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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ANELDIA RILEY; JOSE ARIZMENDI, as individuals, on behalf of themselves and all others similarly situated and aggrieved,

Plaintiff,

vs.

BRILLIANT ART INC. dba VALLIANI JEWELERS, a California Corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No.:

CLASS ACTION & PAGA REPRESENTATIVE ACTION COMPLAINT

(1) FAILURE TO PROVIDE MEAL PERIODS;

(2) FAILURE TO PROVIDE REST BREAKS;

(3) FAILURE TO PAY MINIMUM WAGES;

(4) FAILURE TO PAY OVERTIME WAGES;

(5) FAILURE TO PAY ALL WAGES UPON SEPARATION;

(6) FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS;

(7) FAILURE TO REIMBURSE ALL NECESSARY, BUSINESS-RELATED EXPENSES;

(8) VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL"), CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*; AND

(9) CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE, PURSUANT TO CALIFORNIA'S PRIVATE ATTORNEYS GENERAL ACT ("PAGA"), §§ 2698, *ET SEQ.*

DEMAND FOR JURY TRIAL

CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT

Plaintiffs ANELDIA RILEY ("RILEY") and JOSE ARIZMENDI ("ARIZMENDI"), collectively, "Plaintiffs," on behalf of themselves and all others similarly situated and aggrieved, by and through their attorneys, Abramson Labor Group, hereby file this Class Action and Private Attorneys General Act of 2004 ("PAGA") Representative Action Complaint against Defendant BRILLIANT ART INC. doing business as VALLIANI JEWELERS, a California Corporation; and DOES 1 through 25 inclusive, (collectively, "Defendants"), and states as follows:

I. INTRODUCTION

1. Plaintiffs bring this class and representative action on behalf of themselves, on behalf of a class defined as all current and former hourly non-exempt employees of Defendants in California at any time during the Class Period beginning four years prior to the filing of this Complaint through the present ("Class Period"), and on behalf of all Aggrieved Persons who worked for Defendants as hourly, non-exempt employees in California at any time during the period beginning one year prior to the PAGA letter (defined below) through the present ("PAGA Period").

2. This is also an enforcement action under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* ("PAGA") to recover civil penalties and any other available relief on behalf of Plaintiff ARIZMENDI, the State of California, and other current and former employees who work or worked for Defendants in California as non-exempt, hourly employees and who received at least one wage statement during their employment, and against whom one or more violations of any provision in Division 2, Part 2, Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth in this complaint ("Aggrieved Employees"), at any time between one year and 65 days prior to the filing of this amended complaint (i.e., October 30, 2023) until judgment (the "PAGA Period"). Plaintiff ARIZMENDI'S share of civil penalties sought in this action does not exceed $75,000.

3. Defendant BRILLIANT ART INC. doing business as VALLIANI JEWELERS owns and operates approximately 22 brick-and-mortar retail jewelry stores, including repair services, throughout California and also sells its inventory to customers online.

4. Defendants' policy and practice is to deny earned wages, including premium and proper overtime pay, to their nonexempt employees in California. Defendants do not provide their employees with legally compliant meal periods and rest breaks nor premium pay in lieu thereof because Plaintiffs and Class Members were (1) required to clock out late for their meal periods, (2) perform work during their meal periods by continuing to perform their assigned work that cut into their 30-minute meal periods or (3) return to work prematurely before 30 minutes had elapsed, largely because of in-store customers who needed immediate assistance. Additionally, Defendants require their employees to be present and to perform work uncompensated, some of which is in excess of eight hours per day and/or 40 hours per work week, by mandating that these employees perform various forms of compensable work off-the-clock including, but not limited to, regularly (1) performing work during their meal periods while clocked out for their meal periods; (2) responding to off-shift contacts via phone call and WhatsApp messages regarding work-related questions; (3) on opening shifts, unlocking gates and/or doors, disarming the alarm, turning on the computer; and (4) on closing shifts, arming the alarm, unlocking and then re-locking doors and, for non-keyholders, waiting at the front of the store entrance after clocking out to have the door unlocked to be able to exit the store. As such, Defendants do not provide minimum wages and overtime pay for this off-the-clock time. These off-the-clock waiting periods exist for the sole benefit of Defendants and occurred frequently and regularly at Defendants' locations throughout California. This illegal practice has been in effect by Defendants since at least the start of the Class Period.

5. Moreover, Defendants fail to timely compensate employees for all wages earned upon separation and fail to properly and accurately calculate minimum wages and overtime wages and report wages earned, hours worked, and wage rates. For these reasons, Plaintiffs bring this action on behalf of themselves and other hourly, nonexempt employees of Defendants to recover unpaid wages, overtime compensation, penalties, interest, injunctive relief, damages, and reasonable attorneys' fees and costs.

6. Defendants' deliberate failure to pay their hourly, nonexempt employees their earned wages and overtime compensation violates the California Labor Code and California's Unfair Competition Law, codified under California's Business & Professions Code.

7. Defendants fail to reimburse Plaintiffs and Class Members for a variety of unreimbursed business expenses including (1) the use of their personal cell phones, which was required to communicate

with customers and to use a smartphone application, Podium, and (2) mileage for trips to the bank to make deposits.

8. Plaintiffs bring this class action under the California Code of Civil Procedure section 382 against all Defendants on behalf of all hourly, nonexempt employees of Defendants in California for failing to provide compliant meal periods and rest breaks or premium pay in lieu thereof, for unpaid minimum wages including for work performed off the clock; unpaid overtime wages; failing to provide timely and accurate wage statements; failing to timely pay all wages owed at separation; failing to reimburse all necessary, business-related expenses; and other related penalties and damages under the California Labor Code and California Business & Professions Code.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction over this matter because Defendants are licensed to do business in California, regularly conduct business in California, and committed and continue to commit the unlawful acts alleged herein in California.

10. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statute under which this action is brought does not specify any other basis for jurisdiction.

11. This Court has jurisdiction over all Defendants because, on information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, and intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action given that the State of California, as the real party in interest in this action, is not a "citizen" for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action, and that diversity jurisdiction cannot be established when the plaintiff's share of the civil penalties attributable to violations personally suffered are less than $75,000. *Id.* at 1122.

12. Venue lies properly with this Court, as it is the place where at least one defendant resides, is incorporated or has its principal place of business, or a substantial amount of the events which gave

rise to this suit occurred and/or a cause of action arose. Thus, venue is proper in this Court, because Defendants employ persons in this county and employed at least one plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

13. California Labor Code sections 2698 *et seq.*, the "Labor Code Private Attorneys General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violating the California Labor Code.

III. PARTIES

14. Plaintiff ANELDIA RILEY ("RILEY") is or was a resident of Los Angeles, California. Defendants employed Plaintiff RILEY as an hourly-paid, non-exempt employee for about 0.6 years from approximately September 12, 2022 to April 21, 2023 as a Sales Associate. During her employment, Plaintiff RILEY worked at Defendants' Westfield Mall Culver City location in Culver City, California located at 6000 Sepulveda Blvd., # 2501, Culver City, California 90230. Plaintiff RILEY typically worked five days per week for eight or more hours per day and at least about forty (40) hours per week. At the time Plaintiff RILEY'S employment ended, she was earning $23.00 per hour plus 2% commission on her pre-tax sales.

