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Superior Court of CA,
County of Santa Clara
25CV455650
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

SAAGHAR AZAD, an individual, and in a
representative capacity on behalf of the State of
California and other Aggrieved Employees,

Plaintiff,

vs.

SKIN REFINE MEDSPA a California
corporation, DUSTIN NEWELL, an individual
LOUISE NGUYEN, an individual, and DOES 1-
15

Defendants.

Case No. 25CV455650

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

PLAINTIFF SAAGHAR AZAD (“PLAINTIFF”), an individual, on behalf of herself and in a representative capacity on behalf of the State of California and other AGGRIEVED EMPLOYEES, defined below, against DEFENDANT SKIN REFINE MEDSPA a California corporation, DEFENDANT DUSTIN NEWELL, an individual, DEFENDANT LOUISE NGUYEN, an individual and DOES 1-15 (“Defendant DOES”) (collectively “DEFENDANTS”), alleges on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

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I. INTRODUCTION

1. PLAINTIFF brings this action individually and as a representative action on behalf of herself, the State of California and pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former AGGRIEVED EMPLOYEES of DEFENDANTS for engaging in a pattern and practice of wage and hour violations under the California Labor Code.

2. PLAINTIFF seeks recovery of all individual damages in addition to all civil penalties permitted pursuant to California Labor Code § 2699, *et seq.*

3. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS decreased their employment-related costs by systematically violating California wage and hour laws.

4. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order violations toward PLAINTIFF and other AGGRIEVED EMPLOYEES in California include, *inter alia*:

- a. Failure to provide rest periods;
- b. Failure to provide meal periods;
- c. Failure to pay all wages when due;
- d. Failure to correctly calculate the regular rate of pay;
- e. Failure to pay all overtime wages;
- f. Failure to provide accurate itemized wage statements;
- g. Failure to reimburse for required business expenses;
- h. Failure to timely pay wages upon termination of employment.

5. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

II. PARTIES

6. PLAINTIFF SAAGHAR AZAD (“PLAINTIFF”), an individual, has resided, and at all times mentioned in this Complaint, continues to reside in San Joaquin County.

1 7. DEFENDANT SKIN REFINE MEDSPA a California corporation, registered with
2 the California Secretary of State as entity No. 4114706, that at all relevant times mentioned herein
3 conducted and continues to conduct substantial and regular business throughout California.

4 8. DEFENDANT DUSTIN NEWELL, an individual, is, on information and belief, a
5 California resident and does business in California. DEFENDANT DUSTIN NEWELL is the Chief
6 Executive Officer of DEFENDANT SKIN REFINE MEDSPA. On information and belief, at all
7 relevant times, DEFENDANT DUSTIN NEWELL has been an owner, director, officer, or
8 managing agent of DEFENDANT SKIN REFINE MEDSPA.

9 9. DEFENDANT LOUISE NGUYEN, an individual is, on information and belief, a
10 California resident and does business in California. DEFENDANT LOUISE NGUYEN is the
11 Secretary and Chief Financial Officer of DEFENDANT SKIN REFINE MEDSPA. On information
12 and belief, at all relevant times, DEFENDANT LOUISE NGUYEN has been an owner, director,
13 officer, or managing agent of DEFENDANT SKIN REFINE MEDSPA.

14 10. Defendant DOES 1-15 ("Defendant DOES") are persons and/or entities that at all
15 relevant times mentioned herein conducted and continue to conduct substantial and regular business
16 throughout California.

17 11. Each of the fictitiously named DEFENDANTS participated in the acts alleged in this
18 Complaint. The true names and capacities, whether individual, corporate, subsidiary, partnership,
19 associate, or otherwise of DEFENDANT DOES 1 through 15, inclusive, are presently unknown to
20 PLAINTIFF who therefore sues these DEFENDANTS by such fictitious names pursuant to Cal.
21 Civ. Proc. Code. § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true
22 names and capacities of DOES 1 through 15, inclusive, when they are ascertained. PLAINTIFF is
23 informed and believes, and based upon that information and belief alleges, that the DEFENDANTS
24 named in this Complaint, including DOES 1 through 15, inclusive (hereinafter collectively
25 "DEFENDANTS"), are responsible in some manner for one or more of the events and happenings
26 that proximately caused the injuries and damages hereinafter alleged.

27 12. DEFENDANTS own, operate, and/or manage a medical spa performing work in
28 Santa Clara County.

1 13. DEFENDANTS employed PLAINTIFF between approximately September 2022
2 and July 2024 as a Patient Care Coordinator paid on an hourly basis and eligible for commissions.
3 At all times, DEFENDANTS paid PLAINTIFF as an hourly, non-exempt employee.

4 **III. PRIVATE ATTORNEYS GENERAL ACT AND DEFENDANTS' LIABILITY**

5 14. PLAINTIFF brings the representative action on behalf of the State of California and
6 on behalf of all hourly non-exempt individuals who are or previously were employed by
7 DEFENDANTS in California who suffered one or more Labor Code violations enumerated in Labor
8 Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for
9 DEFENDANTS between October 29, 2023, and the present (“PAGA PERIOD”).

