rate of compensation for each work period
10 during each day in which Defendant failed to provide employees with statutory timely off-duty
11 meal periods.

12 87. Defendant also has a policy or practice of failing to pay each of their employees
13 who was not provided with a meal period as required an additional one hour of compensation at
14 each employee's regular rate of pay.

15 88. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to bring
16 a private right of action to recover wages due based on the deprivation of timely meal periods
17 under Cal. Labor Code § 226.7(b).

18 89. As a direct and proximate result of Defendant's unlawful conduct as alleged
19 herein, Plaintiff and members of the Class have sustained economic damages, including but not
20 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
21 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
22 relief due to Defendant's violations of the California Labor Code and the applicable IWC Wage
23 Orders.

24 **FOURTH CAUSE OF ACTION**

25 **FOR FAILURE TO PROVIDE REST PERIODS**

26 **(Labor Code § 226.7 and IWC Wage Order No. 4 By Plaintiff Against Defendant and**
27 **Does 1 through 100)**
28

1 90. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this First Amended Complaint.

3 91. Labor Code § 226.7 and IWC Wage Order No. 4 provide that employers shall
4 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per
5 four hours of work or major fraction thereof.

6 92. Labor Code § 226.7 and IWC Wage Order No. 4 provide that if an employer fails
7 to provide an employee with rest periods in accordance with those provisions, the employer shall
8 pay the employee one hour of pay at the employee's regular rate of compensation for each
9 workday that the rest periods were not so provided.

10 93. Defendant has intentionally and improperly denied rest periods to Plaintiff and the
11 Class in violation of Labor Code § 226.7 and IWC Wage Order No. 4.

12 94. Plaintiff and members of the Class's rest periods were interrupted and/or not
13 afforded.

14 95. At all times relevant hereto, Defendant failed to provide rest periods as required
15 by Labor Code § 226.7 and Wage Order No. 4.

16 96. By virtue of Defendant's unlawful failure to provide rest periods to Plaintiff and
17 the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts
18 which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional limits
19 of the Court, and which will be ascertained according to proof at trial.

20 **FIFTH CAUSE OF ACTION**

21 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED**

22 **WAGE STATEMENTS**

23 **(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)**

24 97. Plaintiff and the Class reallege and incorporate by reference all of the allegations
25 set forth in this First Amended Complaint.

26 98. Pursuant to IWC Wage Order No. 4, Defendant was the employer of Plaintiff and
27 the Class.
28

1 99. Pursuant to California Labor Code sections 226 and Wage Order 4-2001 section
2 7, Defendants are required to maintain and provide accurate records relating to employee
3 compensation, including all formulas and production records used to calculate wages due.

4 100. Defendant is further required to provide, *inter alia*, semimonthly or at the time of
5 each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all
6 deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the
7 employee is being paid; (5) the name of the employee; and (6) the name and address of the legal
8 entity that is the employee's actual employer. Cal. Labor Code §226(a).

9 101. Section 226(e) provides that an employee is entitled to recover \$50 for the initial
10 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
11 not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods in
12 which the employer knowingly and intentionally failed to provide accurate itemized statements
13 to the employee causing the employee to suffer injury.

14 102. Notwithstanding these provisions, Defendant has engaged in a uniform practice
15 of refusing to maintain and provide the accurate records and wage statements required by
16 California law.

17 103. Throughout the Class Period, Defendant intentionally and knowingly provided
18 Plaintiff and other members of the Class with weekly itemized wage statements containing
19 inaccurate information regarding the wages earned by Plaintiff and members of the Class in that
20 the payments owed to Plaintiff and the members of the Class for overtime wages due to off the
21 clock work, minimum wages, premium pay for meal/rest breaks, sick pay, were not included in
22 gross wages earned by Plaintiff and members of the Class. Further, Defendant failed to furnish
23 Plaintiff and the Class, upon payment of wages, itemized statements accurately showing the
24 number of hours worked and the rates paid.

25 104. As a result, Plaintiff and members of the Class have been injured by having been
26 deprived of the true facts pertaining to their compensation and employment.

27 105. Plaintiff and members of the Class were damaged by these failures because,
28 among other things, the failures led them to believe that they were not entitled to overtime wages,

1 minimum wages, premium pay for meal/rest breaks not properly afforded and sick pay, even
2 though they were so entitled and these failures hindered them from determining the amounts of
3 wages owed to them.

4 106. Plaintiff and members of the Class are entitled to the amounts provided in Labor
5 Code §226(e), plus attorneys' fees and costs.