15. Plaintiff JOSE ARIZMENDI ("ARIZMENDI") is or was a resident of Escondido, California. Defendants employ Plaintiff ARIZMENDI as an hourly-paid, non-exempt employee for about 2.3 years from approximately September 26, 2022 through the present as a Store Manager. Plaintiff ARIZMENDI currently works at Defendants' National City, California location located at 3030 Plaza Bonita Rd., Space 1076, National City, California 91950. Prior to this location, Plaintiff ARIZMENDI also worked at the following locations: (1) 1 Mills Circle, Space 1011, Ontario, California 91764; (2) 500 Inland Center Drive, Suite 426, San Bernardino, California 92408; and (3) 14400 Bear Valley Road, # 641, Victorville, California 92392. Before beginning medical leave, Plaintiff ARIZMENDI typically worked six days per week for eight or more hours per day and at least about forty (40) hours per week, plus regular overtime. At the present, Plaintiff ARIZMENDI'S is earning $29.00 per hour plus commission based on 1% of all store sales for the month, up to 3% of stores sales based on other metrics if achieved.

16. Plaintiffs RILEY and ARIZMENDI are collectively referred to herein as "Plaintiffs."

17. Defendant BRILLIANT ART INC. doing business as VALLIANI JEWELERS ("VALLIANI") is, on information and belief, a California Corporation doing business in California, with its principal place of business at 2855 Stevens Creek Boulevard, Suite 2561, Santa Clara, California 95050, and at all times hereinafter mentioned, is an employer whose employees are engaged throughout this county, in the State of California.

18. Defendants created the policies and procedures described herein and, at all times during the Class Period, participated in, endorsed, implemented, and performed the conduct alleged herein.

19. The practices and policies complained of by way of this Complaint are enforced throughout the State of California, including in Santa Clara, California.

20. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as Does 1-25, inclusive, but are informed and believe that said Defendants are legally responsible for the conduct alleged herein and therefore sue these Defendants by such fictitious names. Plaintiffs will amend this Complaint to allege both the true names and capacities of the Doe Defendants when ascertained. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, all Defendants, including Doe Defendants, and each of them, were agents, servants, employees, successors in interest, and/or joint venturers of their co-Defendants and were, as such, acting within the course, scope, and authority of said agency, employment, and/or venture, and with the consent of their co-Defendants, and/or said acts were ratified by their co-Defendants, and that each and every Defendant, as aforesaid, when acting as a principal, was negligent in the selection and hiring, training, and supervision of each and every other Defendant as an agent, servant, employee, successor in interest, and/or joint venturer. Plaintiffs are informed and believe that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to each of the other Defendant.

IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

21. At all times relevant herein, Defendant VALLIANI owns and operates approximately 22 brick-and-mortar retail jewelry stores, including repair services, throughout California and also sells its inventory to customers online.

22. Upon information and belief, Defendants are incorporated in California and maintain their corporate operations headquarters, including Human Resources in Santa Clara, California. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their operations headquarters in Santa Clara, California, which is responsible for conducting Defendants' recruiting and hiring of new employees, as well as communicating and implementing Defendants' company-wide policies, including timekeeping policies, to employees throughout California. In particular, Plaintiff and other Class Members, on information and belief, received the same standardized documents and/or written policies upon hire. Upon information and belief, the use of standardized documents and/or written policies, including new hire documents, indicate that Defendants dictated policies at the corporate-level and implemented them company-wide, regardless of their employees' assigned locations or positions. On information and belief, all transactions regarding hiring, terminations, promotions, and pay increases, etc., relating to Defendants' California employees were submitted to and processed by Defendants' HR department in Santa Clara, California.

23. Upon information and belief, Defendants' corporate records, business records, data, and other information related to Defendants, including, in particular, HR records pertaining to Defendants' California employees, are also maintained at Defendants' operations headquarters in Santa Clara, California.

24. At all relevant times, Defendants have been, and continue to be, a "person" as that term is defined under California Business & Professions Code section 17021 and California Labor Code sections 1-29.5.

25. At all times relevant herein, Plaintiff RILEY was employed by Defendants as an hourly, nonexempt employee in the position of Sales Associate in California during the Class Period.

26. At all times relevant herein, Plaintiff ARIZMENDI was employed by Defendants as an hourly, nonexempt employee in the position of Store Manager in California during the Class Period.

27. At all times relevant herein, Plaintiffs and Class Members were assigned to and required and permitted to work without pay while performing tasks including, but not limited to: selling in-store customers jewelry and other items; greeting shoppers; assisting customers and shoppers with purchases

and jewelry repair tickets; contacting customers to inform them that their jewelry is available for pick up or other related topics including sales; wiping down display cases; removing jewelry from the safe to put it on display; setting up new brick-and-mortar stores to ready them to open to the public; disarming and arming the store alarm; and locking and unlocking the gate and door to the store to open and close the store to the public. Plaintiffs and Class Members were not properly compensated for some of this work.

28. At all times relevant herein, Plaintiffs and Class Members worked a substantial amount of time while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred for one or a combination of the following reasons: Plaintiffs and Class Members were required to (1) perform work during their meal periods while clocked out for their meal periods; (2) respond to off-shift contacts via phone call and WhatsApp messages regarding work-related questions; (3) on opening shifts, unlock gates and/or doors, disarm the alarm, turn on the computer; and (4) on closing shifts, arm the alarm, unlock and then re-lock doors and, for non-keyholders, wait at the front of the store entrance after clocking out to have the door unlocked to be able to exit the store. Plaintiff's and Class Members' off-the-clock time was never subsequently added and, therefore, remains uncompensated.

29. At all times relevant herein, Plaintiffs and Class Members were required to perform work during their meal periods in the form of continuing to perform their assigned tasks that cut into their 30-minute meal periods, largely because of the time-sensitive nature of assisting in-person customers in the store immediately, along with the commission-based pay structure that incentivized employees to complete sales at all times to both prospective and existing customers that may have a preference for a particular salesperson. Defendants do not compensate Plaintiffs and Class Members for this compensable time worked off the clock.

30. At all times relevant herein, Plaintiffs and Class Members were assigned to and required to work for periods lasting in excess of five hours and were not authorized nor permitted to take full-length 30-minute, uninterrupted, off-duty meal periods. Accordingly, Plaintiff's and Class Members' meal periods were on-duty for which Defendants failed to compensate Plaintiffs and Class Members

with (1) premium pay for meal periods under 30 minutes and (2) the time worked that was on-duty during these meal periods.

31. Supervisors employed by Defendants, including at Plaintiff's location, had knowledge of and prevented Plaintiffs and Class Members from beginning their meal periods before the end of the fifth hour. Supervisors throughout California were aware that Plaintiff and others similarly situated were performing work during these times without proper wages or premium compensation.

32. Moreover, Plaintiffs and Class Members regularly worked in excess of 10 hours without a second 30-minute meal period, despite not signing valid meal period waivers.

33. At all times relevant herein, Plaintiffs and Class Members were assigned to and required and permitted to work shifts lasting over four hours and were not authorized nor permitted to take full, net 10-minute rest breaks during each shift or 4-hour work period.

