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Assigned for All Purposes
Judge Lon F. Hurwitz

CX-103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ASHLIE MARTIN, individually and on behalf of)
all other aggrieved employees,)
Plaintiff,)
v.)
NCR VOYIX CORPORATION; and DOES 1-)
10, inclusive,)
Defendants.)

Case No. 30-2024-01423979-CU-WT-CXC
COMPLAINT FOR:
1. Retaliation in Violation of Labor Code §§
98.6, 232.5, and 1102.5;
2. Wrongful Termination of Employment in
Violation of Public Policy;
3. Intentional Infliction of Emotional Distress;
4. Failure to Pay All Wages;
5. Failure to Reimburse Business Expenses;
6. Wage Statement Violations;
7. Waiting Time Penalties;
8. Unfair Competition; and
9. Violations of the Private Attorneys General
Act of 2004

DEMAND FOR JURY TRIAL

1 Plaintiff ASHLIE MARTIN (“Plaintiff”), individually and on behalf of all other aggrieved
2 employees and the State of California, brings this Complaint against defendants NCR VOYIX
3 CORPORATION, and DOES 1-10, inclusive (collectively, “Defendants”), and hereby alleges with
4 knowledge with respect to her own acts and on information and belief as to other matters as follows:

5 **INTRODUCTION**

6 1. Through this action, Plaintiff seeks statutory, compensatory and punitive damages,
7 penalties, interest as allowed by law, costs, attorneys’ fees, declaratory relief, and other appropriate and
8 just relief due to Defendants’ unlawful conduct in violation of Plaintiff’s rights under state law to be free
9 from retaliation in violation of California common law and California Labor Code (“Labor Code”) as well
10 as unpaid wages (including commissions), liquidated and statutory damages, treble damages, restitution,
11 interest as allowed by law, costs, attorneys’ fees, and other sums that Defendants owe to Plaintiff under the
12 Labor Code, Industrial Welfare Commission (“IWC”) Wage Orders, California Business and Professions
13 Code (“Business and Professions Code”), and California Penal Code (“Penal Code”).

14 2. Plaintiff also brings a representative action on behalf of all other aggrieved employees who
15 are and were employed by Defendants as exempt, non-exempt, and/or misclassified employees throughout
16 California during the PAGA Period under the Private Attorneys General Act of 2004, Labor Code Sections
17 2698 *et seq.* (“PAGA”), against Defendants for alleged violations of Labor Code Sections 98.6, 201, 202,
18 203, 204, 206, 210, 221, 223, 224, 226, 226.3, 227.3, 232.5(c), 246, 432.5, 558, 558.1, 1102.5, 1174,
19 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, and 2804. The term PAGA Period is defined
20 as one (1) year prior to Plaintiff’s notice of Labor Code violations to the Labor and Workforce Development
21 Agency (“LWDA”) and Defendants until judgment.

22 **JURISDICTION AND VENUE**

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

27 4. Venue as to each Defendant is proper in this judicial district pursuant to California Code of
28 Civil Procedure Sections 395(a) and 395.5, as at least some of the acts and omissions complained of herein

1 occurred in this County.

2 PARTIES

3 5. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff
4 was, and currently is, a California resident.

5 6. Defendant NCR VOYIX CORPORATION is a Maryland corporation doing business in
6 California, including in this County. Specifically, NCR VOYIX CORPORATION has an office located at
7 85 Argonaut, Aliso Viejo, California 92656. NCR VOYIX CORPORATION is, and at all relevant times
8 was, an employer subject to the Labor Code.

9 7. Plaintiff is unaware of the true names and capacities of those Defendants identified as DOES
10 1 through 10. Therefore, Plaintiff identifies those Defendants fictitiously. Each DOE Defendant was a
11 parent, sister, or related corporate entity of Defendants, or an owner, employee or agent of Defendants, and
12 each related entity, and was acting with the knowledge and authorization of each of the other Defendants.
13 Plaintiff will seek to amend this Complaint to allege the true names and capacities of each DOE Defendant
14 when their names have been ascertained and identified. Each of the Defendants sued as DOES 1 through
15 10 participated in, received the benefit of, or was in some way responsible for one or more of the wrongful
16 acts and omissions and some portion of the damages alleged in this Complaint.