6 107. As a result, Plaintiff seeks recovery of the penalties authorized by Labor Code
7 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are provided
8 by law for Defendant's improper conduct.

9 **SIXTH CAUSE OF ACTION**

10 **FOR FAILURE TO PAY WAGES UPON TERMINATION**

11 **(Labor Code §§201-203 By Plaintiffs Against Defendant and Does 1 through 100)**

12 108. Plaintiff and the Class reallege and incorporate by reference all of the allegations
13 set forth in this First Amended Complaint.

14 109. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due
15 and payable immediately. Labor Code § 202(a) provides that when an employee resigns from
16 employment, unpaid wages are due and payable within 72 hours of resignation.

17 110. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
18 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
19 paid, not to exceed thirty days.

20 111. Plaintiff and the Class were discharged and/or resigned from Defendant's employ,
21 and Defendant willfully failed to pay Plaintiff and the Class wages due them for overtime,
22 minimum wages, meal/rest breaks and sick pay not properly afforded.

23 112. Plaintiff was terminated by Defendant on January 9, 2024. However, Plaintiff's
24 last paystub is dated January 24, 2024, for the pay period through January 15, 2024. Plaintiff's
25 last paycheck did not include any waiting time penalties.

26 113. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's wages
27 for each day he or she was not timely paid, not to exceed 30 days' wages.

28 **SEVENTH CAUSE OF ACTION**

(Cal. Labor Code §246 By Plaintiffs Against Defendant and Does 1 through 100)

115. Plaintiff worked in California for 30 or more days within a year from the commencement of her employment for Defendant.

117. Although California Labor Code section 246 required it, Defendant did not accrue paid sick days on a regular basis that would have provided at least 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year or in every 12 months.

119. Because Defendant failed to accrue sick time in compliance with the law properly, Defendant is liable to Plaintiff and Class members for payment at the regular rate of compensation for each sick time period that Defendant did not provide sick pay, pursuant to Labor Code section 246.

120. Defendant's unlawful acts deprived Plaintiff and Class members of sick pay in amounts to be determined at trial, and they are entitled to recover these amounts, with interest, attorneys' fees, and costs.

FAILURE TO PROVIDE PROPER DISCLOSURE PURSUANT TO THE FCRA

121. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

1 122. Defendant is a “person” as defined by Section 1681a(b) of the FCRA.

2 123. Plaintiff and Class members are “consumers” within the meaning of Section
3 1681a(c) of the FCRA because they are “individuals.”

4 124. 15 U.S.C. §1681b(b)(2)(A)(i) provides that a person may not procure a consumer
5 report for employment purposes unless the person provides the applicant with a “clear and
6 conspicuous” disclosure “in a document that consists solely of the disclosure.” 15 U.S.C.
7 §1681b(b)(2)(A)(i). The Ninth Circuit held that “the FCRA unambiguously bars a prospective
8 employer from including a liability waiver on a disclosure document provided a job applicant
9 pursuant to Section 1681b(b)(2)(A).” *Syed v. M-I, LLC*, 853 F.3d 492, 503 (9th Cir. 2017).

10 125. The form that was given to Plaintiff and Class members to sign and which was
11 signed by Plaintiff and Class members contained extraneous information.

12 126. By including such extraneous information in its disclosure form, Defendant
13 violated 15 U.S.C. §1681b(b)(2)(A)(i) by not providing Plaintiff with a “clear and conspicuous”
14 disclosure “in a document that consists solely of the disclosure.” Plaintiff and Class members
15 were not provided with stand-alone authorizations for Defendant to conduct background checks.

16 127. Pursuant to 15 U.S.C. § 1681b(b)(2), Plaintiff and Class members were entitled to
17 receive certain information at a specific time, namely a disclosure that a consumer report may be
18 procured for employment purposes in a document consisting solely of the disclosure. Such a
19 disclosure was required to be provided to Plaintiff before the consumer reports were to be
20 procured. By depriving Plaintiff of this information, Defendant injured Plaintiff and Class
21 members. *Public Citizen v. U.S. Department of Justice*, 491 U.S. 440, 449 (1989); *Federal*
22 *Election Commission v. Akins*, 524 U.S. 11 (1998).

23 128. Defendant violated the FCRA by procuring consumer reports as defined by 15
24 U.S.C. § 1681a(d) on Plaintiff and Class members without first making proper disclosures in the
25 format required by 15 U.S.C. §1681b(b)(2)(A)(i). Namely, these disclosures had to be made: (1)
26 before Defendant actually procured consumer reports, and (2) in a stand-alone document, clearly
27 informing Plaintiff and Class members that Defendant might procure a consumer report on each
28 of them for purposes of employment.