10 15. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code
11 § 2699(c) because she was employed by DEFENDANTS and suffered each of alleged Labor Code
12 violations committed by DEFENDANTS.

13 16. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times
14 were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code
15 and the applicable Industrial Welfare Commission Wage Order.

16 17. The Private Attorney General Act (“PAGA”) permits an aggrieved employee to
17 enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* §
18 2699(a).)

19 18. Section 558 of the California Labor Code provides that “any employer *or other*
20 *person* acting on behalf of an employer who violates, or causes to be violated, a section of this
21 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
22 Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).)

23 19. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person*
24 acting either individually or as an officer, agent, or employee of another person, who pays or causes
25 to be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
26 or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

27 20. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held
28 that a corporate employer’s owners, officers and directors, are subject to civil penalties for the

1 employer's failure to pay appropriate wages to its employees, and, since liability under either 558
2 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are
3 necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v.*
4 *Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
5 Cal.App.4th 1112, 1145-1146.

6 21. Section 558.1 of the California Labor Code provides that "any employer *or other*
7 *person acting* on behalf of an employer, who violates, *or causes to be violated*, any provision
8 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
9 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802,
10 may be held liable as the employer for such violation." (*Lab. Code* § 558.1(a).) Section 558.1(b)
11 identifies the "other person acting on behalf of an employer" includes "owner, director, officer, or
12 managing agent" of the employer. (*Lab. Code* § 558.1(b).)

13 22. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS and
14 each of them, are subject to civil penalties for their failure to pay PLAINTIFF and other
15 AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately
16 caused the complaints, injuries, and damages alleged herein.

17 23. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS and
18 each of them, are subject to liability for their failure to pay PLAINTIFF and other AGGRIEVED
19 EMPLOYEES the appropriate wages as complained of herein and proximately caused the
20 complaints, injuries, and damages alleged herein.

21 24. DEFENDANTS have been personally involved in the purported violations and/or
22 had sufficient participation in the employer, such that DEFENDANTS may be deemed to have
23 contributed to, and "caused" the labor code violations alleged.

24 25. At all relevant times, each DEFENDANT, whether named or fictitious, was the
25 agent, employee or other person acting on behalf of each other DEFENDANT, and, in participating
26 in the acts alleged in this Complaint, acted within the scope of such agency or employment and
27 ratified the acts of the other.

1 26. Each DEFENDANT, whether named or fictitious, exercised control over
2 PLAINTIFF'S and other AGGRIEVED EMPLOYEES' wages, working hours, and/or working
3 conditions.

4 27. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to
5 this action as the agent of the other DEFENDANT, carried out a joint scheme, business plan or
6 policy, and the acts of each DEFENDANT are legally attributable to the other DEFENDANTS.

7 **IV. JURISDICTION AND VENUE**

8 28. This Court has jurisdiction over this Action pursuant to the California Code of Civil
9 Procedure, Section 410.10.

10 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
11 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
12 DEFENDANTS (i) currently maintain and at all relevant times-maintained offices and facilities in
13 this County, and (ii) committed the wrongful conduct herein alleged in this County against
14 PLAINTIFF.

15 **V. FACTUAL ALLEGATIONS**

16 A. Rest Period Violations

17 30. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
18 work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of
19 DEFENDANTS' policies and practices.

20 31. Further, for the same reasons PLAINTIFF and other AGGRIEVED EMPLOYEES
21 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
22 (2) to four (4) hours, these same employees were denied a first and second rest period of at least ten
23 (10) minutes for some shifts worked of between six (6) and eight (8) hours.

24 32. Specifically, DEFENDANTS did not allow employees to take their rest periods when
25 they were working with patients and did not schedule breaks in PLAINTIFF's and other
26 AGGRIEVED EMPLOYEES' schedules. As a result of such practices, DEFENDANTS did not
27 provide PLAINTIFF and other AGGRIEVED EMPLOYEES with rest periods. Additionally, on
28 other occasions, if an employee called out or otherwise did not show for a shift, DEFENDANTS

1 required PLAINTIFF and other AGGRIEVED EMPLOYEES to work the shift by themselves. In
2 these instances, PLAINTIFF and other AGGRIEVED EMPLOYEES were unable to take any rest
3 periods because there were no other employees to relieve them. In these same instances, from time-
4 to-time, DEFENDANTS required nurses to relive PLAINTIFF and other AGGRIEVED
5 EMPLOYEES for meal periods. DEFENDANTS did not require the nurses to relieve PLAINTIFF
6 and other AGGRIEVED for rest periods when these employees were scheduled to work alone.