17 8. At all times relevant, each defendant acted in all respects pertinent to this action as the agent
18 of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
19 and the acts of each defendant are legally attributable to the other defendants. Furthermore, Defendants in
20 all respects acted as the employer and/or joint employer of Plaintiff.

21 9. Defendants, each and all of them, at all times relevant, were the joint employers, parent
22 companies, successor companies, predecessors in interest, affiliates, agents, employees, servants, joint
23 venturers, directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining
24 Defendants. Defendants, unless otherwise alleged, at all times relevant, performed all acts and omissions
25 alleged herein within the course and scope of said relationship(s), and are a proximate cause of Plaintiff's
26 damages alleged herein. Moreover, Plaintiff is informed and believes and thereon alleges that each
27 Defendant has authorized and/or ratified the wrongful activities of each of the remaining Defendants and
28 their agents.

10. There exists a unity of interest in ownership between Defendants and DOES 1 through 10, inclusive, such that any individuality and separateness between the individual and the corporation does not exist, as Defendants, and DOES 1 through 10, inclusive, are alter egos, in that: (a) Defendants are and at all times mentioned herein were mere shells, instrumentalities and conduits through which DOES 1 through 10, inclusive, carried out their business in the business name, exercising complete control and dominance over such business; (b) that Defendants were conceived, intended and used by DOES 1 through 10, inclusive, as devices to avoid individual liability and in place of Defendants, and DOES 1 through 10, inclusive, and were without the financial solvency and responsibility required by law; and (c) that all of the assets of the Defendants have been transferred to DOES 1 through 10, inclusive, or some other individual or entity which it, he, or she owns or controls, with the intent to hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further, there exists a principal-agency relationship between and among Defendants.

FACTUAL ALLEGATIONS

11. Defendants are a software, consulting, and technology company providing professional services and electronic products.

12. Defendants employed Plaintiff as an exempt, full-time, remote Relationship Manager (Account Executive) from approximately May 19, 2022 until June 27, 2024, when she was wrongfully terminated in retaliation for making complaints concerning unpaid commissions.

13. At all relevant times, Plaintiff performed her job duties well. As a result of Plaintiff's excellent performance, Defendants named Plaintiff as a distinguished member of their Century Point Club for 2023.

14. Starting in 2023, Plaintiff began to make complaints to Defendants concerning unpaid commissions, including unlawful deductions to Plaintiff's commissions.

15. Defendants were issuing chargebacks for accounts that pre-dated Plaintiff's employment to deprive Plaintiff of earned commissions. For example, Defendants added customers outside of Plaintiff's assigned territories with unpaid accounts receivable and then counted the same against Plaintiff's commissions. This was designed to deprive Plaintiff of earned commissions and increase Defendants' bottom line profits, even though Defendants commission agreement(s) failed to state exactly how

1 Plaintiff's commissions were calculated. In addition, Defendants failed to provide Plaintiff with an accurate
2 account of commissions earned.

3 16. At all relevant times, Plaintiff reasonably believed Defendants' practices and policies
4 concerning commissions was unlawful.

5 17. After Plaintiff made protected complaints about Defendants' practices and policies
6 concerning commissions, Defendants' employee Jason Sheldon sent her the following messages on
7 Microsoft Teams: "got the big dogs in on this one [¶]. Very interesting [¶]." Regarding how Defendants
8 were going to address Plaintiff's complaints, Mr. Sheldon wrote: "hopefully we both have jobs
9 afterwards..."

10 18. On June 21, 2024, Plaintiff opened a ticket with Defendants' human resources department
11 to inquire about her unpaid commissions.

12 19. On June 27, 2024, Defendants terminated Plaintiff's employment.

13 20. Because Defendants engaged in retaliatory adverse employment actions against Plaintiff
14 within ninety (90) days of her protected activities, there shall be a rebuttable presumption in favor of
15 Plaintiff's retaliation claims under Labor Code Sections 98.6 and 1102.5. *See* Senate Bill No. 497 (2023)
16 [Equal Pay and Anti-Retaliation Protection Act].

