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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ALAMEDA**

12 ELIZABETH SMILEY, individually and on
13 behalf of all other aggrieved employees and the
14 State of California,

15 Plaintiff,

16 v.

17 MBKT CORP.; and DOES 1 through 10,
18 inclusive,

19 Defendants.

Case No. **24CV093981**

COMPLAINT FOR:

1. Failure to Pay All Wages;
2. Meal Period Violations (Labor Code §§ 226.7, 512, 558);
3. Rest Period Violations (Labor Code §§ 226.7, 516, 558);
4. Failure to Indemnify All Necessary Business Expenditures (Labor Code §§ 2802, 2804);
5. Wage Statement Violations (Labor Code § 226 *et seq.*);
6. Unfair Competition (Bus. & Prof. Code § 17200 *et seq.*); and
7. Civil Penalties and Injunctive Relief under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

**REQUEST FOR PUBLIC
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Elizabeth Smiley (“Plaintiff”), individually and on behalf of all other aggrieved
2 employees and the State of California, hereby brings this individual and representative action
3 Complaint against MBKT Corp. and DOES 1 through 10 inclusive (collectively, “Defendants”), and
4 hereby alleges with knowledge with respect to her own acts and on information and belief as to other
5 matters as follows:

6 **INTRODUCTION**

7 1. Plaintiff hereby brings this Complaint for recovery of unpaid wages and penalties under
8 California Business and Professions Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226, 226.7, 510,
9 512, 516, 558, 1194, 1194.2, 1197, 1198, 2802, and 2804, and the applicable Industrial Welfare
10 Commission Wage Order, in addition to seeking injunctive relief, declaratory relief, and restitution.

11 2. Plaintiff also brings a representative action, under Labor Code §§ 2698, *et seq.*, on
12 behalf of all other current and former employees of Defendants employed in California during the
13 PAGA Period, including exempt, non-exempt, and/or misclassified employees (collectively,
14 “Aggrieved Employees”). The term “PAGA Period” is defined as commencing from one year prior to
15 the submission of Plaintiff’s notice of Labor Code violations to the Labor and Workforce Development
16 Agency (“LWDA”) and Defendants through the date of final judgment.

17 3. This representative action is brought under, *inter alia*, the California Industrial Welfare
18 Commission (“IWC”) Wage Orders and applicable provisions of the California Code of Regulations,
19 California Code of Civil Procedure § 1021.5, and Labor Code §§ 201, 202, 203, 204, 206, 210, 221,
20 223, 224, 226, 226.3, 226.7, 227.3, 246, 246.5, 247, 247.5, 248.5, 510, 511, 512, 558, 558.1, 1174,
21 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, and 2804.

22 4. Defendants have engaged in a systematic pattern of wage and hour violations under the
23 Labor Code. During the PAGA Period, Defendants maintained a consistent practice and policy of
24 violating state wage and hour laws by, among other things, failing to timely pay all wages (including
25 minimum, overtime, and double time wages, sick pay, and vacation pay), failing to provide compliant
26 meal periods or compensation in lieu thereof, failing to provide compliant rest periods or compensation
27 in lieu thereof, failing to reimburse necessary business expenditures, failing to timely pay all wages
28 due upon separation of employment, failing to provide accurate itemized wage statements, and failing

1 to maintain accurate records. Accordingly, Plaintiff brings this representative action for recovery of
2 civil penalties and injunctive relief under Labor Code §§ 2698 *et seq.*

3 **JURISDICTION AND VENUE**

4 5. This Court has jurisdiction over Defendants because, upon information and belief,
5 Defendants are citizens of California, Defendants have sufficient minimum contacts in California, or
6 otherwise intentionally avail themselves to the California market so as to render the exercise of
7 jurisdiction over them by the California courts consistent with the traditional notions of fair play and
8 substantial justice.

9 6. Venue in this County is proper under Business & Professions Code § 17203 and
10 California Code of Civil Procedure § 395.5 because a substantial part of Defendants' unlawful
11 conduct, acts, and omissions alleged in this Complaint occurred in this County, Defendants conduct
12 substantial business in this County, and/or Defendants' liability arose in this County.