7 33. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with
8 one-hour wages *in lieu* thereof, and as a result, PLAINTIFF and other AGGRIEVED EMPLOYEES
9 were denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

10 34. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
11 required to provide rest periods to PLAINTIFF and other AGGRIEVED EMPLOYEES per every
12 four (4) hours worked or major fraction thereof or provide the employee one (1) hour of pay at the
13 employee's regular rate of compensation for each workday the rest period is not provided. During
14 the entirety of PLAINTIFF'S employment and the PAGA Period, DEFENDANTS required
15 PLAINTIFF and other AGGRIEVED EMPLOYEES to work through rest periods without paying
16 them in accordance with Industrial Wage Orders. As a result, PLAINTIFF and other AGGRIEVED
17 EMPLOYEES forfeited their regular wages by working without compensation at the applicable
18 wage and rates. DEFENDANTS had, and may continue to practice, a uniform policy to not pay
19 PLAINTIFF and other AGGRIEVED EMPLOYEES all rest premiums owed.

20 B. Meal Period Violations

21 35. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
22 work during the meal break during what is scheduled to be PLAINTIFF'S and other AGGRIEVED
23 EMPLOYEES' off-duty meal break due to the nature and constraints of their job duties,
24 DEFENDANTS' scheduling practices, DEFENDANTS' policies and practices.

25 36. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
26 required to provide meal periods of not less than thirty (30) minutes to PLANITIFF and other
27 AGGRIEVED EMPLOYEES for each work period of more than five (5) hours, except when that
28 work period is not more than six (6) and validly waived or provide one (1) hour of pay at the

1 employee's regular rate of compensation.

2 37. DEFENDANTS required PLANITIFF and other AGGRIEVED EMPLOYEES to
3 work during what was scheduled to be off-duty meal period and required PLAINTIFF and other
4 AGGRIEVED EMPLOYEES to postpone their meal periods. During most shifts, DEFENDANTS
5 required PLAINTIFF and other AGGRIEVED EMPLOYEES to work six or seven hours before
6 allowing these employees to take their meal periods. As a result of DEFENDANTS' customer
7 service policies and practices, PLAINTIFF and other AGGRIEVED EMPLOYEES were denied
8 timely meal periods.

9 38. As stated above, on other occasions, if an employee called out or otherwise did not
10 show for a shift, DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
11 work the shift by themselves. In these instances, PLAINTIFF and other AGGRIEVED
12 EMPLOYEES were unable to take any meal periods because there were no other employees to
13 relieve them. In these same instances from time to time, DEFENDANTS required nurses to relive
14 PLAINTIFF and other AGGRIEVED EMPLOYEES for meal periods.

15 39. As a result, PLANITIFF and other AGGRIEVED EMPLOYEES forfeited and
16 postponed their meal periods without compensation at the applicable wage and rates.
17 DEFENDANTS had, and may continue to practice, a uniform policy to not pay PLANITIFF and
18 other AGGRIEVED EMPLOYEES meal premiums.

19 40. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
20 perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without
21 receiving a meal break. The nature of the work performed by AGGRIEVED EMPLOYEES do not
22 qualify for limited and narrowly construed "on-duty" meal period exception. AGGRIEVED
23 EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance
24 with DEFENDANTS' policies and practices.

25 C. Unpaid Commissions

26 41. PLAINTIFF and other AGGRIEVED EMPLOYEES were entitled to 10%
27 commissions on their sales. Throughout PLAINTIFF'S employment and the PAGA Period,
28 DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES all earned

1 commissions on established paydays.

2 42. For instance, there were several occasions in which PLAINTIFF was not paid any
3 portion of the commission earned during the relevant pay period. In these instances, PLAINTIFF
4 had to meet with DEFENDANTS and ask for a detailed report. Upon review of the commission
5 report, PLAINTIFF was owed, and later paid commissions for the relevant pay period.

6 43. DEFENDANTS only paid PLAINTIFF all earned commissions after PLAINTIFF
7 caught DEFENDANTS' error.

8 44. Under information and belief, DEFENDANTS have not paid PLAINTIFF and other
9 AGGRIEVED EMPLOYEES all earned commissions.

10 D. Regular Rate Violation – Overtime, Meal and Rest Period Premiums, and Sick Pay

11 45. From time-to-time during the PAGA PERIOD and PLAINTIFF'S employment,
12 DEFENDANTS failed, and may continue to fail, to accurately calculate and pay PLAINTIFF and
13 other AGGRIEVED EMPLOYEES for their overtime and double time hours worked, meal and
14 rest period premiums, and sick pay. As a result, PLAINTIFF and the other AGGRIEVED
15 EMPLOYEES forfeited wages due them for working overtime without compensation at the correct
16 overtime and double time rates, meal and rest period premiums, and sick pay rates.
17 DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and other AGGRIEVED
18 EMPLOYEES the correct rate for all overtime and double time worked, meal and rest period
19 premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS'
20 business records.

21 46. State law provides that employees must be paid overtime at one-and-one-half times
22 their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated
23 at an hourly rate plus incentive pay that was tied to specific elements of an employee's
24 performance.

25 47. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
26 compensation was DEFENDANTS' incentive program that paid PLAINTIFF and other
27 AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS.

1 The bonus program provided all employees paid on an hourly basis with bonus compensation when
2 the employees met the various performance goals set by DEFENDANTS.