17 21. The alleged retaliation has caused significant emotional distress to Plaintiff.

18 22. The alleged retaliation against Plaintiff was condoned, permitted and encouraged by
19 Defendants in a manner which was grossly negligent, reckless, willful, malicious, and deliberately
20 indifferent to the Plaintiff's personal rights to a workplace free from retaliation.

21 23. In addition, Defendants failed to reimburse Plaintiff for all reasonable and necessary work
22 expenditures incurred for Defendants' benefit. First, Plaintiff, a full-time remote employee, was required
23 to use her personal cell phones to discuss work-related matters with Defendants' representatives and for
24 other work purposes without any reimbursement. Second, Plaintiff was required to incur costs for home
25 internet service without any reimbursement. Third, Plaintiff was required to incur computer-related
26 expenses, including but not limited to displays/monitors, webcams, printers, software, etc., without any
27 reimbursement. Fourth, Plaintiff was required to incur home office expenses, such as furniture and office
28 supplies, without any reimbursement. Fifth, Plaintiff was required to incur extra home utility costs, such as

electricity, to carry out her job duties without any reimbursement. Sixth, Plaintiff was not provided with fair rental value of her home office space.

FACTUAL ALLEGATIONS CONCERNING PAGA CLAIMS

24. Through this action, Plaintiff alleges Defendants have consistently maintained and enforced against Plaintiff and Aggrieved Employees unlawful employment practices and policies which violate the Labor Code and IWC Wage Orders.

25. **Unpaid Wages:** Plaintiff is informed, believes, and thereon alleges that during the PAGA Period, Defendants failed to timely pay to Plaintiff and Aggrieved Employees all wages, including commissions, they earned at the legally mandated rates. For example, Defendants made unlawful deductions to Plaintiff and Aggrieved Employees' commissions. Accordingly, Defendants failed to timely pay to Plaintiff and Aggrieved Employees all commissions they earned in violation of Labor Code Sections 204, 206, 210, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2751, and the applicable IWC Wage Orders and California Code of Regulations.

26. **Unreimbursed Business Expenses:** Plaintiff is informed, believes, and thereon alleges that during the PAGA Period, Defendants failed to reimburse Plaintiff and Aggrieved Employees for all reasonable and necessary work expenditures incurred for Defendants' benefit. First, Plaintiff, a full-time remote employee, and Aggrieved Employees were required to use their personal cell phones to discuss work-related matters with Defendants' representatives and for other work purposes without any reimbursement. Second, Plaintiff and Aggrieved Employees who worked remotely were required to incur costs for home internet service without any reimbursement. Third, Plaintiff and Aggrieved Employees who worked remotely were required to incur computer-related expenses, including but not limited to computers, laptops, displays/monitors, webcams, printers, headsets, ear pods, software, etc., without any reimbursement. Fourth, Plaintiff and Aggrieved Employees who worked remotely were required to incur home office expenses, such as furniture and office supplies, without any reimbursement. Fifth, Plaintiff and Aggrieved Employees who worked remotely were required to incur extra home utility costs, such as electricity, to carry out their job duties without any reimbursement. Sixth, Plaintiff and Aggrieved Employees who worked remotely were not provided with fair rental value of their home office space. Accordingly, Employer violated Labor Code Sections 2800, 2802, and 2804.

1 27. **Waiting Time Penalties:** Plaintiff is informed, believes, and thereon alleges that during the
2 PAGA Period, Defendants willfully failed to timely pay all wages due to Plaintiff and Aggrieved
3 Employees upon separation of employment in violation of the Labor Code and IWC Wage Orders. Plaintiff
4 and Aggrieved Employees were not paid all wages (including commissions) within the required time period
5 in violation of the Labor Code and applicable IWC Wage Orders.