34. At all times relevant herein, Defendants failed to authorize and permit Plaintiffs and Class Members to take full, net 10-minute rest breaks during the Class Period. At the direction of Defendants and/or Defendants' knowledge and acquiescence, Plaintiffs and Class Members routinely missed their entire 10-minute rest breaks ever shift, at least once per shift. Accordingly, Plaintiffs' and Class Members' rest breaks were noncompliant for which Defendants should have compensated Plaintiffs and Class Members with premium pay for noncompliant rest breaks but failed to do so.

35. At all times relevant herein, Plaintiffs and Class Members worked in excess of eight hours per workday or 40 hours per work week. Defendants failed to pay for all hours worked in excess of eight hours per day, and when compensated for overtime, failed to pay the correct amount of overtime by under-recording and underreporting Plaintiff's and Class Members' total hours worked. Defendants failed to pay current and former hourly, nonexempt employees one and one-half times (1½) their regular rate of pay for hours worked in excess of eight hours per day or 40 hours per workweek. Defendants also failed to pay their employees at a rate no less than twice the regular rate of pay for work in excess of 12 hours in one day or for all hours worked in excess of eight hours on the seventh consecutive day of work in a workweek.

36. During the Class Period, Defendants require their hourly, nonexempt employees to perform compensable work while off the clock, including performing compensable work during their

meal periods. Accordingly, during the Class Period, Defendants did not provide minimum wages and overtime pay for this time worked off-the-clock that Plaintiff and the Class endured.

37. Defendants regularly failed to pay their hourly, nonexempt employees the correct amount of and rate for overtime wages. First, in pay periods in which Plaintiffs and Class Members earned commissions, Defendants failed to pay Plaintiffs and Class Members the correct rate of overtime based on their respective regular rates of pay. Second, Defendants fail to record all hours as overtime by failing to record all hours worked in a workday. This work, done primarily for the employer's benefit, is time that hourly, nonexempt employees should be, but were not compensated for, both straight hours and overtime hours worked in excess of 40 hours in a week, hours worked in excess of eight hours in a day, and for the first eight hours worked on the seventh consecutive day of work in a workweek.

38. Supervisors employed by Defendants, including at Plaintiff's location, had knowledge of and required Plaintiffs and Class Members to perform compensable work before and after shifts and during meal periods. Supervisors throughout California were aware that Plaintiff and others similarly situated were performing work during these times without proper wages or overtime compensation.

39. In light of Defendants' failure to record employees' off-the-clock time that employees worked and Defendants' failure to acknowledge the noncompliant meal periods and rest breaks, Defendants failed to properly calculate the hourly, nonexempt employees' hours and therefore, employees' premium pay, minimum wages, and overtime wages due. Accordingly, Defendants failed to provide accurate wage statements to their hourly, nonexempt employees identifying all hours worked and all rates in effect during the pay period.

40. At all times relevant herein, the same unlawful practices and procedures described above affect hourly, nonexempt workers of Defendants employed in California.

41. At all times relevant herein, Defendants failed to pay Plaintiffs and Class Members for all hours worked. Thus, Defendants did not pay Plaintiffs and Class Members minimum wages in accordance with law and, because Class Members were not compensated for time worked (1) performing work during their meal periods while clocked out for their meal periods; (2) responding to off-shift contacts via phone call and WhatsApp messages regarding work-related questions; (3) on opening shifts, unlocking gates and/or doors, disarming the alarm, turning on the computer; and (4) on closing shifts,

arming the alarm, unlocking and then re-locking doors and, for non-keyholders, waiting at the front of the store entrance after clocking out to have the door unlocked to be able to exit the store. Defendants also did not pay nonexempt employees all overtime wages nor at the regular rate of pay when commissions were earned in the same pay period in accordance with law.

42. At all times relevant herein, Defendants failed to reimburse Plaintiffs and Class Members for (1) the use of their personal cell phones, which was required to communicate with customers and to use a smartphone application, Podium, and (2) mileage for trips to the bank to make deposits.

43. Defendants' conduct, as alleged herein, has caused Plaintiffs and Class Members damages including, but not limited to, loss of wages and compensation. Defendants are liable to Plaintiffs and the Class for failing to pay minimum wages; failing to pay overtime wages; failing to provide timely and accurate wage statements; failing to pay all wages owed upon separation; failing to reimburse all necessary, business-related expenses; and unfair competition.

44. Plaintiff ARIZMENDI has complied with the procedures for bringing suit specified in California Labor Code section 2699.3. By letter dated October 30, 2024, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA"), and Defendants, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

V. CLASS ACTION AND REPRESENTATIVE ACTION ALLEGATIONS

45. Plaintiffs are each a member of and seek to be the representative for the Class of similarly situated employees who all have been exposed to, have suffered, and/or were permitted to work under Defendants' unlawful employment practices as alleged herein.

46. Plaintiffs brings their first through eighth causes of action on behalf of themselves and on behalf of the following Class[1] of persons:

> All current and former hourly non-exempt employees of BRILLIANT ART INC. doing business as VALLIANI JEWELERS in California at any time during the Class Period through the present.

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[1] Plaintiff reserves the right under California Rules of Court, Rule 3.765, to amend or modify the Class description with greater particularity or further division into subclasses or limitation to particular issues.

47. This action is appropriately suited for a class action pursuant to Code of Civil Procedure section 382 because there exists an ascertainable and sufficiently numerous Class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives.

48. Numerosity and Ascertainability. The size of the Class makes a class action both necessary and efficient. On information and belief, the proposed Class includes hundreds of current and former employees at Defendants' locations in California. Members of the Class are ascertainable through Defendants' records but are so numerous that joinder of all individual Class Members would be impractical.

49. Predominant Common Questions of Law and Fact. Pursuant to section 382, common questions of law and fact exist as to all Class Members. These questions predominate over any individualized issues. These common questions include but are not limited to:

a. Whether Defendants' policies and practices described in this Complaint were and are illegal;

b. Whether Plaintiffs and each member of the Class were not paid minimum wage for each hour worked or part thereof during which they were required to perform acts at the direction and for the benefit of Defendants;

c. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiffs and the members of the Class who worked as hourly, nonexempt employees in California for the total hours worked during the Class Period;

d. Whether Defendants have engaged in a common course of requiring or permitting their hourly, nonexempt employees to not report all hours worked during the Class Period;

e. Whether Defendants violated Labor Code section 226.7 and/or section 512 and engaged in a pattern or practice of failing to provide timely, off-duty, 30-minute meal periods to Plaintiffs and Class Members who worked as hourly, nonexempt employees in California during the Class Period;

f. Whether Defendants engaged in a pattern or practice of impeding Plaintiffs and Class Members who worked as hourly, nonexempt employees in California during the Class Period from taking full-length off-duty, 30-minute meal periods by imposing unreasonable time windows/work schedules that required Plaintiffs and Class Members to forgo meal periods to complete their daily-assigned jobs on time;

g. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the members of the Class who worked as hourly, nonexempt employees in California during the Class Period from taking full-length off-duty, 30-minute meal periods for their second meal periods for shifts worked in excess of 10 hours but not more than 12 hours, where these second meal periods were not waived by mutual consent;

h. Whether Defendants engaged in a pattern or practice of failing to properly record the start and stop times that Plaintiffs and Class Members actually started performing compensable work and the time at which they stopped performing compensable work;