1 129. Second, Defendant invaded the right of privacy of Plaintiff and Class members.
2 Under the FCRA, “a person may not procure a consumer report, or cause a consumer report to be
3 procured, for employment purposes with respect to any consumer, unless” it complies with the
4 statutory requirements (i.e., disclosure and authorization) set forth in the following subsections:
5 15U.S.C. § 1681b(b)(2). As one court put it, “[t]he FCRA makes it unlawful to ‘procure’ a report
6 without first providing the proper disclosure and receiving the consumer's written authorization.”
7 *Harris v. Home Depot U.S.A., Inc.*, 114 F. Supp. 3d 868, 869 (N.D. Cal. 2015).

8 130. The consumer reports of Plaintiff and Class members contained a wealth of private
9 information that Defendant had no right to access under the FCRA. The consumer reports of
10 Plaintiff and Class members contained, *inter alia*, information regarding the creditworthiness of
11 the applicant, their general character and other private information. By procuring consumer
12 reports containing this private information without complying with the FCRA's disclosure
13 requirements, Defendant illegally invaded Plaintiff's and Class members' right to privacy.

14 131. Defendant's conduct in violation of 15 U.S.C. §§ 1681b(b)(2)(A) was and is
15 willful. Defendant acted in deliberate or reckless disregard of its obligations and the rights of its
16 employees and job applicants, including Plaintiff and Class members. Defendant knew or
17 recklessly disregarded the fact that the disclosure form it utilized should not include items not
18 strictly required by the FCRA. Defendant acted in deliberate or reckless disregard of its
19 obligations and the rights of Plaintiff under 15 U.S.C. §1681b(b)(2)(A)(i).

20 132. As a result of such conduct, Plaintiff and Class members are entitled to statutory
21 damages of not less than \$100 and not more than \$1,000 for each and every one of these violations
22 pursuant to 15 U.S.C. § 1681n(a)(1)(A).

23 133. As a result of such conduct, Plaintiff is entitled to such amount of punitive
24 damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2).

25 134. As a result of such conduct, Plaintiff is further entitled to recover their attorneys'
26 fees and costs pursuant to 15 U.S.C. § 1681n(a)(3).

27 **NINTH CAUSE OF ACTION**

28 **FAILURE TO ALLOW TIMELY INSPECTION OF EMPLOYMENT RECORDS**

(Labor Code §1198.5, 432, 226(b) By Plaintiffs against Defendant and Does 1 through 100)

135. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

136. California Labor Code Section 1198.5 provides:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request to inspect the records. Upon a written request from a current or former employee or his or her representative, the employer shall also provide a copy of the personnel records... later than 30 calendar days from the date the employer receives the request...

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section... the current or former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

(1) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action.

137. Additionally, pursuant to IWC Wage Order No. 4, at section 7 re: Records, employers are required to keep accurate payroll records on each employee, and such records must be made readily available for inspection by the employee upon reasonable request. The employer must also maintain accurate production records.

138. On or about August 21, 2024, Plaintiff's counsel issued a written request to Defendant for copies of his personnel records.

139. Under California Labor Code Sections 226, 432 and 1198.5, such records were to include all records relating to Plaintiff's hours worked, wage statements and compensation. Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his records.

140. As a direct result and consequence of Defendant's failure and refusal to permit Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon Defendant's violation of §1198.

TENTH CAUSE OF ACTION

UNFAIR COMPETITION

**(Violation of Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant
and Does 1 through 100)**

141. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

142. Pursuant to IWC Wage Order No. 4, Defendant was the employer of Plaintiff and the Class. Defendant is also a "person," as that term is defined in Business & Professions Code §17021.

143. The Business & Professions Code defines unfair competition as any unlawful, unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct described herein, Defendants have engaged in unfair and unlawful practices by failing to (1) pay overtime wages; (2) pay minimum wages; (3) pay premium pay for meal breaks not properly afforded; (4) pay premium pay for rest breaks not properly afforded; (5) furnish Plaintiff and the Class with accurate itemized wage statements, (6) pay Plaintiff and the Class wages due when leaving their employ, (7) failing to provide sick leave, (8) failing to provide proper disclosure in violation of the FCRA, (8) timely provide and allow inspection of personnel records, all in violation of Business & Professions Code §§ 17200 *et seq.*

1 144. By and through the unfair and unlawful business practices described herein,
2 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
3 and have deprived them of valuable rights and benefits guaranteed by law, all to the detriment of
4 Plaintiff and the Class.