6 28. **Wage Statement Violations:** Plaintiff is informed, believes, and thereon alleges that during
7 the PAGA Period, Defendants failed to furnish Plaintiff and Aggrieved Employees with accurate and
8 complete wage statements in violation of the Labor Code and IWC Wage Orders. Plaintiff and Aggrieved
9 Employees received wage statements which did not accurately reflect the gross and net wages earned, total
10 hours worked, all applicable rates of pay and the corresponding number of hours worked at each pay rate,
11 and correct entity name and address on wage statements issued to Plaintiff and Aggrieved Employees,
12 among other things in violation of the Labor Code and IWC Wage Orders.

13 29. **Unlawful Commissions Agreement:** Plaintiff is informed, believes, and thereon alleges
14 that during the PAGA Period, Defendants required Plaintiff and Aggrieved Employees or applicants for
15 employment to agree, in writing, to terms or conditions which Defendants knew to be prohibited by law.
16 For example, Defendants knew the terms of its commission agreement were in violation of Labor Code
17 Sections 204 (providing for timely payment of commissions) and 2751 (detailing the precise method for
18 calculating and paying commissions). Accordingly, Defendants violated Labor Code Section 432.5.

19 30. **Retaliation for Engaging in Protected Activity:** Plaintiff is informed, believes, and
20 thereon alleges that during the PAGA Period, Plaintiff engaged in quintessential protected activity by
21 making complaints to Defendants regarding workplace conditions she reasonably believed to be illegal,
22 including Defendants' alleged unlawful commission practices and policies. As a result of Plaintiff's
23 protected activity, Defendants, through their management and supervisors, discriminated, retaliated, and/or
24 took numerous adverse actions against Plaintiff, including but not limited to making unlawful deductions
25 to her commissions and terminating her employment.

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FIRST CAUSE OF ACTION

(Retaliation)

(Violations of Labor Code §§ 98.6, 232.5, and 1102.5)

(Against All Defendants)

31. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth in this paragraph.

32. At all times relevant, the Labor Code was in full force and effect and was binding on Defendants.

33. Labor Code Section 98.6 protects an employee complaining orally or in writing about unpaid wages, or for exercising (on behalf of oneself or other employees) any of the rights provided under the Labor Code or Orders of the Industrial Welfare Commission. In addition to other remedies that might be available, a civil penalty of up to \$10,000 may be awarded to an employee for each violation.

34. Labor Code Section 232.5 prohibits an employer from discharging or retaliating against an employee who discusses or discloses information about the employer's working conditions.

35. Labor Code Section 1102.5 protects against retaliation for disclosing information, or because an employer believes an employee has disclosed information or may disclose information, to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has the authority to investigate, discover, or correct a violation, where an employee reasonably believes that the information discloses a violation of a state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. In addition to other remedies that might be available, a civil penalty of up to \$10,000 may be awarded to an employee for each violation.

36. Labor Code Sections 98.6, 232.5, and 1102.5 were intended to prevent the type of injury and damage alleged in this Complaint. Labor Code Sections 98.6, 232.5, and 1102.5 require Defendants to refrain from retaliating or discriminating against Plaintiff for engaging in protected activities.

37. Plaintiff was, at all times relevant, a member of the class of persons intended to be protected by Labor Code Sections 98.6, 232.5, and 1102.5.

38. As alleged above, Plaintiff engaged in conduct protected by Labor Code Sections 98.6, 232.5, and 1102.5.

39. As alleged above, Defendants took retaliatory adverse employment actions against Plaintiff, including terminating her employment.

40. As alleged above, because Defendants engaged in retaliatory adverse employment actions against Plaintiff within ninety (90) days of her protected activities, there shall be a rebuttable presumption in favor of Plaintiff's retaliation claims under Labor Code Sections 98.6 and 1102.5. *See* Senate Bill No. 497 (2023) [Equal Pay and Anti-Retaliation Protection Act].

41. Plaintiff's protected conduct was a motivating reason for Defendants' alleged retaliatory adverse employment actions.

42. As a result of the foregoing acts and omissions of Defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

43. As a further direct and legal result of the acts and conduct of Defendants, and each of them, Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but Plaintiff is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

44. Defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, Defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

45. Plaintiff is entitled to recover costs, including reasonable attorneys' fees and expert witness fees, according to proof at trial.