13 **PARTIES**

14 7. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
15 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods applicable
16 to each cause of action pled in this Complaint, Plaintiff was employed by Defendants as a non-exempt
17 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of in this
18 Complaint, lost money and/or property, and has been deprived of the rights guaranteed by Business
19 and Professions Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1194,
20 1194.2, 1197, 1198, 2698 *et seq.*, 2802, and 2804, and the applicable Wage Order.

21 8. Defendant MBKT Corp. is a California corporation. MBKT Corp. is, and at all relevant
22 times was, an employer subject to California state wage and hour laws. Plaintiff is informed, believes,
23 and thereon alleges that the practices and policies MBKT Corp. that are complained of by way of this
24 Complaint were implemented during the PAGA Period.

25 9. Plaintiff does not know the true names or capacities, whether individual, partner, or
26 corporate, of the defendants sued herein as DOES 1 to 10, inclusive, and for that reason, said
27 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to further
28 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and

1 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
2 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and
3 proximately caused Plaintiff and other Aggrieved Employees to be subject to the unlawful
4 employment practices, wrongs, injuries and damages complained of herein.

5 10. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
6 herein, Defendants were and are the employers of Plaintiff and other Aggrieved Employees.

7 11. At all relevant times, each of said Defendants participated in the doing of the acts
8 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and
9 each of them, were the agents, servants, and employees of each and every one of the other Defendants,
10 as well as the agents of all Defendants, and at all times herein mentioned were acting within the course
11 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
12 and/or otherwise ratified each and every one of the acts or omissions complained of in this Complaint.

13 12. At all times mentioned herein, Defendants, and each of them, were members of and
14 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
15 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges
16 that all Defendants were joint employers for all purposes of Plaintiff and other Aggrieved Employees.

17 **GENERAL ALLEGATIONS**

18 13. Defendants provide heating ventilation, and air conditioning, electrical, plumbing, and
19 remodeling services to its customers throughout Northern California.

20 14. Defendants have consistently maintained and enforced unlawful employment practices
21 and policies against Plaintiff and other Aggrieved Employees which violate the Labor Code and IWC
22 Wage Orders.

23 15. **Unpaid Wages:** Plaintiff is informed, believes, and thereon alleges that during the
24 PAGA Period, Defendants failed to pay Plaintiff and other Aggrieved Employees minimum, regular,
25 overtime, and/or double time wages for all hours worked at the legally mandated rates. During the
26 PAGA Period, Plaintiff and other Aggrieved Employees regularly worked more than eight (8), 10,
27 and/or 12 hours per workday and/or over 40 hours per workweek. During the PAGA Period, Plaintiff
28 and other Aggrieved Employees were regularly required to work on-call shifts, as shown on

1 Defendants' calendar schedules. If Plaintiff and other Aggrieved Employees received a call during an
2 on-call shift, they only had a limited amount of time to respond to the call and arrive at the job site. If
3 Plaintiff and other Aggrieved Employees failed to answer the call and/or arrive at the job site within a
4 specified amount of time, s/he would be disciplined. During these on-call shifts, Defendants failed to
5 pay Plaintiff and other Aggrieved Employees minimum wages for all hours worked. Specifically,
6 Defendants did not pay Plaintiff for any of her on-call hours worked. In addition, during the PAGA
7 Period, Defendants' practices and policies deprived Plaintiff and other Aggrieved Employees of
8 minimum, regular, overtime, and/or double time wages for work they performed off the clock. For
9 example, Defendants required Plaintiff and other Aggrieved Employees to complete work-related
10 tasks off the clock, including communicating with Employer and working through meal periods. On
11 information and belief, during the PAGA Period, Defendants failed to accurately calculate Plaintiff
12 and other Aggrieved Employees' regular rate of pay by, among other things, failing to include a
13 remuneration when calculating Plaintiff and other Aggrieved Employees' rate of pay for overtime,
14 double time, meal and rest period premiums, and sick pay and the final rate of pay for their vacation
15 payout upon termination. Accordingly, Defendants violated the Labor Code and the applicable IWC
16 Wage Orders.