i. Whether Defendants engaged in a pattern or practice of failing to properly compensate Plaintiff and the members of the Class who worked as hourly, nonexempt employees in California during the Class Period for missed, untimely, or on-duty meal periods as required by California law;

j. Whether Defendants violated section 11 of the applicable California Industrial Welfare Commission's ("IWC") Wage Order(s) by failing to provide Plaintiff and the members of the Class who worked as hourly, nonexempt employees in California during the Class Period with timely, off-duty, 30-minute meal periods;

k. Whether Defendants engaged in an unfair practice and violated California Business and Professions Code, section 17200, *et seq.* by failing to provide Plaintiff and the members of the Class who worked as hourly, nonexempt employees in California during the Class Period with their statutory, off-duty, meal periods;

l. Whether Defendants maintained accurate time records of off-duty, 30-minute meal periods taken by Plaintiffs and Class Members during the Class Period in accordance with section 7 of the applicable IWC Wage Order(s);

m. Whether Defendants engaged in a pattern or practice of failing to properly compensate Plaintiffs and the members of the Class who worked as hourly, nonexempt employees in

California during the Class Period for failing to provide full-length 10-minute rest breaks as contemplated by California law for work periods in excess of four hours;

n. Whether Defendants failed to compensate, and therefore violated section 12 of the applicable IWC Wage Order(s) and Labor Code section 226.7 by failing to provide 10-minute, uninterrupted rest breaks as contemplated by California law for work periods in excess of four hours;

o. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of overtime pay at 1.5 times the regular rate of pay to Plaintiffs and the Class for hours worked in excess of eight hours in a day;

p. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of double time for hours worked in excess of 12 hours in a day;

q. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable IWC Wage Order(s) by failing to pay overtime pay to Plaintiffs and the Class for hours worked in excess of eight hours in a day;

r. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable IWC Wage Order(s) by failing to pay overtime pay to Plaintiffs and the Class for the first eight hours worked in a day on the seventh consecutive day in a workweek and double time for all hours worked in excess of eight hours on such days;

s. Whether Defendants violated Labor Code sections 218.5, 204, 1197, and 1198 due to failure to compensate Plaintiffs and the Class for those acts Defendants required Plaintiffs and Class Members to perform for the benefit of Defendants;

t. Whether Defendants violated California Labor Code section 2802 by failing to reimburse Plaintiffs and Class Members for all necessary business-related expenses they incurred;

u. Whether Defendants have engaged in a common course of failing to pay nonexempt employees all wages due upon termination;

v. Whether Defendants have engaged in unfair competition by the above-listed conduct; and

w. The nature and extent of class-wide injury and the measure of damages for the injury.

50. Typicality. Plaintiffs' claims are typical of the members of the Class. Plaintiffs, like other members of the Class working for Defendants in California, were each subjected to Defendants' policy and practice of refusing to properly and fully pay minimum wages and overtime, failing to provide compliant meal periods and rest breaks or pay corresponding premiums, failing to provide accurate wage statements, failing to reimburse all necessary, business-related expenses, and failing to pay all wages owed upon separation in violation of California wage and hour laws. Plaintiffs' job duties were and are typical of those of other class members who worked for Defendants in California.

51. Adequacy of Representation. Plaintiffs will fairly and adequately represent the interests of the Class because their individual interests are consistent with and not antagonistic to the interests of the Class, and because Plaintiffs have selected counsel who has the requisite resources and ability to prosecute this case as a class action and are experienced labor and employment attorneys who have successfully litigated other cases involving similar issues.

52. Superiority of Class Mechanism. The class action mechanism is superior to any alternatives that might exist for the fair and efficient adjudication of these claims. Proceeding as a class action would permit the large number of injured parties to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort and judicial resources. A class action is the only practical way to avoid the potentially inconsistent results that numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means by which Plaintiffs can effectively litigate against a large, well-represented corporate defendant like Defendants. In the absence of a class action, Defendants would be unjustly enriched because they would be able to retain the benefits and fruits of the many wrongful violations of the California state laws. Numerous repetitive individual actions would also place an enormous burden on the courts as they are forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and over again.

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VI. FIRST CAUSE OF ACTION

Failure to Provide Meal Periods

in Violation of Cal. Labor Code §§ 512 and 226.7; IWC Wage Order No. 7-2001, § 11

(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)

53. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

54. California Labor Code section 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

55. IWC Wage Order No. 7-2001 (11)(A) provides, in pertinent part: "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, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee."

56. Section 512(k) of the California Labor Code provides, in pertinent part, that: "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."

57. Defendants engaged in a systematic, companywide policy of not recording the start and stop time of meal periods but rather auto-deducting one hour from Plaintiffs' and Class Member's total work hours each shift to avoid detection and compliance with California Labor Code Section 512.

58. Defendants also did not schedule second meal periods and had no policy for permitting and authorizing Plaintiffs and other employees to take second 30-minute meal periods on days they worked in excess of 10 hours in one day. Because of Defendants' companywide practice of denying hourly, nonexempt employees second 30-minute meal periods, Plaintiffs and other Class Members were

not relieved of all duties such that they could take full-length second 30-minute meal periods and instead had to work during a portion of that time allotted for meal periods. Accordingly, Defendants failed to provide all meal periods in violation of California Labor Code sections 226.7 and 512. Defendants knew or should have known that their companywide adoption of the requirement that employees skip their meal period without executing waivers to do so would result in a failure to provide Plaintiffs and other Class Members with full and timely meal periods as required by the applicable IWC Wage Order(s) and Labor Code sections 226.7 and 512(a). Furthermore, Plaintiffs and other Class Members did not sign valid meal period waivers on days that they were entitled to meal periods but were not relieved of all duties.

59. Moreover, Defendants engaged in a systematic, companywide policy to not pay meal period premiums. Alternatively, to the extent that Defendants did pay Plaintiffs and other Class Members one additional hour of premium pay for missed meal periods, Defendants did not pay Plaintiffs and other Class Members at the correct rate of pay for premium wages because Defendants failed to include all forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to the extent Defendants paid Plaintiffs and other Class Members premium pay for missed meal periods, it did so at a lower rate than required by law. As a result, Defendants failed to provide Plaintiffs and other Class Members compliant meal periods and failed to pay the full meal period premiums due, in accordance with California Labor Code sections 204, 210, 226.7, and 512.

60. By their actions in requiring their employees to work during a portion of their meal periods and/or their failure to relieve nonexempt, hourly, nonexempt employees of their duties for their off-duty meal periods, Defendants have violated California Labor Code section 226.7 and section 11 of IWC Wage Order No. 7-2001 and is liable to Plaintiffs and the Class.

61. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been deprived of timely off-duty meal periods and are entitled to recovery under Labor Code section 226.7(b) and section 11 of IWC Wage Order No. 7-2001, in the amount of one additional hour of pay at the employee's regular rate of pay for each work period during each day in which Defendants failed to provide their hourly, nonexempt employees with timely, statutory, off-duty meal periods.