SECOND CAUSE OF ACTION

(Wrongful Termination in Violation of Public Policy)

(Against All Defendants)

46. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth

1 in this paragraph.

2 47. There are strong and well defined public policies against retaliation in California. *See, e.g.,*
3 Labor Code §§ 98.6, 232.5, and 1102.5.

4 48. Defendants terminated Plaintiff's employment in violation of these public policies.

5 49. Plaintiff was harmed as a result of Defendants' conduct.

6 50. Defendants and their managers, officers, and/or directors committed the acts alleged herein
7 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with
8 an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
9 rights. Moreover, Defendants and their managers, officers, and/or directors authorized or ratified the
10 wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such,
11 Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

12 **THIRD CAUSE OF ACTION**

13 **(Intentional Infliction of Emotional Distress)**

14 **(Against All Defendants)**

15 51. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
16 in this paragraph.

17 52. California law prohibits persons from intentionally or recklessly causing another emotional
18 distress.

19 53. Defendants intentionally or recklessly caused Plaintiff severe emotional distress.

20 54. Defendants' conduct was outrageous.

21 55. Plaintiff suffered harm as a result of Defendants' conduct.

22 56. Defendants and their managers, officers, and/or directors committed the acts alleged herein
23 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with
24 an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
25 rights. Moreover, Defendants and their managers, officers, and/or directors authorized or ratified the
26 wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such,
27 Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

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1 **FOURTH CAUSE OF ACTION**

2 **(Failure to Pay All Wages)**

3 **(Against All Defendants)**

4 57. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
5 in this paragraph.

6 58. At all relevant times, Defendants had a duty to comply with Labor Code Sections 204, 206,
7 210, 221, 223, 224, 227.3, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the applicable IWC
8 Wage Orders and California Code of Regulations.

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

13 60. Labor Code Section 206 provides that in case of a dispute over wages, the employer shall
14 pay, without condition and promptly under the Labor Code all wages conceded due, leaving to the
15 employee all remedies he/she is otherwise entitled to as to any balance claimed.

16 61. Labor Code Section 210 provides:

17 every person who fails to pay the wages of each employee as provided in
18 Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,
19 shall be subject to a penalty as follows: (1) For any initial violation, one
20 hundred dollars (\$100) for each failure to pay each employee. (2) For each
21 subsequent violation, or any willful or intentional violation, two hundred
22 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.

23 62. Labor Code Section 221 provides “[i]t shall be unlawful for any employer to collect or
24 receive from an employee any part of wages theretofore paid by said employer to said employee.”

25 63. Labor Code Section 223 provides “[w]here any statute or contract requires an employer to
26 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to
27 pay the wage designated by statute or by contract.”

28 64. Labor Code Section 224 prohibits any deduction from an employee’s wages which is not

1 either authorized by the employee in writing or permitted by law.

2 65. Labor Code Section 227.3 requires employers to pay terminated employees for their unused
3 paid vacation time at their final rate of pay.

4 66. Labor Code Section 246 requires employers to provide and allow employees to use at least
5 24 hours, or three days, of paid sick leave per year.

6 67. At all times relevant, Labor Code Section 510, and applicable sections of the California
7 Code of Regulations and the IWC Wage Orders applied to Plaintiff's work with Defendants. Labor Code
8 section 510 and applicable provisions of the California Code of Regulations and IWC Wage Orders state
9 that any work performed in excess of eight hours in a workday and/or 40 hours in a workweek must be
10 paid at one and one-half times the employee's regular rate of pay. Any work performed in excess of 12
11 hours in a workday must be compensated at the rate of no less than twice the regular rate of pay for an
12 employee.

13 68. Labor Code Section 558 provides "[a]ny employer or other person acting on behalf of an
14 employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours
15 and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as
16 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
17 for which the employee was underpaid in addition to an amount to recover underpaid wages. (2) For each
18 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for
19 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3)
20 Wages recovered pursuant to this section shall be paid to the affected employee."