17 16. **Meal Period Violations:** Plaintiff is informed, believes, and thereon alleges that during
18 the PAGA Period, Defendants failed to authorize and permit and/or make available to aggrieved
19 employees timely off-duty 30-minute meal periods within the appropriate time intervals required by
20 Labor Code § 512 and § 11 of the applicable IWC Wage Order(s). Specifically, Plaintiff and other
21 Aggrieved Employees frequently had their meal periods shortened, interrupted, late, and/or missed
22 altogether due to Defendants' practice of understaffing and prioritizing work demands over taking
23 compliant breaks. Defendants also failed to authorize and permit and/or make available to Plaintiff
24 and other Aggrieved Employees second meal periods when they worked more than 10 hours.
25 Moreover, Defendants rounded Plaintiff and other Aggrieved Employees' time punches for meal
26 periods. Accordingly, Defendants failed to authorize and permit and/or make available to Plaintiff and
27 other Aggrieved Employees timely, uninterrupted off-duty meal periods for at least 30 minutes when
28 they worked more than five (5) hours and/or 10 hours in a workday, and failed to compensate Plaintiff

1 and other Aggrieved Employees with an additional hour of pay at their regular rate of pay for every
2 day in which they were denied a compliant meal period, in violation of Labor Code §§ 226.7 and 512,
3 and the applicable IWC Wage Orders. Accordingly, Defendants violated the Labor Code and the
4 applicable IWC Wage Orders.

5 17. **Rest Period Violations:** Plaintiff is informed, believes, and thereon alleges that during
6 the PAGA Period, Defendants failed to permit Plaintiff and other Aggrieved Employees to take all of
7 their statutorily entitled 10-minute rest periods for every four (4) hours worked or major fraction
8 thereof or provide compensation in lieu thereof in violation of the Labor Code and IWC Wage Orders.
9 Plaintiff and other Aggrieved Employees missed their rest breaks or had them interrupted or governed
10 by Defendants' practices and policies. Defendants also failed to adopt and implement a practice of
11 providing third rest breaks when Plaintiff and other Aggrieved Employees worked over 10 hours.
12 Notwithstanding the above rest break violations, Defendants failed to compensate Plaintiff and other
13 Aggrieved Employees with an additional hour of pay at their regular rate of pay for every day in which
14 they suffered a rest period violation. Accordingly, Defendants violated the Labor Code and the
15 applicable IWC Wage Orders.

16 18. **Unreimbursed Business Expenses:** Plaintiff is informed, believes, and thereon alleges
17 that during the PAGA Period, Defendants failed to reimburse Plaintiff and other Aggrieved Employees
18 for necessary business expenses incurred in the performance of their duties in violation of the Labor
19 Code and IWC Wage Orders. First, Plaintiff and other Aggrieved Employees who were required to
20 work remotely incurred costs for home internet service without any reimbursement. In addition,
21 Plaintiff and other Aggrieved Employees who were required to work remotely were not provided with
22 fair rental value of their home office space. Accordingly, Defendants violated Labor Code §§ 2800,
23 2802, and 2804. Accordingly, Defendants violated the Labor Code and applicable IWC Wage Orders.

24 19. **Waiting Time Penalties:** Defendants knew or should have known that Plaintiff and
25 other Aggrieved Employees who separated from their employment with Defendants during the
26 statutory period were entitled to timely payment of all wages due. In violation of the Labor Code,
27 Plaintiff and other Aggrieved Employees did not receive payment of all wages owed upon separation
28 within the permissible time period due to, *inter alia*, Defendants' failure to pay all wages, including

1 minimum wages and premium pay.

2 20. **Wage Statement Violations:** Defendants knew or should have known that Plaintiff
3 and other Aggrieved Employees were entitled to receive complete and accurate wage statements. In
4 violation of the Labor Code and IWC Wage Orders, Plaintiff and other Aggrieved Employees were
5 not furnished with complete and accurate wage statements that show all information required by Labor
6 Code §§ 226 *et seq.*, including, but not limited to, the gross and net wages earned, the total hours
7 worked, all applicable hourly rates in effect during the pay period, and the corresponding number of
8 hours worked at each hourly rate.

9 21. **Failure to Keep Accurate Records:** Defendants knew or should have known that
10 Defendants were required to keep accurate records of the hours worked by Plaintiff and other
11 Aggrieved Employees. In violation of the Labor Code, Defendants failed to maintain accurate records
12 of hours worked by Plaintiff and other Aggrieved Employees as a result of Defendants' conduct, acts,
13 and/or omissions described throughout this Complaint.

14 22. Defendants' conduct, acts, and/or omissions described throughout this Complaint were
15 willful.

