JOSEPH TOJARIEH (SBN 265492)
STONEBROOK LAW
10250 Constellation Boulevard, Suite 2300
Los Angeles, California 90067
Tel: (310) 553-5533 | Fax: (310) 553-5536
jft@stonebrooklaw.com

Attorney for plaintiff
AMBER VILLALOBOS

Electronically FILED by
Superior Court of California,
County of Los Angeles
11/05/2024 1:01 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By C. Vega, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

AMBER VILLALOBOS, on behalf of herself, other aggrieved employees, and the State of California, Plaintiff, v. HOT 8 YOGA, LLC, a California limited liability company; HOT 8 YOGA BH, LLC, a California limited liability company; HOT 8 YOGA CULVER, LLC, a California limited liability company; HOT 8 YOGA HOLLYWOOD LLC, a California limited liability company; HOT 8 YOGA KOREATOWN, LLC, a California limited liability company; HOT 8 YOGA LA BREA LLC, a California limited liability company; HOT 8 YOGA MARINA LLC, a California limited liability company; HOT 8 YOGA MB, LLC, a California limited liability company; HOT 8 YOGA PASADENA, LLC, a California limited liability company; HOT 8 YOGA SB, LLC, a California limited liability company; HOT 8 YOGA SO, LLC, a California limited liability company; HOT 8 YOGA SR LLC, a California limited liability company; HOT 8 YOGA WH LLC, a California limited liability company; VINCENT NICOLETTA, an individual; and DOES 1 through 100, inclusive, Defendants.	Case No. 24STCV29032 **Representative Action Complaint Under Private Attorney General Act (Cal. Lab. Code § 2698, et seq.)** **DEMAND FOR JURY TRIAL**

Plaintiff Amber Villalobos ("Plaintiff"), on behalf of herself, all other Aggrieved Employees, and the State of California, hereby brings this Representative Action Complaint ("Complaint") against Defendants Vincent Nicoletta ("Nicoletta"), as well as Hot 8 Yoga, LLC; Hot 8 Yoga BH, LLC; Hot 8 Yoga Culver, LLC; Hot 8 Yoga Hollywood LLC; Hot 8 Yoga Koreatown, LLC; Hot 8 Yoga La Brea LLC; Hot 8 Yoga Marina LLC; Hot 8 Yoga MB, LLC; Hot 8 Yoga Pasadena, LLC; Hot 8 Yoga SB, LLC; Hot 8 Yoga SO, LLC; Hot 8 Yoga SR LLC; and Hot 8 Yoga WH LLC (collectively referred to as "Corporate Defendants" and, together with Nicoletta, referred to as "Defendants").

THE PARTIES

Plaintiff

1. Plaintiff is, and at all relevant times was, an individual residing in Los Angeles County, California.

Defendants

1. Nicoletta is, and at all relevant times was, an individual residing in Los Angeles County, California.

2. Hot 8 Yoga, LLC is, and at all relevant times was, a California limited liability company doing business in Los Angeles County, California.

3. Hot 8 Yoga BH, LLC is, and at all relevant times was, a California limited liability company doing business in Los Angeles County, California.

4. Hot 8 Yoga Culver, LLC is, and at all relevant times was, a California limited liability company doing business in Los Angeles County, California.

5. Hot 8 Yoga Hollywood LLC is, and at all relevant times was, a California limited liability company doing business in San Francisco County, California.

6. Hot 8 Yoga Koreatown, LLC is, and at all relevant times was, a California limited liability company doing business in Los Angeles County, California.

7. Hot 8 Yoga La Brea LLC is, and at all relevant times was, a California limited liability company doing business in Los Angeles County, California.

///

8. Hot 8 Yoga Marina LLC is, and at all relevant times was, a California limited liability company doing business in San Francisco County, California.

9. Hot 8 Yoga MB, LLC is, and at all relevant times was, a California limited liability company doing business in Los Angeles County, California.

10. Hot 8 Yoga Pasadena, LLC is, and at all relevant times was, a California limited liability company doing business in Los Angeles County, California.

