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individually and on behalf of all others similarly situated

8 **IN THE SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10
11 NICHOLAS ROBERT BURSON, individually
and on behalf of all others similarly situated,

12
13 Plaintiff(s),

14 v.

15 POINT.360; and DOES 1 through 100,

16 Defendant(s).

Case No. **25STCV05347**

COMPLAINT

1. Failure to Provide Compliant Meal Breaks
2. Failure to Provide Complaint Rest Breaks
3. Failure to Pay All Hours Worked
4. Failure to Pay All Overtime Owed
5. Wage Statement Violation
6. Waiting Time Penalties
7. Violation of Unfair Competition
8. Private Attorneys General Act
9. Disability Discrimination
10. Failure to Accommodate
11. Failure to Engage in Interactive Process
12. Retaliation
13. Retaliation for Requesting Accommodation
14. Wrongful Termination

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25 **RELEVANT PARTIES**

26 1. Plaintiff NICHOLAS ROBERT BURSON ("Plaintiff") is an adult resident of Los Angeles
27 County, California, and was at all times relevant residing in Los Angeles County, California.

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1 2. Defendant POINT.360 (“Defendant”) is a California corporation with its principal place of
2 business located in Los Angeles, California. Defendant is registered to and does conduct business in
3 the State of California and is subject to the laws of the State of California. All acts and omissions of
4 Defendant employees as alleged herein occurred while they were acting within the course and scope
5 of their employment.

6 3. Plaintiff is unaware of the true names or capacities of the Defendants sued herein as DOES 1
7 through 100, inclusive (“Doe Defendants”), and therefore sues said Doe Defendants by such
8 fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to insert the true
9 names and capacities of such Doe Defendants when such information has been obtained. Plaintiff is
10 informed and believes, and based on such information and belief alleges, that each of the fictitiously
11 named Doe Defendants has participated in some way in the wrongful acts and omissions alleged
12 below, and is liable to Plaintiff for damages and other relief to which Plaintiff is entitled. Defendant
13 and Doe Defendants are collectively referred to as “Defendants”.

14 **JURISDICTION AND VENUE**

15 4. This action is properly filed in Los Angeles County because the acts and omissions that give
16 rise to Plaintiff’s claims took place in Los Angeles County, and Defendants transact substantial
17 business in this County.

18 5. This Court has jurisdiction over Defendants because Defendants’ unlawful conduct as
19 alleged herein occurred in Los Angeles County, California and Plaintiff suffered damages from
20 such conduct within Los Angeles County, California.

21 **FACTUAL ALLEGATIONS**

22 6. At all times relevant, Plaintiff was Defendants’ employee.

23 7. Plaintiff was employed by Defendants from August 2023 to August 2024 as a Strategic
24 Account Manager.

25 8. Around June 2024, Plaintiff relapsed after nearly two (2) years of sobriety.

26 9. Plaintiff contacted Mary Kate Berg, HR Representative, and requested for assistance with
27 rehabilitation.

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1 10. Between August 3 to 16, 2024, Plaintiff attended a rehabilitation program. During the
2 treatment, Plaintiff maintained regular contact with HR by providing weekly status treatment.

3 11. On August 18, 2024, Plaintiff was discharged from rehabilitation.

4 12. On August 19, 2024, Plaintiff returned to work. However, his security badge did not work
5 and was denied access to his work email.

6 13. On August 20, 2024, Plaintiff was called by General Manager Dave Baczynski and HR Rep.
7 Mary Kate Berg to a conference room where Plaintiff was informed of his termination. Defendants
8 cited "lack of work" as ground for termination.

9 14. Defendants failed to provide Plaintiff with compliant meal breaks because breaks were
10 regularly missed, late, or short. Despite not being provided with compliant meal breaks, Defendant
11 did not pay premium pay for these missed breaks at Plaintiff's regular rate of pay.

12 15. Defendant failed to provide Plaintiff with compliant rest breaks because breaks were
13 regularly missed or short. Despite not being provided with compliant rest breaks, Defendant did not
14 pay premium pay for these missed breaks at Plaintiff's regular rate of pay.