16 **FIRST CAUSE OF ACTION**

17 **Failure to Pay All Wages**

18 **(Against All Defendants)**

19 23. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though
20 fully set forth herein.

21 24. At all relevant times, Defendants had a duty to comply with Labor Code §§ 204, 206,
22 210, 218, 221, 222, 223, 224, 227.3, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the
23 applicable IWC Wage Orders and California Code of Regulations.

24 25. Labor Code § 204 and the IWC Wage Orders require timely payment of all wages owed
25 on regularly scheduled paydays at least twice during each calendar month, on days designated in
26 advance by the employer as the regular paydays. All wages in earned in excess of the normal work
27 period must be paid no later than the payday for the next regular payroll period.

28 26. Labor Code § 206 provides that in case of a dispute over wages, the employer shall

1 pay, without condition and promptly under the Labor Code all wages conceded due, leaving to the
2 employee all remedies he/she is otherwise entitled to as to any balance claimed.

3 27. Labor Code § 210 provides:

4 every person who fails to pay the wages of each employee as provided
5 in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
6 1197.5, shall be subject to a penalty as follows: (1) For any initial
7 violation, one hundred dollars (\$100) for each failure to pay each
8 employee. (2) For each subsequent violation, or any willful or
9 intentional violation, two hundred dollars (\$200) for each failure to pay
each employee, plus 25 percent of the amount unlawfully withheld.
(b) The penalty shall either be recovered by the employee as a statutory
penalty pursuant to Section 98 or by the Labor Commissioner as a civil
penalty through the issuance of a citation or pursuant to Section 98.3.

10 28. Labor Code § 221 provides “[i]t shall be unlawful for any employer to collect or receive
11 from an employee any part of wages theretofore paid by said employer to said employee.”

12 29. Labor Code § 223 provides “[w]here any statute or contract requires an employer to
13 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting
14 to pay the wage designated by statute or by contract.”

15 30. Labor Code § 224 prohibits any deduction from an employee’s wages which is not
16 either authorized by the employee in writing or permitted by law.

17 31. Labor Code § 246 requires employers to provide and allow employees to use at least
18 24 hours, or three days, of paid sick leave per year.

19 32. Labor Code § 227.3 requires employers to pay terminated employees for their unused
20 paid vacation time at their final rate of pay.

21 33. At all times relevant, Labor Code § 510, and applicable sections of the California Code
22 of Regulations and the IWC Wage Orders applied to Plaintiff’s work with Defendants. Labor Code §
23 510 and applicable provisions of the California Code of Regulations and IWC Wage Orders state that
24 any work performed in excess of eight hours in a workday and/or 40 hours in a workweek must be
25 paid at one and one-half times the employee’s regular rate of pay. Any work performed in excess of
26 12 hours in a workday must be compensated at the rate of no less than twice the regular rate of pay for
27 an employee.

28 34. Labor Code § 558 provides “[a]ny employer or other person acting on behalf of an

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

9 35. Labor Code § 1182.12 sets forth the minimum hourly wage that must be paid to all
10 employees in California for all hours worked. Local minimum wage ordinances may provide for higher
11 minimum wage rates that must be paid to employees for all hours worked in those locales where each
12 local ordinance is in effect. Labor Code § 1197 affirms that it is unlawful to pay less than the state or
13 local minimum wage, whichever is higher, for any hour of work.

14 36. Labor Code § 1194 provides that any employee receiving less than the legal minimum
15 wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil
16 action the unpaid balance of the full amount of the minimum wage or overtime compensation,
17 including interest thereon, reasonable attorney's fees, and costs of suit.

18 37. Labor Code § 1194.2 authorizes the recovery of liquidated damages in an amount equal
19 to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

20 38. Labor Code § 1197 provides that the minimum wage for employees fixed by the
21 commission is the minimum wage to be paid to the employees, and the payment of a less wage than
22 minimum so fixed is unlawful.

23 39. Labor Code § 1198 prohibits employers from employing for longer hours or less
24 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
25 the Labor Commissioner.

26 40. The failure to pay at least minimum wages to Plaintiff for each and every hour worked
27 violates Labor Code §§ 1812.11-1812.12, 1194, 1194.2, and 1197; the applicable Wage Order; and
28 Business & Professions Code.

1 41. The failure to pay designated wages to Plaintiff for each and every hour worked violates
2 Labor Code §§ 221 and 223; the applicable Wage Order; and the Business & Professions Code.