3 48. However, from time-to-time, when calculating the regular rate of pay, in those pay
4 periods where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time,
5 paid meal and rest period premium payments, and/or sick pay, and earned this non-discretionary
6 bonus or incentive, DEFENDANTS failed to accurately include the commission compensation
7 and/or incentive as part of the employees' "regular rate of pay" and/or calculated all hours worked
8 rather than just all non-overtime hours worked.

9 49. As a matter of law, the incentive compensation received by PLAINTIFF and other
10 AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to do so
11 has resulting in a systematic underpayment of overtime and double time compensation, meal and
12 rest period premiums, and redeemed sick pay to PLAINTIFF and other AGGRIEVED
13 EMPLOYEES by DEFENDANTS.

14 50. Specifically, California Labor Code Section 246 mandates that paid sick time for
15 non-employees shall be calculated in the same manner as the regular rate of pay for the workweek
16 in which the non-exempt employee uses paid sick time, whether or not the employee actually works
17 overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include
18 the incentive compensation as part of the "regular rate of pay" for purposes of sick pay
19 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
20 under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

21 51. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
23 matter of company policy, practice, and procedure, intentionally and knowingly failed to
24 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate of pay for
25 all overtime and double time worked, meal and rest period premiums, and sick pay. This uniform
26 policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the correct
27 overtime and double time compensation, meal and rest period premiums, and sick pay as required
28 by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage

1 over competitors who complied with the law. To the extent equitable tolling operates to toll claims
2 by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be
3 adjusted accordingly.

4 E. Violations for Untimely Payment of Wages

5 52. Pursuant to California Labor Code section 204, PLAINTIFF and other
6 AGGRIEVED EMPLOYEES are entitled to timely payment of wages during their employment.

7 53. During PLAINTIFF'S employment and the PAGA Period, DEFENDANTS failed to
8 pay PLAINTIFF and other AGGRIEVED EMPLOYEES all meal and rest premiums and all earned
9 commissions within the permissible time period and on days designated in advance by the employer
10 as regular payday.

11 54. As a result, DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED
12 EMPLOYEES all earned wages in violation of Labor Code § 204.

13 55. To the extent wages are deemed to be owed to PLAINTIFF and other
14 AGGRIEVED EMPLOYEES, whose employment has terminated, DEFENDANTS conduct
15 violations Labor Code sections 201 and/or 202, and therefore PLAINTIFF and other AGGRIEVED
16 EMPLOYEES are entitled to waiting time penalties under Labor Code section 203, which penalties
17 are sought herein on behalf of the PLAINTIFF and other AGGRIEVED EMPLOYEES.
18 DEFENDANTS' conduct as alleged herein was willful, intentional, and not in good faith. Further,
19 PLAINTIFF is entitled to seek and recover statutory costs.

20 F. Failure to Reimburse

21 56. DEFENDANTS failed to indemnify PLAINTIFF and other AGGRIEVED
22 EMPLOYEES for use of their personal cell phone and home internet as a direct consequence of
23 discharging work duties.

24 57. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
25 use personal cell phones for internal communications and when the phone system was down in order
26 to communicate with patients.

27 58. Additionally, when PLAINTIFF and other AGGRIEVED EMPLOYEES attempted
28 to use their sick time, DEFENDANTS directed these employees to instead work from home that

1 day. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to use their
2 personal computers, home internet, and personal cell phones to complete work at home.

3 59. DEFENDANTS failed to provide employees with a designated work phone and
4 failed to provide employees reimbursement for the cost of their phone or home internet.

5 60. DEFENDANTS shifted the costs associated with running a business onto
6 PLAINTIFF and other AGGRIEVED EMPLOYEES.

7 G. Inaccurate Itemized Wage Statements

8 61. California Labor Code Section 226 requires an employer to furnish its employees an
9 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3)
10 the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
11 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
12 employee and only the last four digits of the employee's social security number or an employee
13 identification number other than a social security number, (8) the name and address of the legal
14 entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.

16 62. During PLAINTIFF'S employment and during the PAGA period, when PLAINTIFF
17 and other AGGRIEVED EMPLOYEES were not paid meal and rest period premiums, were not paid
18 all earned commissions, were not paid for all hours worked, did not provide total hours work, or
19 applicable hourly rates in effect, DEFENDANTS failed to provide PLAINTIFF and other
20 AGGRIEVED EMPLOYEES with complete and accurate wage statements. DEFENDANTS'
21 paystubs failed to show, among other things, the total hours worked and all applicable hourly rates
22 in effect during the pay period and the corresponding amount of time worked at each hourly rate,
23 correct rates of pay for penalty payments or missed meal and rest periods.

24 63. DEFENDANTS routinely failed to keep, maintain, and store accurate payroll records
25 and provide wage statements that comply with Cal. Lab. Code § 226.

26 64. PLAINTIFF and other AGGRIEVED EMPLOYEES suffered damages as a result of
27 DEFENDANTS' aforementioned violation because they could not promptly and easily determine
28 from the wage statement alone the applicable hourly rate and the corresponding number of hours

1 worked at the applicable hourly rate for this remuneration.

2 65. As a result, DEFENDANTS issued PLAINTIFF and other AGGRIEVED
3 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
4 violations are knowing and intentional, and were not isolated or due to an unintentional payroll error
5 due to clerical or inadvertent mistake.

