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Attorney for Plaintiff,
TARA DENISE MICHAEL

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SACRAMENTO**

TARA DENISE MICHAEL, an individual,
on her own behalf and on behalf of all
others similarly situated,

Plaintiff,

v.

POINT QUEST INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 24CV016886

[Assigned for all purposes to Hon. Lauri Damrell,
in Dept. 22]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 4);**
- 2. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY REST PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 5);**
- 4. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; IWC Wage Order No. 4);**
- 5. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code § 2802);**
- 6. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5);**
- 7. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.); and**

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**8. PRIVATE ATTORNEY GENERAL ACT
("PAGA")**

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

TARA DENISE MICHAEL ("Plaintiff") alleges the following:

1. This is a class action brought under California law by an individual who is employed by Point Quest Inc. ("PQ" or "Defendant") (along with DOES 1 through 100, collectively "Defendants"). Plaintiff brings this action on behalf of herself and others similarly situated to recover wages from Defendant due to Defendant's systematic failure to pay minimum wages, failure to provide meal breaks (or pay the statutory compensation due), failure to provide rest breaks (or pay the statutory compensation due), failure to issue accurate wage statements, failure to reimburse business expenses and failure to allow inspection of employment records.

2. Plaintiffs have worked as employees for Defendant at Blue Oaks Elementary School and other schools in California. While working, Plaintiffs have been forced to endure stressful and illegal workplace conditions created by Defendant's efforts to maximize profits and tightly control labor costs.

3. Plaintiff, like her co-workers whom Defendant also employed during the applicable limitations period, spend their workdays at Blue Oaks Elementary School and other schools in California 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 minimum wages, refusing to provide proper meal periods, refusing to provide proper rest periods, not paying the required extra hour for missed meal/rest breaks, failing to reimburse business expenses, failing to allow inspection of employment 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, minimum wages, missed meal/rest break wages, penalties for failure to provide accurate itemized wage statements, unreimbursed business expenses, failure to allow inspection of employment records and interest, attorneys' fees, costs, and expenses.

5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for herself 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 Tara Denise Michael 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 against the persons identified herein occurred in the County of Sacramento and because Defendant owned and operated its business in the County of Sacramento.

THE PARTIES

PLAINTIFF

10. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Sutter County, California;
- (b) Employed as an hourly employee for Defendant in Roseville, California;
- (c) Did not receive minimum wages as required by Labor Code §§1194, 1194.2, 1997, 1197.1, 1198 and the applicable Wage Orders;
- (d) Did not receive the meal periods required by Labor Code §266.7 and the applicable Wage Orders;
- (e) Did not receive the rest periods required by Labor Code §266.7 and the applicable Wage Orders;
- (f) Did not receive accurate wage statements as mandated by Labor Code §226;
- (g) Was not reimbursed necessary business expenses as required by Labor Code § 2802; and
- (h) 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 PT is, and at all times mentioned herein was:

- (a) A California corporation with a principal place of business at 1401 21st Street, Ste. R, Sacramento, California 95811. Defendant has been authorized to do business and has been doing business in the County of Sacramento;
- (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 minimum wages;
- (e) Failed to provide Plaintiff and all putative Class members with meal/rest periods and failed to provide Plaintiff and all putative Class members with accurate itemized wage statements;

- 1 (f) Failed to reimburse Plaintiff and all putative Class members for necessary
2 business expenses; and
3 (g) Failed to provide their personnel records. Each of these was a violation of
4 the Labor Code.
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6 12. The true names and capacities, whether individual, corporate, subsidiary,
7 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
8 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
9 *Civil Procedure* § 474. Plaintiff will seek leave to amend her Complaint to allege the true names
10 and capacities of DOES 1 through 100, inclusive, when they are ascertained.

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

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

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

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

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

(a) “All current and former employees who were hourly paid employees of Defendant and worked for PT 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 PT 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”).”

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

1 19. Plaintiff brings this action individually and on behalf of herself and as
2 representative of all similarly situated persons under *Business & Professions Code* §§ 17203 and
3 17204 and *Code of Civil Procedure* § 382.