3 42. Plaintiff is informed, believes, and thereon alleges that Defendants failed to pay
4 Plaintiff all wages for hours worked (including minimum, regular, overtime, and double time wages,
5 reporting time pay, sick pay, and vacation pay) by failing to accurately record all time worked, failing
6 to compensate Plaintiff for being on-call, time shaving, auto-deducting missed or short meal periods,
7 rounding time and meal period punches, and requiring off-the-clock work without compensation,
8 among other things.

9 43. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein,
10 Plaintiff has sustained and continue to sustain damages, including loss of earnings from minimum,
11 regular, overtime, and double time compensation due, in an amount to be established at trial, plus
12 prejudgment interest, attorneys' fees, and costs pursuant to statute.

13 44. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
14 conduct described herein, have committed an "intentional theft of wages in an amount greater than
15 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
16 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period" within
17 the meaning of Penal Code § 487m. Specifically, Defendants have intentionally deprived Plaintiff of
18 wages, as defined in Labor Code § 200, gratuities, as defined in Labor Code § 350, benefits, or other
19 compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other
20 compensation is due to Plaintiff under the law. Plaintiff is thus entitled to recover from Defendants
21 treble damages and costs, including reasonable attorneys' fees, pursuant to Penal Code § 496(c).

22 **SECOND CAUSE OF ACTION**

23 **Meal Period Violations (Labor Code §§ 226.7, 512, 558)**

24 **(Against All Defendants)**

25 45. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though
26 fully set forth herein.

27 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
28 their affirmative obligation to provide Plaintiff with all legally compliant meal periods in accordance

1 with the mandates of the California Labor Code and the applicable Wage Order. Despite Defendants'
2 violations, Defendants did not pay an additional hour of pay to Plaintiff at Plaintiff's respective regular
3 rate of compensation, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

4 47. As a result, Defendants are responsible for paying premium compensation for meal
5 period violations including interest thereon, statutory penalties, civil penalties, and costs of suit,
6 pursuant to Labor Code §§ 226.7, 512, 558, the applicable Wage Order, and Civil Code §§ 3287(b)
7 and 3289.

8 48. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
9 conduct described herein, have committed an "intentional theft of wages in an amount greater than
10 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
11 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period" within
12 the meaning of Penal Code § 487m. Specifically, Defendants have intentionally deprived Plaintiff of
13 wages, as defined in Labor Code § 200, gratuities, as defined in Labor Code § 350, benefits, or other
14 compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other
15 compensation is due to Plaintiff under the law Plaintiff is informed, believes, and thereon alleges that
16 meal period premiums are wages, gratuities, benefits, or other compensation within the meaning of
17 Penal Code § 487m. Plaintiff is thus entitled to recover from Defendants treble damages and costs,
18 including reasonable attorneys' fees, pursuant to Penal Code § 496(c).

19 **THIRD CAUSE OF ACTION**

20 **Rest Period Violations (Labor Code §§ 226.7, 516, 558)**

21 **(Against All Defendants)**

22 49. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though
23 fully set forth herein.

24 50. California Labor Code §§ 226.7, 516 and 558 and the applicable Wage Order establish
25 the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4)
26 hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and permit
27 Plaintiff to take all legally complaint rest periods as alleged herein, Defendants did not pay Plaintiff
28 an additional hour of pay at Plaintiff's respective regular rate for the rest periods that they failed to

1 authorize and permit Plaintiff to take, as required by Labor Code § 226.7.

2 51. Defendants' policies and practices described herein are unlawful and create an
3 entitlement to recovery by Plaintiff in a civil action for the unpaid amount of rest period premiums
4 owing, including interests thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit
5 according to California Labor Code §§ 226.7, 516, 558, the applicable Wage Order, and Civil Code
6 §§ 3287(b) and 3289.

7 52. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
8 conduct described herein, have committed an "intentional theft of wages in an amount greater than
9 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
10 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period" within
11 the meaning of Penal Code § 487m. Specifically, Defendants have intentionally deprived Plaintiff of
12 wages, as defined in Labor Code § 200, gratuities, as defined in Labor Code § 350, benefits, or other
13 compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other
14 compensation is due to Plaintiff under the law Plaintiff is informed, believes, and thereon alleges that
15 rest period premiums are wages, gratuities, benefits, or other compensation within the meaning of
16 Penal Code § 487m. Plaintiff is thus entitled to recover from Defendants treble damages and costs,
17 including reasonable attorneys' fees, pursuant to Penal Code § 496(c).