11. Hot 8 Yoga SB, LLC is, and at all relevant times was, a California limited liability company doing business in Los Angeles County, California.

12. Hot 8 Yoga SO, LLC is, and at all relevant times was, a California limited liability company doing business in Los Angeles County, California.

13. Hot 8 Yoga SR LLC is, and at all relevant times was, California limited liability company doing business in San Jose County, California.

14. Hot 8 Yoga WH LLC is, and at all relevant times was, a California limited liability company doing business in Los Angeles County, California.

Does

15. Plaintiff is unaware of the true names and capacities of the defendants sued herein as Does 1 through 100, inclusive, and, therefore, sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of such fictitiously named defendants when the same have been ascertained. Plaintiff is informed and believes and based thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences alleged herein and that Plaintiff's damages were proximately caused by their conduct.

Agency

16. Plaintiff is informed and believes and based thereon alleges that at, all material times, each defendant was the agent, employee, partner, joint venture, co-conspirator, owner, principal, and employer of the remaining defendants, and is, and at all times herein mentioned was, acting within the course and scope of that agency, employment, partnership, conspiracy, ownership or joint venture. Plaintiff is further informed and believes and based thereon alleges

that the acts and conduct alleged herein were known to, and authorized, directed, and/or ratified by, the officers, directors, and managing agents of the business entity defendants, and each of them.

Alter Ego—Between Entities

17. Plaintiff is informed and believes and on that basis alleges that there exists, and at all relevant times there has existed, a unity of interest and ownership among Corporate Defendants such that any separateness and individuality between them have ceased. Adherence to the fiction of these defendants being separate business entities would permit abuse of any corporate privilege, sanction fraud, and promote injustice.

Integrated Enterprise

18. Plaintiff is informed and believes and based thereon alleges that Corporate Defendants shared (a) interrelation of operations, (b) common management, (c) centralized control of labor relations, and (d) common ownership or financial control. As such, Corporate Defendants were an integrated enterprise and should be treated as a single employer.

Personal Liability Under Labor Code Section 558.1

19. Plaintiffs is informed and believes and, on that basis, alleges that Nicoletta was Plaintiff's employer, or an owner, director, officer, or managing agent who was acting on behalf of Plaintiff's employers, and violated, or caused violations, of provisions regulating minimum wages, hours, and days of work in the orders of the Industrial Welfare Commission and Labor Code sections 203, 226, 226.2, 226.7, 1193.6, 1194, and/or 2802. As such, Nicoletta is personally liable for such violations under Labor Code section 558.1.

Individual Liability Under *Martinez v. Combs*

20. Nicoletta, directly and/or indirectly, or through an agent or any other person, engaged, suffered, and/or permitted Plaintiff to work and exercised control over Plaintiff's wages, hours, or working conditions, such that Nicoletta is personally liable for the wage and hour violations alleged herein under *Martinez v. Combs* (2010) 49 Cal.4th 35.

///

///

NATURE OF REPRESENTATIVE ACTION CLAIMS

Background on Defendants' Operations

21. Corporate Defendants are made up of 13 fitness studios throughout California, all limited liability companies registered with the State of California. Defendants' Santa Monica studio alone employs about 100 employees.

Background on Plaintiff's Employment

22. Plaintiff was hired as a non-exempt assistant studio manager from about October 6, 2023 to May 14, 2024. Plaintiff's wage statements indicate that her employer is "Hot 8 Yoga LLC" (without the comma), and her employer's address is 8383 Wilshire Blvd #75 Beverly Hills, CA 90211. Plaintiff is informed and believes that all 13 studios report to Hot 8 Yoga, LLC's corporate office in Beverly Hills.

Defendants' Failure to Pay Plaintiff and Aggrieved Employees Earned Wages

23. Defendants illegally required Plaintiff and Aggrieved Employees to work during periods when their hours were not being recorded, also known as "off-the-clock" work. During these periods, Plaintiff and Aggrieved Employees were not paid at least minimum wages.