VII. SECOND CAUSE OF ACTION

Failure to Provide Rest Breaks

in Violation of Cal. Labor Code §§ 226.7, 512, and 1194;

IWC Wage Order No. 7-2001, § 12

(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)

62. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

63. California Labor Code section 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

64. IWC Wage Order No. 7-2001, section (12)(A) provides, in pertinent part: "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 of ten (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 times 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."

65. IWC Wage Order No. 7-2001, section (12)(B) provides, "If an employer fails to provide an employee with 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."

66. As alleged herein, Defendants failed to authorize and permit compliant rest breaks during the Class Period. Plaintiffs and Class Members were routinely required to work during their entire rest breaks at the direction of Defendants and/or with Defendants' knowledge and acquiescence. This was the result of Defendants' requirement to assist in-store customers with sales.

67. Furthermore, Defendants' staffing and job-assignment policies required employees to forgo their 10-minute rest breaks, entirely preventing Plaintiffs and Class Members from being relieved of all duty in order to take compliant rest breaks; these practices forced Plaintiffs and other Class

Members to remain on duty for part of their rest breaks. As a result, Plaintiffs and Class Members would work shifts in excess of 3.5 hours without the net 10-minute rest breaks to which they were entitled. More specifically, throughout their employment, during 8-hour or longer shifts, Plaintiffs and Class Members regularly worked during the entirety of their 10-minute rest breaks by using that time to continue performing work for Defendants.

68. At the same time, Defendants implemented a companywide policy to not pay rest break premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members one additional hour of premium pay for missed rest breaks, Defendants did not pay Plaintiff and other Class Members at the correct rate of pay for premium wages because Defendants failed to include all forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other Class Members premium pay for missed rest breaks, it did so at a lower rate than required by law. As a result, Plaintiff and other Class Members were denied compliant rest breaks and Defendants failed to pay the full rest break premiums due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s).

69. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiffs and all others similarly situated and such conduct has continued through the filing of the initial Complaint.

70. As a direct and proximate result of Defendants' unlawful action, Plaintiffs and the Class have been deprived of full-length 10-minute rest breaks and/or were not paid for rest breaks taken during the Class Period and are entitled to recovery under Labor Code section 226.7(b) 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 Defendants failed to provide employees with compliant and/or paid rest breaks.

VIII. <u>THIRD CAUSE OF ACTION</u>

Failure to Pay Minimum Wages

Upon Payment of Wages in Violation of Cal. Labor Code §§ 510, 1194, 1194.2, and 1197; IWC Wage Order No. 7-2001, § 4

(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)

71. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint

as if fully set forth herein.

72. Labor Code section 510 provides in relevant part: "[e]ight hours of labor constitutes a day's work. Any work in excess of eight hours in one work day 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."

73. Labor Code section 1197 provides: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

74. Labor Code section 1182.12 establishes the right of employees to be paid minimum wages for all hours worked in amounts set by state law.

75. Labor Code section 1194, subdivision (a) provides: "Notwithstanding any agreement to work for a lesser wage, an 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."

76. Labor Code section 1194.2 provides in pertinent part: "In any action under Section 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

77. Pursuant to IWC Wage Order No. 7-2001, section (2)(H), at all times material hereto, "hours worked" includes "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

78. At all times relevant during the liability period, under the provisions of IWC Wage Order

No. 7-2001, Plaintiffs and each Class Member should have received not less than the minimum wage in a sum according to proof for the time worked, but not compensated.

79. For all hours that Plaintiffs and Class Members worked, they are entitled to not less than the California minimum wage and, pursuant to Labor Code section 1194.2(a) liquidated damages in an amount equal to the unpaid minimum wages and interest thereon.

80. Pursuant to Labor Code section 1194, Plaintiffs and Class Members are also entitled to their attorneys' fees, costs, and interest according to proof.

81. At all times relevant during the liability period, Defendants willfully failed and refused, and continue to willfully fail and refuse, to pay Plaintiffs and Class Members the amounts owed.

82. As described above, Defendants required Plaintiffs and other Class Members to work during their meal periods so that they could assist their pre-existing clientele or assist prospective customers when other staff members were not available. Also, Defendants did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium pay, Defendants did not pay at least minimum wages for those hours worked off-the-clock.

83. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiffs and all other similarly situated nonexempt, hourly, nonexempt employees, and Defendants have done so continuously throughout the filing of this complaint.

84. As a direct and proximate result of Defendants' violation of Labor Code sections 510 and 1197, Plaintiffs and other Class Members have suffered irreparable harm and money damages entitling them to damages, injunctive relief or restitution. Plaintiffs, on behalf of themselves and on behalf of the Class, seek damages and all other relief allowable including all wages due while working as Defendants' hourly, nonexempt employees, attorneys' fees, liquidated damages, prejudgment interest, and as to those employees no longer employed by Defendants, waiting time penalties pursuant to Labor Code sections 200, *et seq*.

85. Plaintiffs and Class Members are entitled to the unpaid amount of minimum wages, pre-judgment interest, liquidated damages, statutory penalties, attorneys' fees, and costs according to Labor Code sections 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure 1021.5.

IX. FOURTH CAUSE OF ACTION

Failure to Pay Overtime Wages

in Violation of Cal. Labor Code §§ 510 and 1194, IWC Wage Order No. 7-2001, § 3

(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)

86. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

87. Pursuant to section 3 of IWC Wage Order No. 7-2001; California Code of Regulations, Title 8, Chapter 5, section 11040, section 12; and Labor Code sections 200, 204, 226, 500, 510, 512, 1194, and 1198, Defendants were required to compensate Plaintiffs and Class Members for all overtime hours worked, which is calculated at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight hours per day and/or 40 hours per week, and for the first eight hours on the seventh consecutive work day, with double time after eight hours on the seventh day of any work week, or after 12 hours in any work day.

88. Plaintiffs and Class Members were and are nonexempt employees entitled to the protections of IWC Wage Order No. 7-2001; California Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510, 512, 1194, and 1198. In addition, during the Class Period, Plaintiffs and other members of the Class consistently worked five days per week for shifts of eight hours or more. During the course of Plaintiff's employment, and during the course of the employment of the members of the Class, Defendants failed to compensate Plaintiffs and the Class for overtime hours worked as required under the aforementioned Labor Codes and Regulations.

89. Under the aforementioned Wage Orders, statutes, and regulations, Plaintiffs and Class Members are entitled to one and one-half (1½) times and/or double their regular rate of pay for overtime work performed during the four years preceding the filing of this Complaint, based on appropriate calculations of the "total remuneration" for each workweek.

90. In violation of state law, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiffs and the Class for all wages earned and all hours worked. As a direct result, Plaintiffs and the Class have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in

seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

91. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiffs and the Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff's rights and the rights of the Class. Plaintiffs and the Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

92. Defendants' conduct described herein violates IWC Wage Order No. 7-2001; California Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510, 512, and 1198. Therefore, pursuant to Labor Code sections 200, 203, 204, 226, 226.7, 512, 558, and 1194, Plaintiffs and the Class are entitled to recover the unpaid balance of overtime compensation Defendants owes Plaintiffs and the Class, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

X. <u>FIFTH CAUSE OF ACTION</u>

Failure to Pay All Wages Owed Upon Separation

in Violation of Cal. Labor Code §§ 201–203

(Brought by Plaintiff Riley on Behalf of Themselves and the Class Against All Defendants)

93. Plaintiff RILEY hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

94. Labor Code section 201 provides, in relevant part, "[I]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

95. Labor Code section 202 provides, in relevant part, "[I]f 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."

96. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the

employer is liable for penalties in the form of continued compensation up to 30 workdays.