4 **C. The Class Requisites**

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

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

- 8 (a) The persons who comprise the Class are so numerous that the joinder of all those
9 persons is impracticable, and the disposition of their claims as a Class will
10 benefit the parties and the Court;
- 11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
12 that are raised in this First Amended Complaint are common to the Class and
13 will apply uniformly to every Class member;
- 14 (c) The claims of the representative Plaintiff are typical of the claims of each
15 Class member. Plaintiff, like all Class members, has sustained damages
16 arising from Defendant's violations of the laws of the State of California.
17 Plaintiff and the Class members were and are similarly or identically harmed
18 by the same unlawful, deceptive, unfair, systematic and pervasive pattern of
19 misconduct engaged in by Defendant;
- 20 (d) The representative Plaintiff has, and will continue to, fairly and adequately
21 represent and protect the interests of the Class and has retained counsel who
22 is competent and experienced in class action litigation. There are no material
23 conflicts between the claims of the representative Plaintiff and the Class
24 members that would make class certification inappropriate. Counsel for the
25 Class will vigorously assert the claims of all Class members.

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1 22. The persons who comprise the Class are so numerous that joining all of them is
2 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
3 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
4 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
5 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for Plaintiff
6 are experienced, qualified and generally able to conduct complex class action litigation.

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

- 9 (a) The questions of law and fact common to the Class predominate over any
10 question affecting only individual members;
- 11 (b) A class action is superior to any other available method for fairly and
12 efficiently adjudicating the claims of the Class;
- 13 (c) The Class members are so numerous that it is impractical to bring all of
14 them before the Court;
- 15 (d) Plaintiff and other Class members will not be able to obtain effective and
16 economic legal redress unless the action is maintained as a class action;
- 17 (e) There is a community of interest in obtaining appropriate legal and
18 equitable relief for the statutory violations, and in obtaining adequate
19 compensation for the damages and injuries for which Defendant is
20 responsible in an amount sufficient to adequately compensate the Class
21 members;
- 22 (f) Without Class certification, the prosecution of separate actions by
23 individual Class members would create a risk of:
- 24 i. Inconsistent or varying adjudications for individual Class members
25 that would establish incompatible standards of conduct for
26 Defendant; and/or,
- 27 ii. Adjudication for individual Class members that would, as a practical
28 matter, dispose of other non-party members' interests, or that would

1 substantially impair or impede the non-parties' ability to protect their
2 interests by, for example, potentially exhausting the funds available
3 from Defendant, and

4 (g) Defendant has acted or refused to act on grounds generally applicable to the
5 Classes, making final injunctive relief appropriate for the Class as a whole.
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7 24. Plaintiff contemplates eventually issuing notice to the proposed Class Members
8 that would set forth the subject and nature of the action. Defendant's own business records may
9 be utilized for assisting in preparing and issuing the contemplated notice. To the extent that any
10 further notices may be required, Plaintiff would contemplate using additional media and/or
11 mailing.

12 **GENERAL ALLEGATIONS**

13 25. At all times material hereto, Defendant PT has been and is a special education
14 program contractor that provides educational services.

15 26. Plaintiff and members of the Class were employed as Behavioral Aides and other
16 non-exempt employees by Defendant in California at various times during the Class Period.

17 **THE CONDUCT**

18 27. Plaintiff seeks relief from Defendant's uniform policies and practices of denying
19 Plaintiff and members of the Class wages and compensation owed under California law.

20 28. Starting on or about August 8, 2023, and continuing to the present, Defendant
21 employed Plaintiff on an hourly basis as a Behavioral Aide at Blue Oaks Elementary School in
22 Roseville, California.

23 29. While employed by Defendant as a Behavioral Aid, Plaintiff was paid
24 approximately \$19.00 per hour.

25 30. The employment by Defendant of the Class Members, and each of them, is
26 governed by Industrial Welfare Commission Wage Order 4, which covers those persons
27 employed in the professional, technical, mechanical, clerical and similar occupations.

28 **OFF-THE-CLOCK WORK**

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

5 32. Defendant required Plaintiff and the Class to, at times, perform compensable tasks
6 off-the-clock for which they did not receive any compensation. Specifically, at times, Plaintiff
7 and Class members worked hours for which they were not paid because Plaintiff and the Class
8 members were required to have Zoom meetings, phone calls, and texts with Defendant off the
9 clock. Further, Plaintiff and Class members were required to use their personal cell phones for
10 approximately 10 minutes per day off the clock for work-related activities, such as clocking
11 in/out, texting and/or calling their supervisors and using work apps.