24. Moreover, Defendants' practices and policies discouraged employees from working overtime. Further, on days when these employees worked more than eight hours, the manager would adjust their hours and deduct time off their timecards. Plaintiff is informed and aware that other non-exempt employees have found multiple instances when their timecards incorrectly showed fewer hours than what they actually worked. Defendants failed to revert the adjustments made and these hours remain unpaid.

25. In addition, Plaintiff is informed and believes that Defendants adjusted the hours of Plaintiff and Aggrieved Employees, and clocked them out for meal periods even though the employees worked through those time periods.

Defendants' Failure to Authorize and Permit Compliant Rest Periods for Plaintiff and Aggrieved Employees

26. Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take timely, duty-free, and uninterrupted rest periods of at least 10 minutes net for each four

hours of work or major fraction thereof, and failed to pay premium wages of one hour's pay in lieu of providing such rest periods.

27. Defendants failed to relinquish control over how they spent their rest breaks. Defendants failed to maintain a compliant rest break policy and failed to create conditions that relieved Plaintiff and Aggrieved Employees of all of their duty during rest breaks. Defendants undermined Plaintiff and Aggrieved Employees' rest break rights by discouraging and impeding them from taking breaks, pressuring them to perform their duties in ways that omit breaks, and encouraging them to skip their breaks. When Plaintiff and Aggrieved Employees attempted to take a rest break, the rest breaks were, oftentimes, late, interrupted, cut short, or on-duty.

28. For example, assistant studio managers, like Plaintiff, had to perform "hot shifts" that entailed four uninterrupted hours of being at the reception, facing clients, and making connections.

Defendants' Failure to Provide Plaintiff and Aggrieved Employees Compliant Meal Periods

29. Defendants did not provide Plaintiff and Aggrieved Employees with timely, duty-free, and uninterrupted meal periods of at least 30 minutes for each five hours of work, and failed to pay premium wages of one hour's pay in lieu of providing such meal periods.

30. Defendants failed to maintain a compliant meal break policy and failed to create conditions that relieved Plaintiff and Aggrieved Employees of all of their duty. Defendants undermined Plaintiff and Aggrieved Employees' meal break rights by discouraging and impeding them from taking breaks, pressuring them to perform their duties in ways that omit breaks, and encouraging them to skip their breaks. When Plaintiff and Aggrieved Employees attempted to take a meal break, the meal breaks were, oftentimes, late, interrupted, cut short, or on-duty.

31. For example, on at least 21 occasions during her employment, Plaintiff had to take a meal break after the fifth hour. However, Defendants did not pay her a meal break premium. On at least 7 occasions during her employment, Plaintiff had to take a meal break that was less than 30 minutes, but Defendants failed to pay her a meal break premium. On at least 10 occasions during her employment, on days when she would travel between Defendants' locations, Plaintiff was unable to take a duty-free and uninterrupted meal period of at least 30

minutes and Defendants did not pay her a meal break premium for those missed meal periods. These violations similarly affected Aggrieved Employees.

32. Additionally, whenever Plaintiff and Aggrieved Employees worked multiple rates or earned nondiscretionary bonuses and Defendants paid them premium wages, Defendants failed to pay the premium wages at Plaintiff and Aggrieved Employees' regular rate of pay.

Defendants' Failure to Pay Plaintiff and Aggrieved Employees Overtime Compensation

33. Defendants failed to pay Plaintiff and Aggrieved Employees one and a half times their regular rate for work performed over 40 hours in a workweek, over 8 hours in a workday, or up to 8 hours on the seventh consecutive day of work. In addition, Defendants failed to pay Plaintiffs and Aggrieved Employees two times their regular rate for work performed over 12 hours in a workday or over 8 hours on the seventh consecutive day of work.