97. At all times relevant during the liability period, Plaintiff RILEY and the other members of the Class were employees of Defendants covered by Labor Code section 203. Pursuant to Labor Code section 201, upon Plaintiff RILEY'S and the Class Members' separation dates, Defendants were required to pay Plaintiff RILEY and the Class Members all wages earned. Plaintiff RILEY was terminated, but Defendants did not pay Plaintiff RILEY her final payment including her final day of work, nor subsequently, on the day of her termination, as required and in violation of Labor Code section 201.

98. At the time of Plaintiff RILEY'S and Class Members' respective separation dates, Plaintiffs and Class Members had unpaid wages. Defendants willfully failed to pay Plaintiff RILEY and other members of the Class who are no longer employed by Defendants for their uncompensated hours, uncompensated overtime, and missed, untimely, or on-duty meal periods and rest breaks upon their termination or separation from employment with Defendants as required by California Labor Code sections 201 and 202. Thus, in violation of Labor Code section 201, Defendants failed to pay Plaintiff RILEY and the Class Members the full amount of wages due and owing them, in amounts to be proven at the time of trial, but in excess of the jurisdictional minimum of this Court.

99. Defendants' failure to pay Plaintiff RILEY and the Class respective wages due and owed to them was willful, and done with the wrongful and deliberate intention of injuring Plaintiff RILEY and the Class Members and in conscious disregard of their rights.

100. Defendants' willful failure to pay former employee Plaintiff RILEY and the Class all of the wages due and owing them constitutes violations of Labor Code sections 201 and 203, which provide that an employee's wages will continue as a penalty up to 30 days from the time the wages were due. Therefore, former employee Plaintiff and the Class Members are each entitled to penalties pursuant to Labor Code section 203.

XI. <u>SIXTH CAUSE OF ACTION</u>

Failure to Furnish Timely and Accurate Wage Statements

Upon Payment of Wages in Violation of Cal. Labor Code § 227.3

(Brought by Plaintiff Arizmendi on Behalf of Himself and the Class Against All Defendants)

101. Plaintiff Arizmendi hereby re-alleges and incorporates by reference all paragraphs of this

Complaint as if fully set forth herein.

102. Labor Code section 226(a) sets forth reporting requirements for employers when they pay wages, as follows: "Every employer shall . . . at the time of each payment of wages, furnish his or his employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis . . . ." Section (e) provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be 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 exceeding an aggregate penalty of four thousand dollars ($4,000), and shall be entitled to an award of costs and reasonable attorney's fees."

103. Defendants failed to accurately record the regular and overtime hours worked by Plaintiffs and Class Members on their paystubs.

104. Defendants failed to accurately provide Defendant VALLIANI'S correct legal name on Plaintiffs and Class Members' paystubs. Their paystubs state "Valliani Jewelers" for the employer name when it should read "Brilliant Art Inc."

105. Additionally, Defendants failed to accurately record all rates of pay in effect during the pay period, including the rate of overtime owed when commissions were earned in the same pay period.

106. Plaintiff Arizmendi and Class Members were damaged by these failures because, among other things, the failures hindered Plaintiff Arizmendi and the Class from determining the amounts of wages actually owed to them.

107. Plaintiff Arizmendi and Class Members request recovery of Labor Code section 226(e) penalties according to proof, as well as interest, attorneys' fees and costs pursuant to Labor Code section 226(e), in a sum as provided by the Labor Code and/or other statutes.

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XII. <u>SEVENTH CAUSE OF ACTION</u>

Failure to Reimburse All Necessary, Business-Related Expenses in Violation of Cal. Labor Code § 2802

(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)

108. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

109. California Labor Code section 2802 provides that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful unless the employee, at the time of obeying the directions, believed them to be unlawful."

110. During the applicable statutory period, Plaintiffs and Class Members incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of Defendants, but Defendants did not reimburse Plaintiffs and Class Members for these expenditures or losses. Such expenses include, but are not limited to, expenses for (1) the use of their personal cell phones, which was required to communicate with customers and to use a smartphone application, Podium, and (2) mileage for trips to the bank to make deposits.

111. Defendants have failed to fully reimburse Plaintiffs and Class Members for necessary business-related expenses and losses.

112. Plaintiffs and Class Members are entitled to recover their necessary unreimbursed business-related expenses and losses incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California, pursuant to California Labor Code section 2802.

XIII. <u>EIGHTH CAUSE OF ACTION</u>

Violations of California's Unfair Competition Law ("UCL"), California Business and Professions Code §§ 17200, *et seq.*

(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)

113. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint

as if fully set forth herein.

114. Section 17200 of the California Business and Professions Code (the "UCL") prohibits any unlawful, unfair, or fraudulent business practices.

115. Through their actions alleged herein, Defendants have engaged in unfair competition within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair, and/or fraudulent business practices under the UCL.

116. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to, failure to pay Class Members wages and compensation they earned through labor provided, and failing to otherwise compensate Class Members, as alleged herein. Defendants' fraudulent conduct includes, but is not limited to, issuing wage statements containing false and/or misleading information about the time the Class Members worked and the amount of wages or compensation due.

117. Defendants' violations of California wage and hour laws and illegal payroll practices or payment policies constitute a business practice because they were done repeatedly over a significant period of time, and in a systematic manner to the detriment of Plaintiffs and Class Members.

118. Plaintiffs have standing to assert this claim because she has suffered injury in fact and has lost money as a result of Defendants' conduct.

119. For the four years preceding the filing of this action, Plaintiffs and Class Members have suffered damages and request restitutionary disgorgement of all monies and profits to be disgorged from Defendants in an amount according to proof at the time of trial and an injunction prohibiting them from engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

XIV. NINTH CAUSE OF ACTION

For Civil Penalties Pursuant to California's Private Attorneys General Act of 2004 ("PAGA"), §§ 2698, *et seq.*, for Violations of California Labor Code Sections

(Brought by Plaintiff Arizmendi on Behalf of Himself and the General Public Against All Defendants)

120. Plaintiff ARIZMENDI hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

121. PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order(s) that provides for a civil penalty to be assessed and collected by California's Labor and Workforce Development Agency ("LWDA") for violations of the California Labor Code and applicable IWC Wage Order(s) may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

122. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."

123. Plaintiff and other current and former employees of Defendants are "aggrieved employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or former employees and one or more of the alleged violations were committed against them.

124. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees, including Plaintiff, may pursue a civil action arising under PAGA, alleging violations of any provision listed in section 2699.5, after the following requirements have been met:

a. The aggrieved employee shall give written notice ("Employee's Notice") by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
b. The Employee's Notice filed with the LWDA is accompanied by a $75 filing fee; and
c. The LWDA shall provide notice ("LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within 65 calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

125. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, including

Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those listed in section 2699.5 after the following requirements have been met:

a. The aggrieved employee shall give written notice by online filing ("Employee's Notice") to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;

b. The Employee's Notice filed with the LWDA is accompanied by a $75 filing fee; and

c. The employer may cure the alleged violation within 33 calendar days of the postmark date of the Employee's Notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

126. On October 30, 2024, Plaintiff ARIZMENDI provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff ARIZMENDI'S notice to the LWDA was accompanied by the $75 filing fee. A true and correct copy of Plaintiff's written notice to the LWDA, BRILLIANT ART INC. doing business as VALLIANI JEWELERS dated October 30, 2024 is attached hereto as "**Exhibit 1**." Exhibit 1 is incorporated into this Complaint by reference.