21 69. Labor Code Section 1182.12 sets forth the minimum hourly wage that must be paid to all
22 employees in California for all hours worked. Local minimum wage ordinances may provide for higher
23 minimum wage rates that must be paid to employees for all hours worked in those locales where each local
24 ordinance is in effect. Labor Code Section 1197 affirms that it is unlawful to pay less than the state or local
25 minimum wage, whichever is higher, for any hour of work.

26 70. Labor Code Section 1194 provides that any employee receiving less than the legal minimum
27 wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action
28 the unpaid balance of the full amount of the minimum wage or overtime compensation, including interest

thereon, reasonable attorneys' fees, and costs of suit.

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

72. Labor Code Section 1197 provides that the minimum wage for employees fixed by the commission is the minimum wage to be paid to the employees, and the payment of a less wage than minimum so fixed is unlawful.

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

74. Plaintiff is informed, believes, and thereon alleges that at all relevant times, Plaintiff regularly worked more than eight (8) hours, 10, and/or 12 hours per workday, more than 40 hours per workweek, and/or more than eight (8) hours on the seventh consecutive day of work.

75. Plaintiff is informed, believes, and thereon alleges that at all relevant times, Defendants failed to pay Plaintiff all wages for hours worked (including commissions).

76. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained and continues to sustain damages, including loss of earnings including commissions due, in an amount to be established at trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

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

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FIFTH CAUSE OF ACTION

(Failure to Reimburse Business Expenses)

(Against All Defendants)

78. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth in this paragraph.

79. At all relevant times, Defendants had a duty to comply with Labor Code Sections 2800 and 2802. Defendants failed to comply with these indemnification and reimbursement requirements with respect to Plaintiff.

80. Labor Code Section 2800 requires employers to indemnify employees for losses caused by the employer's want of ordinary care. To the extent Defendants claim that Plaintiff failed to request, demand, notify or otherwise seek reimbursement for their expenses and losses, Defendants were obligated to nevertheless indemnify Plaintiff due to their own negligence.

81. Labor Code Section 2802(a) requires that employers indemnify and reimburse employees for all business expenses, which are defined as all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties or otherwise incurred based on the employee's obedience to the employer's directions. Labor Code Section 2802(b) authorizes employees to recover in a court action interest which shall accrue from the date on which the employee incurred the necessary expenditure or loss. Labor Code Section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor Code Section 2802, to also recover attorneys' fees and costs.

82. As alleged above, Defendants failed to pay and indemnify Plaintiff for her necessary expenditures and losses incurred in direct consequence of the discharge of Plaintiff's duties or of Plaintiff's obedience to Defendants' directions.

83. As a result of Defendants' failure to indemnify and reimburse Plaintiff for all business and work-related costs, expenditures, losses and expenses in accordance with Labor Code Sections 2800 and 2802, Plaintiff is entitled to recover the full unreimbursed balance of reimbursements, expenditures and losses, prejudgment interest, and statutory penalties, along with attorneys' fees and costs according to proof at trial.

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SIXTH CAUSE OF ACTION

(Wage Statement Violations)

(Against All Defendants)

84. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth in this paragraph.

85. Labor Code Section 226(a) requires employers, at the time of each payment of wages, to furnish each employee with an accurate statement itemizing, among other things: (1) gross wages earned; (2) the total hours worked by the employee; (3) all deductions; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the employee and his or her social security number (last four digits); (7) the name and address of the legal entity that is the employer; and (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Labor Code Section 1174 further requires that such payroll records be kept in a central location.

86. Labor Code Section 226(e) further provides that if an employer knowingly and intentionally fails to provide a statement itemizing, among other things, the total hours worked by the employee, then the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

87. As alleged above, Defendants failed to pay all wages, reimbursements, and premiums. Thus, Defendants have knowingly and intentionally failed to comply with the Labor Code on each and every wage statement that should have been provided to Plaintiff by failing to provide itemized wage statements to Plaintiff that accurately reported, among other things, the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate.

88. By failing to keep accurate records and provide such records to Plaintiff as required by Labor Code Sections 226(a) and 1174, Defendants have injured Plaintiff and made it difficult to calculate the unpaid wages earned and due to Plaintiff. Moreover, Defendants' failure to comply with Labor Code Section 1174 is unlawful under Labor Code Section 1175.