15 16. Defendants failed to pay Plaintiff for all hours worked because Plaintiff was required to
16 answer work-related calls and/or perform work-related tasks outside of regular work hours, while
17 off the clock.

18 17. Defendants failed to pay Plaintiff all overtime owed because Plaintiff regularly worked in
19 excess of 8 hours in a day and 40 days in a workweek. Thus, any unpaid time is necessarily
20 overtime.

21 18. Defendants failed to provide Plaintiff with accurate wage statements because the wage
22 statements issued to Plaintiff did not accurately list total wages owed and hours worked, among
23 other things.

24 19. Due to Defendants' failure to pay all wages due to Plaintiff during their employment, it
25 follows that Defendant failed to pay all wages due at the conclusion of Plaintiff's employment as
26 well. Therefore, Defendants are liable to Plaintiff for waiting time penalties.

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PAGA ALLEGATIONS

20. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures outlined in Labor Code section 2699.3.

21. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil action under PAGA after the following requirement have been met:

22. The aggrieved employee has provided written notice by online filing to the LWDA and by certified mail to the employer (hereinafter “Employee’s Notice”) of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations; and

23. The LWDA has provided notice (hereinafter “LWDA’s Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the aggrieved employee’s claims. Upon receipt of the LWDA’s Notice, or if the LWDA does not provide such Notice within 65 calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

24. On October 23, 2024, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of specific provisions of the Labor Code alleged to have been violated by Defendants, including the facts and theories to support the alleged violations.

25. The 65-day notice period has elapsed, and the LWDA did not provide Plaintiff with written notice that it intends to investigate the alleged violations of the Labor Code. Thus, Plaintiff seeks PAGA Penalties on behalf of all Aggrieved Employees.

26. The Aggrieved Employees are defined as “All other nonexempt, hourly employees, current and former, who were employed by Defendants within one year prior to October 23, 2024, through final disposition of this action.”

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28. Plaintiff has therefore exhausted all administrative remedies required by FEHA as a prerequisite to filing this action.

By Plaintiff Against All Defendants

30. Labor Code section 512 and the Wage Orders provide that “an employer shall 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” or “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”.

32. Not only must an employer affirmatively relieve its employees of all duty during their meal breaks, it also must not “impede or discourage” its employees from taking compliant meal breaks. (*Brinker*, supra).

34. For each day that Defendants failed to provide Plaintiff with a compliant meal break, Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is one additional hour of pay at Plaintiff's regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021)).

1 35. Defendants failed to pay premium pay at Plaintiff's regular rate of pay for each day a meal
2 break was missed.

3 36. Plaintiff is therefore entitled to recover premium pay for missed meal breaks, interest,
4 penalties, attorney fees, and costs.

5 **SECOND CAUSE OF ACTION**

6 **Failure to Provide Compliant Rest Periods**

7 **By Plaintiff Against All Defendants**

8 37. Plaintiff incorporates by reference the paragraphs above.

9 38. Labor Code section 226.7 and the Wage Orders requires employers to authorize and permit
10 its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net
11 per four hours or major fraction thereof.

12 39. Furthermore, "[d]uring rest periods employers must relieve employees of all duties and
13 relinquish control over how employees spend their time." (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.
14 5th 257, 269 (2016)).

15 40. Defendants failed to provide Plaintiff with compliant rest breaks as alleged herein.

16 41. For each day that Defendants failed to provide Plaintiff with a compliant rest break,
17 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
18 one additional hour of pay at Plaintiff's regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
19 11 Cal. 5th 858 (2021)).

20 42. Defendants failed to pay premium pay at Plaintiff's regular rate of pay for each day a rest
21 break was missed.

22 43. Plaintiff is therefore entitled to recover premium pay for missed rest breaks, interest,
23 penalties, attorney fees, and costs.

24 **THIRD CAUSE OF ACTION**

25 **Failure to Pay for All Hours Worked**

26 **By Plaintiff Against All Defendants**

27 44. Plaintiff incorporates by reference the paragraphs above.