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

14 **FAILURE TO PAY MINIMUM WAGES**

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

23 35. These minimum wage standards apply to each hour employees worked or were
24 subject to control by the employer for which they were not paid. Therefore, an employer’s failure
25 to pay for any particular hour of time worked by an employee or subject to the employer’s control
26 is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results
27 in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th
28 314, 324 (2005).

43. Defendant failed to fully reimburse Plaintiff and Class members for their necessary business expenses, such as cell phone use. Plaintiff's cell phone bill was approximately \$80 per month, and she was only reimbursed \$5.00 per pay period.

FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS

44. Defendant failed to allow Plaintiff to timely inspect her records and payroll files.

EXCLUSION OF "TIER STIPEND" FROM MEAL PREMIUM RATE OF PAY

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

46. Defendant failed to properly pay and calculate wages due to excluding "TIER STIPEND" from the meal premium rate of pay calculations. Such payments are required under California law to be included in an employee's meal premium rate of pay for wage calculation. Defendant failed to do so, thereby failing to pay employees their full wages as required under the Labor Code.

47. Plaintiff and members of the Class received a "TIER STIPEND" that must be included when calculating their meal premium rates of pay for purposes of wages. However, Defendant failed to correctly calculate Plaintiff and members of the Class's meal premium rate of pay to include all applicable remuneration, including, but not limited to, "TIER STIPEND."

48. Plaintiff's paystub dated September 20, 2023, shows "TIER STIPEND" was paid to her at the same time as "PP/Meal Break," but it was paid at exactly the base rate. Thus, the additional compensation was not incorporated into the meal premium rate.

FIRST 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)**

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

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

6 51. Labor Code § 1197 states the California requirement that employees must be paid
7 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
8 wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the
9 legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount
10 of this minimum wage.” IWC Wage Order 4-2001 also obligates employers to pay each employee
11 minimum wages for all hours worked. These minimum wage standards apply to each hour
12 employees worked for which they were not paid. Therefore, an employer’s failure to pay for any
13 particular hour of time worked by an employee is unlawful, even if averaging an employee’s total
14 pay over all hours worked, paid or not, results in an average hourly wage above minimum wage.
15 *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

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

20 53. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and
21 the standard conditions of labor fixed by the commission shall be the maximum hours of work
22 and the standard conditions of labor for employees. The employment of any employee for longer
23 hours than those fixed by the order or under conditions of labor prohibited by the order is
24 unlawful.”

25 54. Defendant failed to satisfy minimum wage requirements because they improperly
26 failed to afford meal/rest breaks to Plaintiff and Class members and were required to engage in
27 off-the-clock work in violation of Labor Code §§ 1197, 1198 and IWC Wage Order No. 4.
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55. Defendant's pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation as described herein 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.

56. 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).

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

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

SECOND CAUSE OF ACTION

FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS

(IWC Wage Order No. 4; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendant and Does 1 through 100)

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

1 60. California Labor Code § 226.7(a) prohibits an employer from requiring an
2 employee to work during any meal period mandated by an applicable Industrial Wage Order.
3 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
4 employee to work during a meal or rest break or recovery period mandated pursuant to an
5 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
6 Commission..."

7 61. California Labor Code § 1198 makes unlawful the employment of an employee
8 under conditions the IWC prohibits.

9 62. IWC Wage Order No. 4 provides, in relevant part: "No employer shall employ any
10 person for a work period of more than five (5) hours without a meal period of not less than 30
11 minutes, except that when a work period of not more than six (6) hours will complete the day's
12 work the meal period may be waived by mutual consent of the employer and the employee."

13 63. IWC Wage Order No. 4, section (11)(c) further provides, in relevant part: "Unless
14 the employee is relieved of all duty during a 30-minute meal period, the meal period shall be
15 considered an 'on duty' meal period and counted as time worked."

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

17 An employer may not employ an employee for a work period of more than five
18 hours per day without providing the employee with a meal period of not less than
19 30-minutes, except that if the total work period per day of the employee is no
20 more than six hours, the meal period may be waived by mutual consent of both
21 the employer and employee. An employer may not employ an employee for a
22 work period of more than 10 hours per day without providing the employee with
23 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.

24 65. The Labor Code and Wage Order provisions cited above require California
25 employers to provide employees with off-duty 30-minute meal periods on or before the fifth hour
26 of their shifts. To satisfy this obligation, employers must (1) make employees aware of their right
27 to off-duty 30-minute meal periods before the fifth hour of their shifts and (2) ensure that
28 employees are free of job duties for 30 minutes per day on or before the fifth hour of their shifts.