34. At times, Defendants paid their employees, including Plaintiff, different hourly rates. For example, assistant studio managers, including Plaintiff, were paid different hourly rates for administrative work ("Regular" rate), meetings and travel time ("Dept Rates Regular"), and teaching hours ("Dept Rates OT"). On workweeks when Plaintiff and Aggrieved Employees worked different hourly rates, Defendants failed to factor the different hourly rates of pay into the regular rate for overtime purposes.

35. Defendants also paid employees, including Plaintiff, non-discretionary bonuses or "commissions" for, among other things, memberships that they sold. On workweeks when Plaintiff and Aggrieved Employees earned non-discretionary bonuses and worked overtime, Defendants failed to factor the nondiscretionary bonuses into the regular rate for overtime purposes.

36. Moreover, at least some of the unpaid hours worked by Plaintiff and Aggrieved Employees constituted overtime, for which they were not compensated.

Defendants' Failure to Pay Plaintiff and Aggrieved Employees Minimum Wages

37. During periods when Plaintiff and Aggrieved Employees worked off-the-clock, Defendants failed to pay these employees wages at the applicable minimum wage rate.

///

Defendants' Failure to Timely Provide Earned Wages Upon Separation

38. Defendants willfully failed to pay Plaintiff and Aggrieved Employees earned wages immediately upon discharge or within 72 hours of resignation.

Defendants' Failure to Provide Timely and Accurate Wage Statements

39. Defendants knowingly failed to provide Plaintiff and Aggrieved Employees with timely and accurate wage statements that included all of the following: (1) gross wages earned, (2) total hours worked, (3) all deductions, (4) net wages earned, (5) the pay period, (6) the employee name and social security number or employee number, (7) the name and address of the legal entity employer, and (8) all applicable hourly rates in effect and corresponding hours worked at each rate.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

40. Plaintiff, on behalf of herself and all other similarly aggrieved employees, notified Corporate Defendants, Nicoletta, and the Labor and Workforce Development Agency (LWDA) of this lawsuit and the nature of the claims herein on or about August 9, 2024. (LWDA Case No. 1044697-24.) Defendants failed to provide notice that it cured any of the alleged violations within 33 days after Plaintiff's notice was postmarked. The Labor Commissioner's Office failed to provide notice that it intended to investigate Plaintiff's allegations within 65 days after Plaintiff's notice was postmarked. Accordingly, Plaintiff has exhausted all administrative remedies prior to filing this action.

FIRST CAUSE OF ACTION

Private Attorney General Act

(California Labor Code Section 2698, et seq.)

(By Plaintiff, Individually and In a Representative Capacity, Against Defendants and Does 1 Through 100)

41. Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

42. The Labor and Workforce Development Agency (LWDA) is authorized to assess and collect civil penalties for specified violations of the Labor Code. However, as a result of the

LWDA's limited resources, the California legislature enacted the Private Attorney General Act of 2004 (PAGA) to allow an aggrieved employee to step into the shoes of the LWDA and initiate a private representative civil action on behalf of the employee and other current or former employees to recover civil penalties.

43. PAGA divides violations into three groups: (1) violations of sections of the Labor Code enumerated in section 2699.5; (2) violations of health and safety laws specified in section 2699.3(b); and (3) violations of all other Labor Code sections, as set forth in 2699.3(c). The applicable civil penalties and required notices under PAGA depend on the underlying violation.

44. Violations involving Labor Code sections that do not specify a civil penalty have an established civil penalty equal to $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation. For violations involving Labor Code sections that do have a civil penalty specified, an employee can seek to recover the penalty specified.

Labor Code Sections 201, 202, and 203—Waiting Time Penalties

45. California Labor Code sections 201 through 203 provide in pertinent part the following:

> 201. (a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately….
>
> 202. (a) If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting…
>
> 203. (a) If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days….

46. Pursuant to Labor Code section 203(a), Plaintiff and separated Aggrieved Employees are entitled to a statutory penalty based on Plaintiff and separated Aggrieved

Employees' daily wage rate starting from Plaintiff and separated Aggrieved Employees' employment end date until 30 days from Plaintiff and separated Aggrieved Employees' employment end date.