89. Because of Defendants' willful failure to provide Plaintiff with accurate records as required by Labor Code § 226(a), Plaintiff is entitled to damages under Labor Code Section 226(e) according to proof at trial.

SEVENTH CAUSE OF ACTION

(Waiting Time Penalties)

(By Plaintiff Against All Defendants)

90. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth in this paragraph.

91. Labor Code Section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge as required under Labor Code Section 201, the employer is liable to the employee for penalties.

92. At the time of Plaintiff's termination of employment, Plaintiff had unpaid wages, reimbursements, and premium pay for missed meal and rest periods outstanding.

93. Defendants have willfully, unfairly, fraudulently, or unlawfully failed to pay Plaintiff's compensation owed upon termination of employment under Labor Code Section 201. Plaintiff's employment with Defendants terminated but Defendants failed to pay Plaintiff's any of the unpaid wages, reimbursements, and premiums due and owing to Plaintiff's at the time of Plaintiff's termination of employment. As a result, Defendants are liable to Plaintiff for waiting time penalties under Labor Code § 203 according to proof at trial.

EIGHTH CAUSE OF ACTION

(Unfair Business Practices)

(Against All Defendants)

94. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth in this paragraph.

95. As alleged above, Defendants' conduct constitutes an unfair or unlawful business practice as defined in California's Unfair Competition Law, California Business & Professions Code Sections 17200-17209 *et seq.* The unlawful conduct includes failure to timely pay all wages (including meal and

rest break premiums) and associated violations of the California Labor Code.

96. As a result, Plaintiff is entitled to restitution of unpaid wages, unpaid meal and rest break premiums, and unreimbursed business expenses, attorneys' fees and costs, and other relief.

NINTH CAUSE OF ACTION

(Violations of the Private Attorneys General Act of 2004)

(Against All Defendants)

97. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth in this paragraph.

98. Under Labor Code Section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code Sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate or after 65 days have passed without notice from the LWDA.

99. On July 2, 2024, Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code Section 2699.3. This written notice was provided via certified mail to Defendants and to the LWDA by electronically filing the notice via the Department of Industrial Relations' website. More than 65 days have passed since Plaintiff submitted the notice to the LWDA without notice from the LWDA. Accordingly, Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved employees under PAGA.

100. Under Labor Code Section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to the procedures specified in Labor Code Section 2699.3.

101. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code Section 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for

1 each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these
2 provisions of the Labor Code.

3 102. Pursuant to Labor Code Sections 2699.3 and 2699.5, Plaintiff may seek civil penalties for
4 any alleged violation of the following provisions: subdivision (k) of section 96, sections 98.6, 201, 201.3,
5 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and
6 212, subdivision (d) of section 213, sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive,
7 (7), and (9) of subdivision (a) of section 226, sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4,
8 230.7, 230.8, and 231, subdivision (c) of section 232, subdivision (c) of section 232.5, sections 233, 234,
9 351, 353, and 403, subdivision (b) of section 404, sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512,
10 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976,
11 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of section 1174, sections
12 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of section 1198.3, sections 1199, 1199.5, 1290,
13 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5,
14 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of section 1695.5, sections 1695.55, 1695.6,
15 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and
16 1700.47, sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of section
17 2673.1, sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of section 2929, and sections
18 3073.6, 6310, 6311, and 6399.7.

19 103. Defendants' conduct violates numerous Labor Code Sections, including, but not limited to,
20 the following:

21 (a) Violation of Labor Code Sections 201-204, 206, 210, 221, 223, 224, 227.3, 246,
22 510, 558, 1194, 1197, 1197.1, and 1198 for failure to timely pay all earned wages (including commissions)
23 owed to Plaintiff and other aggrieved employees during employment and upon separation of employment;

24 (b) Violation of Labor Code Sections 221, 223, and 224 for secretly paying Plaintiff
25 and/or Aggrieved Employees less than the statutory or contractual rate;