6 **VI. CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 For Failure to Provide Rest Periods

9 (Cal. Lab. Code §§ 226.7 & 512)

(Plaintiff Against All DEFENDANTS)

10 66. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
11 every allegation set forth above.

12 67. Labor Code Sections 226.7 and 512 and the Industrial Wage Orders require
13 DEFENDANTS to provide employees with all rest periods specified in the applicable Wage Order.
14 These laws and regulations further entitle employees to be paid one additional hour of pay at their
15 regular rate of compensation for each day of denied rest period.

16 68. PLAINTIFF was required to work in excess of four (4) hours without being provided
17 ten (10) minute rest periods. Further and for the same reasons PLAINTIFF was denied her first rest
18 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
19 PLAINTIFF was denied a first and second rest period of at least ten (10) minutes for shifts worked
20 of between six (6) and eight (8) hours. PLAINTIFF was also not provided with one-hour wages in
21 lieu thereof.

22 69. As a result of DEFENDANTS' policies and practices, PLAINTIFF was denied her
23 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

24 70. DEFENDANTS violated California Labor Code §§ 226.7 and the applicable IWC
25 Wage Order by failing to compensate PLAINTIFF who was not provided a rest period, in
26 accordance with the applicable Wage Order, one additional hour of compensation at each
27 employee's regular rate of pay for each workday that rest period was not provided.

28 71. As a proximate result of the aforementioned violations, PLAINTIFF has been

1 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
2 penalties, expenses and costs of suit.

3 **SECOND CAUSE OF ACTION**

4 For Failure to Provide Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

5 (Plaintiff Against All DEFENDANTS)

6 72. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
7 every allegation set forth above.

8 73. Labor Code Sections 226.7 and 512 and the Industrial Wage Orders require
9 DEFENDANTS to provide employees with all meal periods specified in the applicable Wage Order.
10 These laws and regulations further entitle employees to be paid one additional hour of pay at their
11 regular rate of compensation for each day of denied meal period.

12 74. DEFENDANTS failed to provide all the legally required off-duty meal breaks to
13 PLAINTIFF as required by the applicable Wage Order and Labor Code. The nature of the work
14 performed by PLAINTIFF does not prevent DEFENDANTS from relieving their employees from
15 of all duties for their legally required off-duty meal periods. As a result of DEFENDANTS policies
16 and practices, PLAINTIFF was not fully relieved of duty by DEFENDANT for her meal periods.

17 75. DEFENDANTS further violated California Labor Code §§ 226.7, 512 and the
18 applicable IWC Wage Order by failing to compensate PLAINTIFF who was not provided a meal
19 period, in accordance with the applicable Wage Order, one additional hour of compensation at each
20 employee's regular rate of pay for each workday that a meal period was not provided.

21 76. As a proximate result of the aforementioned violations, PLAINTIFF has been
22 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
23 penalties, expenses and costs of suit.

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1 **THIRD CAUSE OF ACTION**

2 For Failure To Pay Wages

3 (Cal. Lab. Code § 204, 210)

4 (Plaintiff Against All DEFENDANTS)

5 77. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and every allegation set forth above.

6 78. Labor Code Section 204 provides in part provides in part that “all wages, ..., earned
7 by any person in any employment are due and payable twice during each calendar month, on days
8 designated in advance by the employer as the regular paydays.”

9 79. Plaintiff is informed and believes, and thereon alleges that DEFENDANTS did not
10 pay PLAINTIFF all earned wages, including commissions and meal and rest premiums, on regularly
11 established paydays.

12 80. In violation of Labor Code section 204, DEFENDANTS knowingly and willfully
13 refused to perform their obligations to compensate their employees for all wages earned.

14 81. Pursuant to Labor Code section 210, PLAINTIFF is entitled to recover a penalty of
15 \$100.00 for the initial failure to timely pay each employee all of the wages earned, and \$200.00 for
16 each subsequent failure to pay each employee all of the wages earned; in addition, pursuant to
17 section 210, for each subsequent failure to pay in compliance with Labor Code section 204,
18 PLAINTIFF is entitled to recover an additional amount equal to 25% of the unlawfully withheld
19 wages.

20 82. As a direct and proximate result of DEFENDANTS’ conduct in violation of Labor
21 Code section 204 as alleged above, DEFENDANTS’ employees have suffered, and continue to
22 suffer, losses related to the use and enjoyment of wages and lost interest on such wages all to their
23 damage in amounts according to proof at trial.

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1 **FOURTH CAUSE OF ACTION**

2 For Failure to Pay All Minimum Wages
3 (Cal. Lab. Code § 1194, 1197& 1197.1, 218.5, 218.6)
4 (Plaintiff Against All DEFENDANTS)

5 83. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and every allegation set forth above.

6 84. PLAINTIFF brings a claim for DEFENDANTS' willful and intentional violations of
7 California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS'
8 failure to accurately calculate and pay all minimum wages to PLAINTIFF.