47. In violation of Labor Code sections 201, 202, and 203, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, willfully failed to pay Plaintiff and Aggrieved Employees who have separated from Nicoletta and Corporate Defendants earned wages, immediately upon discharge or within 72 hours of resignation.

48. Thus, Plaintiff and separated Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code sections 201, 202, and 203 against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

Labor Code Section 204—Failure to Pay Wages At Least Twice Per Month

49. Labor Code section 204 provides in pertinent part the following:

> (a) All wages … earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. … However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time.
> (b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. …

50. In violation of Labor Code section 204, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, willfully failed to pay Plaintiff and Aggrieved Employees all earned wages at least twice per month.

51. Thus, Plaintiff and Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code section 204 against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and

within the jurisdictional limits of the Court.

Labor Code Section 210

52. Labor Code section 210 subjects any person who fails to pay the wages of any employee as provided in sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5 to a civil penalty as follows: For any initial violation, $100 for each failure to pay each employee; and, for each subsequent violation, or any willful or intentional violation, $200 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. The civil penalties so provided in this section are in addition to any other civil penalties provided by law.

53. In violation of Labor Code section 210, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, failed to pay the wages of Plaintiff and Aggrieved Employees pursuant to sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, as alleged herein.

54. Thus, Plaintiff and Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code section 210 against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

Labor Code Section 221—Collecting or Receiving Owed Wages

55. Labor Code section 221 makes it illegal for an employer to collect or receive any part of an employee's wages.

56. In violation of Labor Code section 221, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, collected or received Plaintiff and Aggrieved Employees' wages.

57. Thus, Plaintiff and Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code section 221 against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

Labor Code Section 226—Failure to Furnish Timely and Accurate Wage Statements

58. Labor Code section 226 provides in pertinent part the following:

> 226. (a) Every employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee…an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer… and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee….
> (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.

59. In violation of Labor Code section 226, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, intentionally failed to furnish Plaintiff and Aggrieved Employees' with timely and compliant wage statements.

60. Thus, Plaintiff and Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code section 226 against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

<u>Labor Code Section 226.3</u>

61. Labor Code section 226.3 subjects any employer who violates section 226(a) to a civil penalty as follows: $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation. The civil penalties provided for in this section are in addition to any other penalty provided by law.

62. In violation of Labor Code section 226.3, Corporate Defendants violated section 226(a), as alleged herein.

///

63. Thus, Plaintiff and Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code section 226.3 against Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

Labor Code Section 226.7—Failure to Authorize and Permit Compliant Rest Periods

64. Labor Code section 226.7 provides in pertinent part the following:

> 226.7….(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

65. In violation of Labor Code section 226.7, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, failed to authorize and permit compliant rest periods and caused Plaintiff and Aggrieved Employees to work for periods of more than four hours or major fraction thereof without rest periods of at least 10 minutes.

66. Plaintiff and Aggrieved Employees were not paid an additional hour of pay at the regular rate of compensation in lieu of the mandated rest period required by the Labor Code.

67. Thus, Plaintiff and Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code section 226.7 against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

Labor Code Sections 226.7 and 512—Failure to Provide Compliant Meal Periods

68. Labor Code section 226.7 provides in pertinent part the following:

> 226.7….(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate

> of compensation for each workday that the meal or rest or recovery period is not provided.

69. Labor Code section 512 provides in pertinent part the following:

> 512. (a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with 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.

70. In violation of Labor Code sections 226.7 and 512, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, caused Plaintiff and Aggrieved Employees to work for periods of more than five hours without a meal period of at least 30 minutes.

71. Plaintiff and Aggrieved Employees were not paid an additional hour of pay at the regular rate of compensation in lieu of the mandated meal period required by the Labor Code.

72. Thus, Plaintiff and Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.7 and 512 against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

<u>Labor Code Sections 510 and 1194—Failure to Pay Overtime and Double Time Compensation</u>

73. Labor Code section 510 provides in pertinent part the following:

> 510. (a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee….