18 **FOURTH CAUSE OF ACTION**

19 **Failure to Indemnify All Necessary Business Expenditures (Labor Code §§ 2802, 2804)**

20 **(Against All Defendants)**

21 53. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though
22 fully set forth herein.

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

27 55. Furthermore, at all relevant times herein, Defendants were subject to Labor Code §
28 2804, which states that "any contract or agreement, express or implied, made by any employee to

1 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
2 any employee or his personal representative of any right or remedy to which he is entitled under the
3 laws of this State.”

4 56. Due to Defendants’ unlawful policy and/or practice of failing to pay reimbursements
5 to Plaintiff, as alleged above, Defendants have violated Labor Code § 2802.

6 57. As a proximate result of Defendants’ policies and/or practices in violation of Labor
7 Code §§ 2802 and 2804, Plaintiff suffered damages in sums, which will be shown according to proof.

8 58. Plaintiff is entitled to attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c)
9 for bringing this action.

10 59. Under Labor Code §2802(b), any action brought for the reimbursement of necessary
11 expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff is entitled to
12 interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

13 **FIFTH CAUSE OF ACTION**

14 **Wage Statement Violations (Labor Code § 226 *et seq.*)**

15 **(Against All Defendants)**

16 60. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though
17 fully set forth herein.

18 61. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff with
20 complete and accurate itemized wage statements in violation of Labor Code § 226 *et seq.*

21 62. Defendants’ failures in furnishing Plaintiff with complete and accurate itemized wage
22 statements resulted in injury, as said failures deprived Plaintiff of the information necessary to identify
23 the discrepancies in Defendants’ reported data, and deprived Plaintiff of the information required to
24 be included under Labor Code § 226(a).

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

1 **SIXTH CAUSE OF ACTION**

2 **Unfair Competition (Bus. & Prof. Code § 17200 *et seq.*)**

3 **(Against All Defendants)**

4 64. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though
5 fully set forth herein.

6 65. Defendants have engaged and continue to engage in unfair and/or unlawful business
7 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by:
8 (a) failing to timely pay Plaintiff all wages owed; (b) failing to provide Plaintiff with all meal periods
9 to which Plaintiff is entitled, and failing to pay Plaintiff all meal period premium payments; (c) failing
10 to authorize and permit Plaintiff all rest periods to which Plaintiff is entitled, and failing to pay Plaintiff
11 rest period premium payments; (d) failing to reimburse Plaintiff for necessary business expenditures;
12 and (e) failing to issue to Plaintiff accurate and itemized wage statements.

13 66. Defendants' utilization of these unfair and/or unlawful business practices deprived
14 Plaintiff and continues to deprive Plaintiff of compensation to which Plaintiff is legally entitled,
15 constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants'
16 competitors who have been and/or are currently employing workers and attempting to do so in honest
17 compliance with applicable wage and hour laws.

18 67. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
19 herein, Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore any
20 and all monies withheld, acquired and/or converted by Defendants pursuant to Business and
21 Professions Code §§ 17203 and 17208.

22 68. The acts complained of in this Complaint occurred within the last four years
23 immediately preceding the filing of the Complaint in this action.

24 **SEVENTH CAUSE OF ACTION**

25 **Civil Penalties and Injunctive Relief Under PAGA (Labor Code §§ 2698, *et seq.*)**

26 **(Against All Defendants)**

27 69. Plaintiff incorporate by reference all previous paragraphs of this Complaint as though
28 fully set forth herein.

1 70. On July 26, 2024, Plaintiff notified MBKT Corp., via certified mail, and the California
2 Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of
3 the California Labor Code and Plaintiff’s intent to bring a claim for injunctive relief and civil penalties
4 under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code
5 identified in this Complaint. Now that sixty-five days have passed from Plaintiff notifying Defendants
6 of these violations, Plaintiff has exhausted the administrative requirements for bringing a claim under
7 the Private Attorneys General Act with respect to the violations alleged in this Complaint.