9 85. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
10 including minimum wage compensation and interest thereon, together with the costs of suit. Cal.
11 Lab. § 1194.2 further establishes an employee's right to liquidated damages in an amount equal to
12 the unpaid minimum wages according to proof at trial.

13 86. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF without
14 regard to the correct amount of time worked and underpaying PLAINTIFF when failing to take
15 PLAINTIFF'S earned commissions into account for the purposes of calculating PLAINTIFF'S
16 regular rate of pay. As set forth herein, DEFENDANTS' uniform policy and practice was to
17 unlawfully and intentionally deny payment of wages due to PLAINTIFF for all hours worked and
18 therefore did not receive minimum wage for all hours worked as required by Cal. Lab. Code § 1197.

19 87. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
20 without limitation, as a result of implementing a uniform policy and practice that denied accurate
21 compensation to PLAINTIFF in regard to minimum wages.

22 88. In committing these violations of the California Labor Code, DEFENDANTS failed
23 to calculate PLAINTIFF's regular rate of pay, amount of time worked and consequently underpaid
24 the actual time worked by PLAINTIFF. DEFENDANTS acted in an illegal attempt to avoid the
25 payment of all earned wages, and other benefits in violation of the California Labor Code, the
26 Industrial Welfare Commission requirements and other applicable laws and regulations.

27 89. PLAINTIFF was paid less for time worked than she was entitled to, constituting a
28 failure to pay all earned wages.

90. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein, PLAINTIFF has suffered and will continue to suffer an economic injury including the use and enjoyment of wages and lost interest on such wages all to her damage in amounts in amounts which are presently unknown to her, and which will be ascertained according to proof at trial.

91. DEFENDANTS knew or should have known that PLAINTIFF was under-compensated for her time worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF the correct wages for her time worked.

92. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate PLAINTIFF for all time worked and provide her with the requisite compensation, DEFENDANTS acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF with a conscious disregard for her legal rights, or the consequences to her, and with the intent of depriving her of her property and legal rights, and otherwise causing her injury in order to increase company profits at the expense of this employee.

93. PLAINTIFF, therefore, request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable statutes.

FIFTH CAUSE OF ACTION

For Failure to Pay Overtime Wages
(Cal. Lab. Code §§ 558, 510, 1194, 1198)
(Plaintiff Against All DEFENDANTS)

94. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and every allegation set forth above.

95. Labor Code section 558 provides for a civil penalty to be assessed against any employer or other person acting on behalf of an employer who fails to compensate employees at the statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40 hours in any workweek or who fails to compensate employees at the statutory double time rates for any work in excess of twelve hours in one day or any work in excess of 8 hours on the seventh day

1 of a workweek.

2 96. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
3 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code
4 § 1198 further states that the employment of an employee for longer hours than those fixed by the
5 Industrial Welfare Commission is unlawful.

6 97. Pursuant to Labor Code section 558, PLAINTIFF is entitled to recover a penalty of
7 \$50.00 for the initial failure to compensate employees at the statutory overtime rate for any work in
8 excess of eight hours in one day or any work in excess of 40 hours in any workweek and/or failure
9 to compensate employees at the statutory double time rates for any work in excess of twelve hours
10 in one day in addition to any underpaid wages; and \$100.00 for each subsequent failure to
11 compensate employees at the statutory overtime rate for any work in excess of eight hours in one
12 day or any work in excess of 40 hours in any workweek in addition to any underpaid wages.

13 98. DEFENDANTS routinely and systematically failed to properly calculate each
14 employee's regular rate of pay which from time to time, included commissions and overtime. By
15 failing to properly calculate the regular rate of pay, DEFENDANTS routinely and systematically
16 failed to compensate employees at the statutory overtime rate for any work in excess of eight (8)
17 hours in one day or any work in excess of forty (40) hours in any workweek as required by Labor
18 Code section 510 and Section 3 of the applicable Wage Order.

19 99. During PLAINTIFF'S employment, DEFENDANTS required PLAINTIFF to
20 perform work, including overtime, for DEFENDANTS during pay periods in which she earned
21 commissions.

22 100. As a proximate result of DEFENDANTS' failure to pay overtime wages as alleged
23 above, PLAINTIFF is entitled to recover from DEFENDANTS penalties pursuant to section 558 as
24 may be established according to proof at trial. As a direct result of DEFENDANTS' unlawful wage
25 practices as alleged herein, PLAINTIFF did not receive the correct overtime compensation for her
26 time worked for DEFENDANTS.

27 101. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages,
28 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission

1 requirements and other applicable laws and regulations.

2 102. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
3 the overtime requirements of the law. For portions of PLAINTIFF'S employment, these exemptions
4 did not apply to PLAINTIFF. Further, PLAINTIFF is not subject to a valid collective bargaining
5 agreement that would preclude the causes of action contained herein this Complaint.

6 103. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
7 compensation to PLAINTIFF for the true amount of overtime worked, PLAINTIFF has suffered
8 and will continue to suffer an economic injury in amounts which are presently unknown to her, and
9 which will be ascertained according to proof at trial.