26 (c) Violation of Labor Code Sections 1174 and 1174.5 for failure to maintain accurate
27 records regarding the employment of Plaintiff and other Aggrieved Employees;

28 (d) Violation of Labor Code Sections 2800, 2802, and 2804 for failure to reimburse

1 business expenses to Plaintiff and other Aggrieved Employees;

2 (e) Violation of Labor Code Sections 432.5 for requiring Plaintiff and Aggrieved
3 Employees to enter into commissions agreement(s) which Defendants knew were in violation of Labor
4 Code Sections 204 (providing for timely payment of commissions) and 2751 (detailing the precise method
5 for calculating and paying commissions);

6 (f) Violation of Labor Code Sections 98.6, 232.5(c), and 1102.5 for discriminating,
7 retaliating, and/or taking adverse actions against Plaintiff for engaging in quintessential protected activity;

8 (g) Violation of Labor Code Section 1199 for the foregoing Labor Code violations.

9 104. Labor Code Section 226.3 provides: “[a]ny employer who violates subdivision (a) of
10 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
11 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
12 violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction
13 statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided
14 for in this section are in addition to any other penalty provided by law.”

15 105. Labor Code Section 558(a) provides “[a]ny employer or other person acting on behalf of an
16 employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours
17 and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as
18 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
19 for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100)
20 for each underpaid employee for each pay period for which the employee was underpaid.”

21 106. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to maintain
22 accurate and complete payroll records showing the hours worked daily by and the wages paid to employees.

23 107. Labor Code Section 1197.1 also provides “[a]ny employer or other person acting either
24 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any
25 employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the
26 commission shall be subject to a civil penalty . . . as follows: (1) For any initial violation that is intentionally
27 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the
28 employee is underpaid . . . (2) For each subsequent violation for the same specific offense, two hundred

fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

108. As set forth above, Defendants have violated numerous provisions of the Labor Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff also seeks the civil penalties set forth in Labor Code Sections 226.3, 226.8, 558, 1174.5, and 1197.1 individually, on behalf of all aggrieved employees, and the State of California.

109. Pursuant to Labor Code Sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

110. Plaintiff is also entitled to attorneys' fees and costs.

PRAYER FOR RELIEF

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

1. For general damages, according to proof at trial;
2. For compensatory damages, according to proof at trial;
3. For loss of earnings and other economic or pecuniary damages, according to proof at trial;
4. For prejudgment interest on all sums recovered pursuant to other compensatory damages at the legal rate from the date of injury or pursuant to Code of Civil Procedure Sections 3287 and 3289, and Labor Code Section 218.6;
5. For exemplary and punitive damages in an amount sufficient to deter Defendants, according to proof at trial;
6. For treble damages pursuant to Penal Code Section 496(c), according to proof at trial;
7. For waiting time penalties under Labor Code Section 203;
8. For liquidated damages under Labor Code Section 1194.2;
9. For statutory penalties to the extent permitted by law, including those under the Labor Code and IWC Wage Orders;
10. For attorneys' fees under Labor Code Sections 218.6, 226, 1194, and 2802, Code of Civil Procedure Section 1021.5, Penal Code Section 496(c), and any other applicable provisions of law;
11. For costs of suit incurred; and

12. For such other and further relief as the Court may deem just and proper.

WHEREFORE, Plaintiff, on behalf of herself, the Aggrieved Employees, and the State of California, prays for judgment against Defendants, jointly and severally, as follows:

1. For injunctive relief against Defendants pursuant to, *inter alia*, Labor Code Sections 2698, *et seq.*;

2. For civil penalties against Defendants pursuant to, *inter alia*, Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2698, *et seq.*;

3. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including pursuant to Labor Code Sections 2699(g), 2802(c) and Code of Civil Procedure Section 1021.5; and

4. For such other relief as the Court deems just and proper.

Dated: September 9, 2024

MANAHAN O'DELL LLP

By: Shaheen A. Etemadi
Shaheen A. Etemadi
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: September 9, 2024

MANAHAN O'DELL LLP

By: Shaheen A. Etemadi
Shaheen A. Etemadi
Attorneys for Plaintiff