66. As alleged herein, Defendant failed to relieve employees of duties for timely meal breaks throughout the Class Period. Plaintiff and the members of the Class were prohibited from leaving their job sites during meal breaks.

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

68. By their actions in not affording Plaintiff and Class members proper meal periods, Defendant violated Cal. Lab. Code §226.7(b) and section 11 of Wage Order No. 4 in the amount of one additional hour of pay at the employee's regular rate of compensation for each work period during each day in which Defendant failed to provide employees with proper statutory off-duty meal periods.

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

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

71. As a direct and proximate result of Defendant's unlawful conduct as alleged herein, Plaintiff and members of the Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendant's violations of the California Labor Code and IWC Wage Order No. 4.

THIRD CAUSE OF ACTION

FOR FAILURE TO PROVIDE REST PERIODS

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

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

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

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

8 75. Defendant has intentionally and improperly denied rest periods to Plaintiff and the
9 Class in violation of Labor Code § 226.7 and IWC Wage Order No. 4. Plaintiff and Class
10 members were never afforded any rest periods.

11 76. At all times relevant hereto, Plaintiff and members of the Class have worked six
12 or more hours daily.

13 77. At all times relevant hereto, Defendant failed to provide proper rest periods as
14 required by Labor Code § 226.7 and IWC Wage Order No. 4. Plaintiff and Class members were
15 not afforded rest breaks.

16 78. 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 **FOURTH CAUSE OF ACTION**

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

22 **WAGE STATEMENTS**

23 **(Labor Code §226 and IWC Wage Order No. 4 By Plaintiffs Against Defendant and Does**
24 **1 through 100)**

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

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

1 81. Pursuant to California Labor Code sections 226 and 1174 and IWC Wage Order
2 No. 4, section 7, Defendant is required to maintain and provide accurate records relating to
3 employee compensation, including all formulas and production records used to calculate wages
4 due.

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

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

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

18 85. Throughout the Class Period, Defendant intentionally and knowingly provided
19 Plaintiff and other members of the Class with weekly itemized wage statements containing
20 inaccurate information regarding the wages earned by them in that the payments owed to Plaintiff
21 and the members of the Class for minimum wages, missed or interrupted meal/rest periods, were
22 not included in gross wages earned by Plaintiff and members of the Class.

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

25 87. Plaintiff and members of the Class were damaged by these failures because,
26 among other things, the failures led them to believe that they were not entitled to minimum wages,
27 pay for meal/rest periods not provided, even though they were so entitled, and these failures
28 hindered them from determining the amounts of wages owed to them.

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

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

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 (Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)

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

11 91. Labor Code §2802 requires employers to indemnify employees for all necessary
12 expenditures incurred by employees in the discharge of their duties.

13 92. At all times relevant herein, Defendant was aware that Plaintiff and Class
14 members were using their cell phones for business but failed to fully indemnify Plaintiff and
15 Class members for all their business-related expenses in accordance with Labor Code §2802.
16 Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendant
17 maintained a practice of not fully reimbursing Plaintiff and Class Members for their work-related
18 expenses that they incurred in using their cell phones for work-related purposes. Plaintiff's cell
19 phone bill was approximately \$80 per month, and she was only reimbursed \$5.00 per pay period.

20 93. As a result of Defendant's conduct, Plaintiff and Class Members suffered damages
21 in an amount, subject to proof, to the extent they were not reimbursed for all of their business-
22 related expenses incurred in the discharge of their duties.

23 94. Pursuant to Labor Code § 2802, Plaintiff and Class Members are entitled to
24 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
25 costs of suit.

26 **SIXTH CAUSE OF ACTION**

27 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

28 (Labor Code §1198.5 By Plaintiffs Against Defendant and Does 1 through 100)

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

3 96. California Labor Code Section 1198.5 provides:

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

7 (b) The employer shall make the contents of those personnel records available
8 for inspection to the current or former employee, or his or her
9 representative, at reasonable intervals and at reasonable times, but not later
10 than 30 calendar days from the date the employer receives a written request,
11 unless the current or former employee, or his or her representative, and the
12 employer agree in writing to a date beyond 30 calendar days to inspect the
13 records, and the agreed-upon date does not exceed 35 calendar days from
14 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...

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

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

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

24 98. On or about August 23, 2024, Plaintiff's counsel issued a written request to
25 Defendant for copies of her personnel records.