74. Labor Code section 1194 provides in pertinent part the following:

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

75. In violation of Labor Code sections 510 and 1194, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, failed to pay Plaintiff and Aggrieved Employees overtime and double time compensation.

76. Thus, Plaintiff and Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code sections 510 and 1194 against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

<u>Labor Code Sections 510, 1194, 1194.2, and 1197—Liquidated Damages</u>

77. Labor Code section 510 provides in pertinent part the following:

> 510. (a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee….

78. Labor Code section 1194 provides in pertinent part the following:

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

///

79. Labor Code section 1194.2 provides in pertinent part the following:

> 1194.2. (a) In any action under Section …1194… to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. …

80. Labor Code section 1197 makes it illegal for an employer to pay its employees a lower wage than the minimum wage fixed by the commission or by any applicable state or local law.

81. In violation of Labor Code sections 510, 1194, 1194.2, and 1197, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, failed to pay Plaintiff and Aggrieved Employees minimum wages, including overtime and double time compensation at at least the minimum wage rate.

82. Thus, Plaintiff and Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code sections 510, 1194, 1194.2, and 1197 against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

Labor Code Section 558

83. Labor Code section 558 mandates a penalty be assessed against any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of the chapter starting with Labor Code section 500, *et seq.* or any provision regulating hours and days of work in any order of the Industrial Welfare Commission as follows: $50 for the first pay period in which the employee is underpaid, in addition to an amount sufficient to recover underpaid wages; and, for each subsequent violation, $100 for each pay period in which the employee is underpaid, in addition to an amount sufficient to recover underpaid wages. The civil penalties so provided in this section are in addition to any other civil penalties provided by law.

84. In violation of Labor Code section 558, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, violated or caused a violation of a section of the chapter starting with Labor Code section 500, *et seq.* or a provision regulating hours and days

of work in the order of the Industrial Welfare Commission, as alleged herein.

85. Thus, Plaintiff and Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code section 558 against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

Labor Code Sections 1174—Failure to Maintain Compliant Employee and Payroll Records

86. Labor Code section 1174 provides in pertinent part the following:

> 1174. Every person employing labor… shall:…
> (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
> (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. …

87. In violation of Labor Code section 1174, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, willfully failed to maintain compliant employee and payroll records.

88. Thus, Plaintiff and Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code section 1174 against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

Labor Code Section 1174.5

89. Labor Code section 1174.5 subjects any employer who violates section 1174(c) or 1174(d) to a civil penalty of $500.

90. In violation of Labor Code section 1174.5, Corporate Defendants violated section 1174, as alleged herein.

91. Thus, Plaintiff and Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code section 1174.5 against Corporate Defendants. The exact amount of the

applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

Labor Code Section 1197.1

92. Labor Code section 1197.1 subjects any person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum wage, to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: For any initial violation that is intentionally committed, $100 for each underpaid employee for each pay period for which the employee is underpaid; and, for each subsequent violation, $250 for each underpaid employee for each pay period for which the employee is underpaid, regardless of whether the initial violation is intentionally committed. These amounts are in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to section 1194.2, and any applicable penalties imposed pursuant to section 203.

93. In violation of Labor Code section 1197.1, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, paid or caused to be paid to Plaintiff and Aggrieved Employees a wage less than the minimum wage, as alleged herein.

94. Thus, Plaintiff and Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code section 1197.1 against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

Labor Code Section 1198—Rest Periods

95. Labor Code section 1198 makes it illegal for an employer to employ an employee for longer hours than those fixed by the Wage Orders or under conditions of labor prohibited by the Wage Order.

96. Industrial Welfare Commission Wage Order Nos. 2-2001 and 4-2001 (and/or other applicable Wage Order), Section 12, provides in pertinent part the following:

> 12. REST PERIODS
> (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle

> of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

97. At relevant times herein, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, violated Labor Code section 1198 by failing to provide Plaintiff and Aggrieved Employees with adequate rest periods and an additional hour of pay at the regular rate of compensation in lieu of the mandated rest periods.