127. As of the filing date of the initial complaint, over 65 days have passed since Plaintiff ARIZMENDI sent the LWDA Notice described above, and the LWDA has not responded that it intends to investigate Plaintiff's claims. Defendants have not given notice that it has cured the alleged violations set forth in this Complaint. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) and (c) to recover civil penalties against all defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226.7, 510, 512(a), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

128. Labor Code section 558(a) provides that "[a]ny employer or other person acting on behalf

of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

129. Defendants, at all times relevant herein, were employers or persons acting on behalf of an employer(s) who violated Plaintiff ARIZMENDI'S and other non-party aggrieved employees' rights by violating various sections of the California Labor Code as set forth above.

130. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order(s), including:

a. Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage Order(s) for Defendants' failure to provide Plaintiff and other Class Members with compliant meal periods and/or rest breaks, as set forth above;

b. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC Wage Order(s) for Defendants' failure to compensate Plaintiff and other Class Members with at least minimum wages for all hours worked as set forth above;

c. Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order(s) for Defendants' failure to compensate Plaintiff and other Class Members with overtime wages for all hours worked in excess of eight in one day or 40 in one week and double time for all hours worked in excess of 12 hours, as set forth above;

d. Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order(s) for failure to provide accurate and complete wage statements to Plaintiff and other Class Members as set forth above;

e. Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth above;

f. Violations of Labor Code section 204 for failure to pay all earned wages during employment as set forth above;

g. Violations of Labor Code section 2802 for failure to reimburse employees for all necessary, business-related expenses incurred during employment as set forth above;

h. Plaintiff and other non-party aggrieved employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereupon, pursuant to Labor Code section 2699(f)-(g); and

i. Any and all additional applicable civil penalties and sums as provided by the California Labor Code and/or other relevant statutes.

131. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558, Plaintiff ARIZMENDI, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party aggrieved employees, and the State of California against all defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

132. In addition, Plaintiff ARIZMENDI seeks and is entitled to sixty-five percent (65%) of all penalties obtained under California Labor Code section 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the California Labor Code, and thirty-five percent (35%) to all aggrieved employees.

133. Further, Plaintiff ARIZMENDI is entitled to recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 2699(g)(1), 218.5, 1194(a) and any other applicable statute.

XV. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated and also on behalf of the general public, respectfully request that this Court find against all defendants as follows:

1. An order that this action may proceed and may be maintained as a class action;
2. All unpaid minimum wages and liquidated damages due to Plaintiffs and each Class Member on their minimum wage claims;
3. All unpaid overtime wages due to Plaintiffs and each Class Member;
4. One hour of wages due to Plaintiffs and each Class Member for each work period of more than

four hours when they did not receive an uninterrupted 10-minute rest break;

5. One hour of wages due to Plaintiffs and each Class Member for each work period of more than five hours when they did not receive an uninterrupted 30-minute meal period;

6. All unpaid minimum wages and liquidated damages due to Plaintiffs and each Class Member on their minimum wage claim;

7. For restitution of all monies due to Plaintiffs and Class Members and disgorged profits from the unlawful business practices of Defendants;

8. For waiting time penalties pursuant to Labor Code section 203;

9. Statutory penalties under Labor Code section 226(e);

10. For reimbursement of business expenses under California Labor Code section 2802;

11. For penalties pursuant to Labor Code sections 204, 206, 210, 225.5, 226.7, 510, 512, 558, 1182.12, 1194, 1194.2, 1197.1, 1198, and 2802;

12. For injunctive relief enjoining Defendants from engaging in the unlawful and unfair business practices complained of herein;

13. For all civil penalties permitted by California's Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, based on all the alleged statutory violations set forth in this Complaint;

14. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;

15. Prejudgment interest at the maximum legal rate on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;

16. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, 1194, 2699(g), and Code of Civil Procedure section 1021.5;

17. Accounting of Defendants' records for the liability period;

18. General, special, and consequential damages, to the extent allowed by law; and

19. All such other and further relief that the Court may deem just and proper.

Dated: January 6, 2025

ABRAMSON LABOR GROUP

By: Cheryl Kenner

Cheryl A. Kenner

Attorneys for Plaintiffs ANELDIA RILEY and JOSE ARIZMENDI and all others similarly situated and aggrieved

DEMAND FOR JURY TRIAL

Plaintiffs ANELDIA RILEY and JOSE ARIZMENDI, on behalf of themselves and all others similarly situated and aggrieved, hereby demand a jury trial with respect to all issues triable of right by jury.

Dated: January 6, 2025

ABRAMSON LABOR GROUP

By: Cheryl Kenner

Cheryl A. Kenner

Attorneys for Plaintiffs ANELDIA RILEY and JOSE ARIZMENDI and all others similarly situated and aggrieved

EXHIBIT 1

ABRAMSON
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October 30, 2024

VIA ONLINE SUBMISSION

Stewart Knox, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

Brilliant Art Inc. dba Valliani Jewelers
Attn: Human Resources
3030 Plaza Bonita Rd., Space 1076
National City, CA 91950

Brilliant Art Inc. dba Valliani Jewelers
Attn: Human Resources
14400 Bear Valley Rd., #641
Victorville, CA 92392

Brilliant Art Inc. dba Valliani Jewelers
Attn: Human Resources
1 Mills Cir., Space 1011
Ontario, CA 91764

Brilliant Art Inc. dba Valliani Jewelers
Attn: Legal Department
2855 Stevens Creek Blvd., Ste. 2561
Santa Clara, CA 95050

Brilliant Art Inc. dba Valliani Jewelers
Attn: Human Resources
500 Inland Center Dr., Suite 426
San Bernardino, CA 92408

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTION 2698, *ET SEQ.*

To: The California Labor and Workforce Development Agency; Brilliant Art Inc. dba Valliani Jewelers

From: Jose Arizmendi, on behalf of himself and all other current and former hourly nonexempt employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by current employee Jose Arizmendi ("Mr. Arizmendi") to seek compensation and all other available relief, including civil penalties on his behalf and on the behalf of all those similarly aggrieved (collectively with Mr. Arizmendi, "Claimants") who have been injured by Brilliant Art Inc. doing business as Valliani Jewelers' ("Valliani") violations of the California Labor Code. Mr. Arizmendi, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt employees of Valliani, intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Factual Statement:

Brilliant Art Inc. doing business as Valliani Jewelers owns and operates approximately 22 brick-and-mortar retail jewelry stores throughout California and also sells its inventory to customers online.