8 71. Defendants have committed several Labor Code violations against Plaintiff and other
9 Aggrieved Employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698
10 *et seq.*, acting on behalf of herself and other Aggrieved Employees, brings this representative action
11 against Defendants to recover the civil penalties due to Plaintiff, other Aggrieved Employees, and the
12 State of California according to proof, including, but not limited to: (1) \$100.00 for each initial
13 violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful
14 or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25%
15 of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
16 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$250.00 for each initial
17 violation; and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee
18 per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation
19 per employee per pay period for those violations of the Labor Code for which no civil penalty is
20 specifically provided, based on the following Labor Code violations:

21 (a) Violation of Labor Code §§ 201-204, 210, 221, 223, 224, 227.3, 510, 558, 1194,
22 1197, 1197.1, and 1198 for failure to timely pay all earned wages owed to Plaintiff and other
23 Aggrieved Employees during employment and upon separation of employment;

24 (b) Violation of Labor Code §§ 226.7, 516, and 558 for failing to authorize and
25 permit all required rest periods and failing to pay rest period premiums to Plaintiff and other Aggrieved
26 Employees at these employees’ respective regular rates of compensation for rest period violations;

27 (c) Violation of Labor Code §§ 226.7, 512, and 558 for failing to provide meal
28 periods as required by law and failing to pay meal period premiums to Plaintiff and other Aggrieved

1 Employees at these employees' respective regular rates of compensation for meal period violations;

2 (d) Violation of Labor Code §§ 226 *et seq.* for failing to furnish Plaintiff and other
3 Aggrieved Employees with accurate and compliant itemized wage statements;

4 (e) Violation of Labor Code §§ 221, 223, and 224 for secretly paying Plaintiff and
5 other Aggrieved Employees less than the statutory or contractual rate;

6 (f) Violation of Labor Code §§ 1174, 1174.5, and 1198 for failure to maintain
7 accurate records on behalf of Plaintiff and other Aggrieved Employees;

8 (g) Violation of Labor Code §§ 2800, 2802, and 2804 for failure to reimburse
9 business expenses to Plaintiff and other Aggrieved Employees; and

10 (h) Derivative violations of Labor Code § 1199.

11 72. Under Labor Code §§ 2699(a), 2699.3, and 2699.5, Plaintiff is entitled to recover civil
12 penalties, in addition to public injunctive relief, for the alleged foregoing violations of the Labor Code.

13 73. Under Labor Code §§ 2699(g) and 2802(c) and California Code of Civil Procedure §
14 1021.5, Plaintiff is entitled to attorneys' fees and costs incurred in this action.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff prays for judgment against Defendants, jointly and severally, as
17 follows:

18 1. Upon the First Cause of Action, for payment of minimum wages, liquidated damages,
19 and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
20 and for compensatory, consequential, general and special damages according to proof pursuant to
21 Labor Code §§ 204, 510, 558, 1194, and 1198;

22 2. Upon the Second Cause of Action, for compensatory, consequential, general, and
23 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

24 3. Upon the Third Cause of Action, for compensatory, consequential, general, and special
25 damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

26 4. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
27 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

28 5. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226,

1 *et seq.*;

2 6. Upon the Sixth Cause of Action, for restitution to Plaintiff of all money and/or property
3 unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in
4 violation of Business and Professions Code § 17200 *et seq.*;

5 7. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, Aggrieved
6 Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a)
7 and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
8 employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor
9 Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2)
10 \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558
11 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
12 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial
13 violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee
14 per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation
15 per employee per pay period for those violations of the Labor Code for which no civil penalty is
16 specifically provided;

17 8. Upon the Seventh Cause of Action, for appropriate injunctive relief pursuant to Labor
18 Code § 2698 *et seq.*;

19 9. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code §
20 218.6 and Civil Code §§ 3287 and 3289;

21 10. On all causes of action, for attorneys' fees and costs as permitted by law, including
22 under Labor Code §§ 226, 1194, 2698 *et seq.*, and 2802(c), and Code of Civil Procedure § 1021.5; and

23 11. For such other and further relief the Court may deem just and proper.

24
25 Dated: September 30, 2024

MANAHAN O'DELL LLP

26
27 By: Shaheen Anthony Etemadi

28 Shaheen Anthony Etemadi
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: September 30, 2024

MANAHAN O'DELL LLP

By: Shaheen Anthony Etemadi
Shaheen Anthony Etemadi
Attorneys for Plaintiff