98. Thus, Plaintiff and Aggrieved Employees are entitled to recover the established civil penalty under PAGA against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

<u>Labor Code Section 1198—Meal Periods</u>

99. Industrial Welfare Commission Wage Order Nos. 2-2001 and 4-2001 (and/or other applicable Wage Order), Section 11, provides in pertinent part the following:

> 11. MEAL PERIODS
> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes…
> (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. …

100. At relevant times herein, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, violated Labor Code section 1198 by failing to provide Plaintiff and Aggrieved Employees with adequate meal periods and an additional hour of pay at the regular rate of compensation in lieu of the mandated meal periods.

101. Thus, Plaintiff and Aggrieved Employees are entitled to recover the established civil penalty under PAGA against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

Labor Code Section 1198—Overtime

102. Industrial Welfare Commission Wage Order Nos. 2-2001 and 4-2001 (and/or other applicable Wage Order), Section 3, provides in pertinent part the following:

> 3. HOURS AND DAYS OF WORK
> (A) Daily Overtime - General Provisions
> (1) … employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:
> (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
> (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek….

103. At relevant times herein, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, violated Labor Code section 1198 by failing to pay Plaintiff and Aggrieved Employees overtime and double time compensation.

104. Thus, Plaintiff and Aggrieved Employees are entitled to recover the established civil penalty under PAGA against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

Labor Code Section 1198—Minimum Wages

105. Industrial Welfare Commission Wage Order Nos. 2-2001 and 4-2001 (and/or other applicable Wage Order), Section 4, provides in pertinent part the following:

> 4. MINIMUM WAGES
> (A) Every employer shall pay to each employee wages not less than the following:
> (1) Any employer who employs 26 or more employees shall pay to each employee wages not less than the following:
> (a) Ten dollar and fifty cents ($10.50) per hour for all hours worked, effective January 1, 2017;
> (b) Eleven dollars ($11.00) per hour for all hours worked, effective January 1, 2018….

106. At relevant times herein, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, violated Labor Code section 1198 by failing to pay Plaintiff and Aggrieved Employees minimum wages, including overtime and double time compensation at the minimum wage rate.

107. Thus, Plaintiff and Aggrieved Employees are entitled to recover the established civil penalty under PAGA against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

<u>Labor Code Section 1198—Split Shift</u>

108. Industrial Welfare Commission Wage Order Nos. 2-2001 and 4-2001 (and/or other applicable Wage Order), Section 4, provides in pertinent part the following:

> 4. MINIMUM WAGES…
> (C) When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday….

109. At relevant times herein, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, violated Labor Code section 1198 by failing to pay Plaintiff and Aggrieved Employees one hour's pay at the minimum wage rate in addition to the minimum wage for that workday when an employee works a split shift.

110. Thus, Plaintiff and Aggrieved Employees are entitled to recover the established civil penalty under PAGA against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

///

Labor Code Section 1198—Wage Statements

111. Industrial Welfare Commission Wage Order Nos. 2-2001 and 4-2001 (and/or other applicable Wage Order), Section 7, provides that:

> 7. RECORDS …
> (B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. …

112. At relevant times herein, Corporate Defendants, along with Nicoletta, acting on behalf of Corporate Defendants, violated Labor Code section 1198 by failing to maintain accurate information with respect to each employee, provide employees with thorough and accurate itemized wage statements, and provide clocks within a reasonable distance from employees' work areas.

113. Thus, Plaintiff and Aggrieved Employees are entitled to recover the established civil penalty under PAGA against Nicoletta and Corporate Defendants. The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For all civil penalties authorized by law.
2. For preliminary and permanent injunctive relief.
3. For attorney fees and costs pursuant to all applicable provisions of law.
4. For such other relief as the court may deem proper.

///

////

///

Dated: November 4, 2024

STONEBROOK LAW

By: ______________________

JOSEPH TOJARIEH
Attorney for Plaintiff
AMBER VILLALOBOS