Claimant Mr. Arizmendi works for Valliani as an hourly, nonexempt employee in the position of Store Manager at Valliani's retail store in National City, California, earning $29.00 per hour plus 1-3% commissions on all sales at his location from approximately September 26, 2022 through the present. Before holding the position of Store Manager, Mr. Arizmendi held the position of Manager In Training, which was for about 5-6 months. Mr. Arizmendi has also worked at Valliani's Ontario, San Bernardino, and Victorville locations. Mr. Arizmendi, on behalf of himself and all other similarly aggrieved current and former employees in California in various positions, are or were engaged in retail sales-related tasks for Valliani. As part of their employment with Valliani, Claimant and other hourly, nonexempt employees, collectively, "hourly nonexempt employees," are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to, selling in-store customers jewelry and other items; greeting shoppers; assisting customers and shoppers with purchases and jewelry repair tickets; contacting customers to inform them that their jewelry is available for pick up or other related topics including sales; wiping down display cases; removing jewelry from the safe to put it on display; setting up new brick-and-mortar stores to ready them to open to the public; disarming and arming the store alarm; locking and unlocking the gate and door to the store to open and close the store to the public.

Although currently on medical leave, Claimant Mr. Arizmendi regularly works six (6) days per week for 8 hours or more hours per day. During the entire course of his employment, Valliani has failed to provide Mr. Arizmendi and those similarly aggrieved with overtime pay and compliant meal periods and rest breaks. Valliani has also failed to pay minimum wages to Mr. Arizmendi and other hourly, nonexempt employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 7-2001. As a consequence, Valliani has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission ("IWC") Wage Orders, including but not limited to, IWC Wage Order No. 7-2001. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Valliani has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Valliani has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Valliani has failed and continues to fail to provide timely, accurate wage statements to Mr. Arizmendi and other aggrieved persons in violation of Labor Code section 226(a). Valliani has failed and continues to fail to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for cell phone expenses and mileage, in violation of Labor Code section 2802. Mr. Arizmendi is informed and believes that such violations are ongoing, systematic, and continuous. Mr. Arizmendi intends to bring an action against

Valliani under the Private Attorneys General Act ("PAGA") to recover wages and penalties as provided by California law.[1]

Theories of Labor Code Violations and Remedies:

Claimant Mr. Arizmendi has been employed by Valliani since approximately September 26, 2022 through the present as a Store Manager. For a period of at least four (4) years prior to October 2024, but for our purposes here, one (1) year prior, Valliani has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. Valliani has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and section 4 of IWC Wage Order No. 7-2001. First, Defendant Claimants worked a substantial amount of time while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred because Claimants were required to (1) perform work during their meal periods while clocked out for their meal periods; (2) respond to off-shift contacts via phone call and WhatsApp messages regarding work-related questions; (3) on opening shifts, unlock gates and/or doors, disarm the alarm, turn on the computer; and (4) on closing shifts, arm the alarm, unlock and then re-lock doors and, for non-keyholders, wait at the front of the store entrance after clocking out to have the door unlocked to be able to exit the store. These pre- and post-shift wait times and meal period and off-shift interruptions in which Claimants performed work were all for the benefit of Valliani and, therefore, constitute compensable work. Claimants' off-the-clock time was never subsequently added and, therefore, uncompensated. Accordingly, Claimants were not paid for that time spent working off the clock. Second, Defendant enforces practices that effectively require Claimants to perform work during their meal periods, the effects of which Defendant could have mitigated by adding more staff to ensure sufficient floor coverage to allow compliant meal periods and rest breaks. However, Defendant instead chose to instruct Claimants to work through their meal periods, take them late, or take them with interruptions requiring them to return to work prematurely and to rarely if ever take rest breaks. In effect, these policies and practices cause Claimants to remain on-duty during meal periods and rest breaks, and therefore, constitute a failure on Valliani's part to provide compliant meal periods and rest breaks. Third, Defendant enforces practices that effectively require Claimants to perform work on closing shifts that should have been compensated but were not. This noncompliance could have been corrected by adding extra time to all employees' hours worked each shift With that, Valliani's corresponding failure to provide premium pay at the correct regular rate, if any

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[1] Without limitation, Mr. Arizmendi, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

> The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

premiums were paid at all, in lieu of compliant meal periods and rest breaks constitutes Valliani's failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 204, 226(a), 510, 1182.12, 1194, and 1197. Valliani's failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 7-2001.

Claimants were at all times entitled to unpaid off-duty, uninterrupted **meal periods**. As explained in the preceding paragraph, Valliani failed to authorize and permit full-length meal periods for Mr. Arizmendi and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 7-2001. Mr. Arizmendi and all similarly aggrieved persons were required to clock out late for their meal periods or else perform work during their meal periods by continuing to perform their assigned work that cut into their 30-minute meal periods or else return to work prematurely before 30 minutes had elapsed, largely because of in-store customers who needed immediate assistance. Claimants did not record (did not clock out and back in for) their meal periods until 30 minutes had elapsed. Despite that, Valliani did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. Accordingly, since Valliani required Mr. Arizmendi and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, section 20 of IWC Wage Order No. 7-2001, and 2699(f).

Claimants were at all times entitled to take paid, off duty 10-minute **rest breaks**. However, for the same reasons cited in the preceding paragraph regarding meal periods, Valliani likewise failed to authorize and permit Mr. Arizmendi and all other similarly aggrieved employees to take any full-length, off-duty rest breaks as required by Labor Code sections 226.7 and section 12 of IWC Wage Order No. 7-2001. Claimants were not able to take their requisite number of 10-minutes rest breaks based on their shift duration; Mr. Arizmendi and Claimants regularly worked through their rest breaks. Valliani did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and section 20 of IWC Wage Order No. 7-2001. Furthermore, since Valliani required their hourly nonexempt employees to perform work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Valliani was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Mr. Arizmendi and Claimants regularly worked overtime hours, some on the clock and some off the clock because of the on-duty meal periods and off-shift contacts described earlier. Valliani has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, Valliani failed to provide Mr. Arizmendi and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 3.

Claimants were at all times entitled to be provided timely and accurate **wage statements** from Valliani pursuant to Labor Code section 226. First, Mr. Arizmendi's paystubs do not provide the legal name of the employer; they read "Valliani Jewelers" rather than the legal name Brilliant Art Inc. Second, because Valliani failed to pay Claimants all of their meal period and rest break premiums for noncompliant meal periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants' wage statements were inaccurate in reflecting meal period and rest break premiums owed, overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants' wage statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by Valliani for all necessary, **business-related expenses** they incurred in executing their duties for Valliani. California Labor Code section 2802 provides that "An employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." Valliani, however, has failed to fully reimburse Mr. Arizmendi and Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for (1) the use of their personal cell phones, which was required to communicate with customers and to use a smartphone application, Podium, and (2) mileage for trips to the bank to make deposits for Valliani. Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

Valliani's uniform failure to pay minimum and overtime wages, failure to authorize and permit full-length, off-duty meal periods and rest breaks or pay Claimants adequate premium compensation in lieu thereof, failure to keep accurate time records, failure to furnish timely and accurate wage statements, and failure to reimburse all necessary, business-related expenses, violate Labor Code sections 204, 226(a), 226.7, 510, 512, 1182.12, 1194, 1197, and 2802, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys' fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Arizmendi, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Valliani for violations of California Labor Code sections 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

ABRAMSON LABOR GROUP

Cheryl Kenner

Cheryl A. Kenner