26 99. Under California Labor Code Sections 226, 432 and 1198.5, such records were to
27 include all records relating to Plaintiff's hours worked, wage statements and compensation.

28 ///

1 100. Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the
2 time for Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies
3 of her records.

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

9 **SEVENTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

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

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

15 103. Pursuant to IWC Wage Order No. 4, Defendant was the employer of Plaintiff and
16 the Class. Defendant is also a "person," as that term is defined in Business & Professions Code
17 §17021.

18 104. The Business & Professions Code defines unfair competition as any unlawful,
19 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
20 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
21 minimum wages, (2) pay Plaintiff and the Class for meal periods not afforded, (3) pay Plaintiff
22 and the Class for rest periods not afforded or interrupted, (4) furnish Plaintiff and the Class with
23 accurate itemized wage statements, as mandated by the applicable Labor Code and Industrial
24 Welfare Commission requirements, (5) reimburse business expenses, (6) provide personnel
25 records, all in violation of Business & Professions Code §§ 17200 *et seq.*

26 105. By and through the unfair and unlawful business practices described herein,
27 Defendant has obtained valuable property, money and services from Plaintiff and the Class and
28 has deprived them of valuable rights and benefits guaranteed by law, all to their detriment.

1 106. All the acts described herein are violations of, among other things, the Labor Code
2 and Industrial Commission Wage Order No. 4, are unlawful and in violation of public policy; and
3 in addition, are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair
4 and unlawful business practices in violation of Business & Professions Code §§ 17200 *et seq.*

5 107. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary
6 to restore to them the money and property which Defendant has acquired or of which Plaintiff
7 and the Class have been deprived by means of the above-described unfair and unlawful business
8 practices.

9 108. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
10 above-described business practices are unfair and unlawful, and that injunctive relief should be
11 issued restraining Defendant from engaging in any of the above-described unfair and unlawful
12 business practices in the future.

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

19 **EIGHTH CAUSE OF ACTION**

20 **PRIVATE ATTORNEY GENERAL ACT**

21 **(Damages Pursuant to Private Attorney General Act Against All Defendants)**

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

24 111. Plaintiff brings this action on her own behalf and on behalf of all current and
25 former employees of Defendant who were employed in California for the previous four years,
26 seeking to recover wages from Defendant due to their systematic failure to pay minimum wages,
27 to afford proper meal/rest breaks (or pay the statutory compensation due), to issue accurate wage
28 statements, to reimburse business expenses and unfair competition, as set forth in this pleading.

112. On August 23, 2024, Plaintiff, Plaintiff, pursuant to California Labor Code §§2699, et seq., by and through Plaintiff’s 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 the defendant.

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

114. Plaintiff has, therefore, complied with the administrative exhaustion requirements of PAGA.

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

PRAYER FOR DAMAGES

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

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

2. For payment of unpaid wages in accordance with California labor and employment law;

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

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

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

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

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

1 8. For compensatory damages in the amount of Plaintiff and Class Members' cell
2 phone expenses for business purposes, costs and attorneys' fees pursuant to Cal. Code Civ. Proc.
3 § 2802(c);

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

7 10. For statutory penalties pursuant to Cal. Lab. Code §§ 558, 226.7, 1198.5,
8 according to proof;

9 11. For civil penalties pursuant to Cal. Lab. Code §1198 and IWC Wage Order No. 4;

10 12. For penalties pursuant to Labor Code §2699(g);

11 13. For reasonable costs, including attorneys' fees, in an amount according to proof
12 pursuant to, *inter alia*, Cal. Lab. Code §§ 1194, 1198.5(1), 218.5, 2802, Cal. Code of Civ. Proc.
13 §1021.5 and/or 2699;

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

16 15. For injunctive relief requiring Defendant to comply with Lab. Code 1198.5(b)(1);

17 16. For injunctive relief ordering the continuing unfair business acts and practices to
18 cease, as the Court deems just and proper;

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

21 18. For punitive and exemplary damages in a sum to be determined at trial; and

22 19. For such other and further relief as the Court deems just and proper.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff Tara Denise Michael hereby respectfully requests a trial by jury for all claims
25 and issues raised in her First Amended Complaint that may be entitled to a jury trial.

26 Date: October 25, 2024

27 By:  _____

 Jasmine J. Badawi

28 Attorneys for Plaintiff, Tara Denise Michael