5 145. All the acts described herein are violations of, among other things, the Labor Code
6 and IWC Wage Order No. 4, are unlawful and in violation of public policy; and in addition, are
7 immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair and unlawful
8 business practices in violation of Business & Professions Code §§ 17200 et seq.

9 146. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary
10 to restore to them the money and property which Defendant has acquired, or of which Plaintiff
11 and the Class have been deprived by means of the above-described unfair and unlawful business
12 practices.

13 147. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
14 above-described business practices are unfair and unlawful and that injunctive relief should be
15 issued restraining Defendant from engaging in any of the above-described unfair and unlawful
16 business practices in the future.

17 148. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
18 redress the injuries which they have suffered as a consequence of the unfair and unlawful business
19 practices of Defendant. As a result of the unfair and unlawful business practices described above,
20 Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless Defendant
21 is restrained from continuing to engage in these unfair and unlawful business practices. In
22 addition, Defendant should be required to disgorge the unpaid moneys to Plaintiff and the Class.

23 **ELEVENTH CAUSE OF ACTION**

24 **(Damages Pursuant to Private Attorney General Act Against Defendant)**

25 149. Plaintiff and the Class reallege and incorporate by reference all of the allegations
26 set forth in this First Amended Complaint.

27 ///

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150. Plaintiff brings this action on her own behalf and on behalf of all current and former employees of Defendants who were employed in California for the previous four years, seeking to recover unpaid....., penalties for missed meal and rest periods, among other things, as set forth in this pleading.

151. On July 29, 2024, Plaintiff, pursuant to California Labor Code §§ 2699, et seq., by and through her attorneys, uploaded a Private Attorney General Act (“PAGA”) claim to the State of California Labor and Workforce Development Agency (“LWDA”) and sent a letter via Certified Mail Return Receipt Requested to Defendant.

152. More than 65 days have passed since the above letter, and Plaintiff's counsel has not received a notice from the LWDA stating an intention to prosecute Plaintiff's PAGA claims.

153. Plaintiff has complied with the administrative exhaustion requirements of PAGA.

154. Plaintiff seeks Labor Code penalties, attorneys' fees and costs, in an amount according to proof at trial as provided by the Labor Code Private Attorney General Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor and against Defendant as follows:

1. For compensatory damages in the amount of overtime wages due to Plaintiff and Class Members, according to proof;

2. For compensatory damages in the amount of minimum wages due to Plaintiff and Class Members, according to proof;

3. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a meal and/or rest period was not provided;

4. For an award of consequential damages in Plaintiff and Class members' favor and against Defendant, in an amount to be proven at trial;

5. For sick pay;

6. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

/ / /

/ / /

1 7. For payment to Plaintiff and Class Members of waiting time penalties pursuant to
2 *Cal. Lab. Code* §203, in an amount equal to her and Class members' respective daily rates of pay
3 at the time of termination or layoff, multiplied by the total amount of days elapsed between the
4 date of the involuntary termination and/or 72 hours after notice of the voluntary termination, up
5 to a maximum of 30 days' pay, according to proof;

6 8. For specific relief, enforcing waiting time penalties of 30 days of per diem wages
7 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

8 9. For prejudgment interest accrued on all due and unpaid overtime and minimum
9 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
10 1194(a), according to proof;

11 10. For reasonable costs, including attorneys' fees, in an amount according to proof
12 pursuant to *Cal. Labor Code* § 2699(g);

13 11. For civil penalties pursuant to *Cal. Labor Code* §1198, 15 U.S.C. §1681n and
14 Wage Order 4-2001(14);

15 12. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5, 15
16 U.S.C. §1681n, according to proof;

17 13. For reasonable costs, including attorneys' fees, in an amount according to proof
18 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 1198.5, 15 U.S.C. § 1681n(a)(3) and/or
19 *Cal. Code of Civ. Proc.* §1021.5;

20 14. For an award of restitution of wages to Plaintiff and Class members in an amount
21 equal to the amount of wages owed and unpaid, according to proof;

22 15. For injunctive relief ordering the continuing unfair business acts and practices to
23 cease, as the Court deems just and proper;

24 16. For other injunctive relief ordering Defendant to notify Plaintiff and Class
25 members that they have not been paid the proper amounts in accordance with California law;

26 17. For punitive and exemplary damages in a sum to be determined at trial; and

27 18. For such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff Martha Hassler hereby respectfully requests a trial by jury for all claims and issues raised in her First Amended Complaint that may be entitled to a jury trial.

Date: October 9, 2024

LIPELES LAW GROUP, APC

By:  _____

Jasmine J. Badawi
Attorneys for Plaintiff,
MARTHA HASSLER