10 104. DEFENDANTS knew or should have known that PLAINTIFF was under
11 compensated for her time worked. DEFENDANTS systematically elected, either through intentional
12 malfeasance or gross nonfeasance, to not pay her for labor as a matter of uniform company policy,
13 practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
14 PLAINTIFF the correct overtime wages for their overtime worked.

15 105. In performing the acts and practices herein alleged in violation of California labor
16 laws, and refusing to compensate PLAINTIFF for all time worked and provide her with the requisite
17 compensation, DEFENDANTS acted and continues to act intentionally, oppressively, and
18 maliciously toward PLAINTIFF with a conscious of and utter disregard for her legal rights, or the
19 consequences to her, and with the despicable intent of depriving her of her property and legal rights,
20 and otherwise causing her injury in order to increase company profits at the expense of these
21 employees.

22 106. Therefore, PLAINTIFF request recovery of overtime wages, according to proof,
23 interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS,
24 in a sum as provided by the California Labor Code and/or other applicable statutes.

25 **SIXTH CAUSE OF ACTION**

26 For Failure to Pay Wages Upon Termination

27 (Cal. Lab. Code § 201, 202, 203)

(Plaintiff Against All DEFENDANTS)

28 107. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and

1 every allegation set forth above.

2 108. If an employer willfully fails to pay, without abatement or reduction, in accordance
3 with Sections 201, . . . 202, any wages of an employee who is discharged or who quits, the wages
4 of the employee shall continue as a penalty from the due date thereof at the same rate until paid or
5 until an action therefor is commenced; but the wages shall not continue for more than 30 days. (Cal.
6 Lab. Code § 203).

7 109. To date, DEFENDANTS have yet to pay PLAINTIFF all of the wages and all
8 premiums due for missed meal breaks and missed rest breaks, all earned commissions, and
9 DEFENDANTS have failed to pay any penalty wages owed under California Labor Code section
10 203.

11 110. Additionally, the employment of PLAINTIFF was terminated, and DEFENDANTS
12 have not tendered payment of wages to this employee who was underpaid for overtime wages,
13 and/or missed meal and rest breaks, as required by law.

14 111. DEFENDANTS knowingly and willfully violated the laws, regulations and orders
15 governing the wages of PLAINTIFF as described in the causes of action above.

16 112. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself whose
17 employment has terminated, PLAINTIFF demands up to thirty (30) days of pay as penalty for not
18 paying all wages due at time of termination and demand an accounting and payment of all wages
19 due, plus interest and statutory costs as allowed by law.

20 **SEVENTH CAUSE OF ACTION**

21 For Failure to Reimburse Business Expenses

22 (Cal. Lab. Code §§ 2802)

(Plaintiff Against ALL DEFENDANTS)

23 113. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
24 every allegation set forth above.

25 114. Pursuant to California Labor Code section 2802, DEFENDANTS are required to
26 indemnify PLAINTIFF for the expenses and losses incurred during the performance of her job
27 duties. The purpose of this statute is to prevent employers from passing their operating expenses on
28 to their employees.

1 115. DEFENDANTS required PLAINTIFF to use her personal cell phone, home internet,
2 and personal computer in the discharge work duties but failed to reimburse PLAINTIFF for the use
3 or cost of her cell phone or home internet.

4 116. In violation of Labor Code section 2802, DEFENDANTS failed to reimburse
5 PLAINTIFF for necessary business expenditures for use of her personal cell phone and home
6 internet.

7 117. DEFENDANTS sought to pay their own pockets at the expense of their employees,
8 and instead of compensating their employees for the necessary business costs, the employer passed
9 on its costs to its employees.

10 118. DEFENDANTS intentionally failed to reimburse its employees for the actual
11 expenses incurred and thereby increased its own profits to the detriment of its employees.

12 119. PLAINTIFF seeks to recover these business expenditures, plus interest thereon,
13 reasonable attorneys' fees, and costs, and statutory and civil penalties as provided by the Labor Code
14 in an amount to be proven.

15 120. Interest accrues from the date the employee incurred the necessary expenditure or
16 loss.

17 **EIGHTH CAUSE OF ACTION**

18 For Failure to Provide Accurate, Itemized Wage Statements

19 (Cal. Lab. Code §§ 226; 226.3; 1174.5)

(Plaintiff Against All DEFENDANTS)

20 121. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
21 every allegation set forth above.

22 122. Labor Code section 226 requires DEFENDANTS to provide employees an accurate
23 itemized statement showing (1) gross wages earned, (2) total hours worked by the employee, (3) the
24 number of piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6) the
25 inclusive date of the period for which the employee is paid, (7) the name of the employee and his/her
26 or her social security number, (8) the name and address of the legal entity that is the employer, and
27 (9) all applicable hourly rates in effect and the corresponding number of hours worked

28 123. DEFENDANTS did not accurately record PLAINTIFF'S missed meal and rest

1 breaks, all earned commissions, and calculate the regular rate of pay. DEFENDANTS failed to
2 provide an accurate wage statement in writing that properly and accurately itemizes all wages,
3 missed meal and rest periods, applicable hourly wages in effect, and reporting time wages owed to
4 PLAINTIFF and thereby also failed to set forth the correct wages earned by the employees.

5 124. DEFENDANTS knowingly and intentionally failed to comply with Labor Code
6 section 226(a) on each and every wage statement that they provided to PLAINTIFF.

7 125. By failing to keep adequate records, as required by Labor Code sections 226 and
8 1174, DEFENDANTS injured PLAINTIFF making it difficult for this employee to calculate the
9 correct wages owed. Those injuries include unpaid wages, interest, and penalties thereon.

10 126. PLAINTIFF seeks to recover the statutory penalties provided by Labor Code section
11 226(e), 226.3, and 1174.5 for the wage statement and inaccurate record violations committed by
12 DEFENDANTS.

13 **NINTH CAUSE OF ACTION**

14 For Recovery of Civil Penalties Under the Labor Code Private Attorney General Act
15 (Cal. Lab. Code §§ 2698 et seq.)
(Plaintiff and Aggrieved Employees Against All DEFENDANTS)

16 127. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and
17 reallege as if fully stated herein each and every allegation set forth above.

18 128. As a result of the acts alleged herein, PLAINTIFF, as an AGGRIEVED EMPLOYEE
19 within the meaning of Labor Code section 2699, subdivision (c), on behalf of herself and all other
20 AGGRIEVED EMPLOYEES of DEFENDANTS, seeks the recovery of civil penalties against
21 DEFENDANTS pursuant to California Labor Code sections 2698 et seq., for the following knowing
22 and intentional violations of the California Labor Code:

- 23 a. For failing to compensate employees who were not provided a rest period in violation
24 of Labor Code Section 226.7 and 512; and
25 b. For failing to compensate employees who were not provided a meal period in
26 violation of Labor Code Section 226.7 and 512; and
27 c. For failing to pay wages on established paydays, in violation of Labor Code sections
28 204 and 210;

- d. For failing to correctly calculate regular rate of pay and thereby failing to pay all overtime wages in violation of Labor Code sections 558, 510, 1194, 1198;
- e. For failing to pay wages upon termination, in violation of Labor Code sections 201, 202, and 203;
- f. For failing to reimburse employees for business-related expenses in violation of Labor Code section 2802;
- g. For failing to maintain for and provide accurate, itemized wage statements required by Labor Code Section 226, 226.3;
- h. For failing to maintain accurate records in violation of Labor Code Section 1174.5.

129. The above-referenced civil penalties shall include the recovery of amounts specified in the applicable sections of the Labor Code, and if not specifically provided, those under section 2699(f), and shall include those amounts sufficient to recover underpaid wages pursuant to C.C.R. section 11040 and Labor Code sections §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 515, 558, 1174.5, 1194, 1198, 1199, 2802, and 2699, subdivisions (a) and (f).

130. PLAINTIFF filed this complaint after the LWDA was afforded the opportunity to consider PLAINTIFF's notice of DEFENDANTS' Labor Code violations and of PLAINTIFF's intent to prosecute a private enforcement action for civil penalties under PAGA. After the LWDA declined to investigate, PLAINTIFF brought this PAGA cause of action against DEFENDANTS, pursuant to California Labor Code section 2699.3, subdivision (a)(2)(A).

DEMAND FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each DEFENDANTS, jointly and severally, as follows:

1. On behalf of the PLAINTIFF:

A. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

B. Compensatory damages, according to proof at trial, including unpaid commissions and unpaid overtime, due to PLAINTIFF, during the applicable employment period plus interest thereon at the statutory rate;

1 C. The wages of Plaintiff as a penalty from the due date thereof at the same rate until
2 paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

3 D. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
4 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
5 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
6 an award of costs for violation of Cal. Lab. Code § 226;

7 E. One hundred dollars (\$100) for the initial pay period in which Defendants
8 intentionally failed to pay minimum wages per employee per pay period and two hundred fifty
9 dollars (\$250) per employee per pay period for each violation in a subsequent pay period for
10 violation of Cal. Lab. Code § 1197 and 1197.1;

11 F. The amount of the expenses PLAINTIFF incurred in the course of her job duties,
12 plus interest, and costs of suit;

13 G. Punitive damages in an amount to punish DEFENDANTS to be proven at trial;

14 H. Liquidates damages pursuant to Cal. Lab. Code § 1194.2 in an amount equal to the
15 unpaid minimum wages according to proof at trial;

16 2. On Behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES

17 i. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
18 General Act of 2004;

19 3. On all claims:

20 A. An award of interest, including prejudgment interest at the legal rate;

21 B. Such other and further relief as the Court deems just and equitable; and

22 C. An award of penalties, attorneys' fees and cost of suit, as allowable under the law.

23 DATED: January 3, 2025

Respectfully submitted,
24 **EMRAN LAW**

25
26 By: Harris Emran
Harris Emran
27 Attorney for PLAINTIFF and OTHER
28 AGGRIEVED EMPLOYEES

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: January 3, 2025

EMRAN LAW

By: Harris Emran
Harris Emran
Attorney for PLAINTIFF and OTHER
AGGRIEVED EMPLOYEES