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1 45. Labor Code sections 558 and 1194 and the Wage Orders require an employer to pay
2 employees minimum wages for all hours worked fewer than eight hours in a day and/or fewer than
3 40 hours in a workweek.

4 46. Defendants failed to pay Plaintiff for all hours worked as alleged herein.

5 47. Plaintiff is therefore entitled to recover all unpaid wages, liquidated damages, interest,
6 penalties, attorney fees, and costs.

7 **FOURTH CAUSE OF ACTION**

8 **Failure to Pay All Overtime Owed**

9 **By Plaintiff Against All Defendants**

10 48. Plaintiff incorporates by reference the paragraphs above.

11 49. Labor Code section 510 provides that “[a]ny work in excess of eight hours in one workday
12 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
13 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
14 one-half times the regular rate of pay for an employee.”

15 50. Defendants failed to pay Plaintiff all overtime wages owed as alleged herein.

16 51. Plaintiff is therefore entitled to recover all unpaid overtime wages, liquidated damages,
17 interest, penalties, attorney fees, and costs.

18 **FIFTH CAUSE OF ACTION**

19 **Wage Statement Penalties**

20 **By Plaintiff Against All Defendants**

21 52. Plaintiff incorporates by reference the paragraphs above.

22 53. Labor Code section 226(a) requires employers to provide itemized wage statements to its
23 employees that identify accurate information regarding their compensation. Defendants, as a matter
24 of policy and practice, failed in its affirmative obligation to provide accurate itemized wage
25 statements to Plaintiff in violation of Labor Code section 226(a).

26 54. As alleged herein, the wage statements that Defendants issued to Plaintiff were inaccurate
27 and incomplete.

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1 55. Defendants knowingly and intentionally issued wage statements that were inaccurate and
2 incomplete, and the issuance of inaccurate and incomplete wage statements caused injury to
3 Plaintiff in that Plaintiff was unable to accurately verify and/or calculate their wages.

4 56. Plaintiff is therefore entitled to the recovery of wage statement penalties, attorney fees, and
5 costs.

6 **SIXTH CAUSE OF ACTION**

7 **Waiting Time Penalties**

8 **By Plaintiff Against All Defendants**

9 57. Plaintiff incorporates by reference the paragraphs above.

10 58. Labor Code sections 201 and 202 require that an employer provide an employee with all
11 wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the
12 employee's resignation.

13 59. Labor Code section 203 provides that if an employer willfully fails to pay wages owed in
14 accordance with Labor Code sections 201 or 202, then the wages of the employee continue as a
15 penalty from the due date at the same rate until paid or until an action is commenced, not to exceed
16 thirty days.

17 60. As alleged herein, Defendants willfully did not pay Plaintiff all wages owed at the
18 conclusion of employment.

19 61. Plaintiff is therefore entitled to the recovery of waiting time penalties, interest, attorney fees,
20 and costs.

21 **SEVENTH CAUSE OF ACTION**

22 **Violation of Unfair Competition Law**

23 **By Plaintiff Against All Defendants**

24 62. Plaintiff incorporates by reference the paragraphs above.

25 63. Defendants' conduct described herein constitutes unfair competition.

26 64. Specifically, Defendants have gained an unfair advantage over other similarly situated
27 businesses by unlawfully reducing their overhead costs by not paying their employees what they are
28 owed.

65. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all wrongfully withheld wages.

66. Plaintiff may recover attorney fees pursuant to Code of Civil Procedure section 1021.5.

EIGHTH CAUSE OF ACTION

Private Attorneys General Act

By Plaintiff and the Aggrieved Employees Against All Defendants

67. Plaintiff incorporates by reference the paragraphs above.

68. PAGA permits Plaintiff and the Aggrieved Employees to recover civil penalties for the violation(s) of the Labor Code.

69. As alleged herein, Defendants' conduct violates numerous sections of the Labor Code.

70. With respect to violations of Labor Code sections 226.7 and 558 for Defendants' failure to provide Plaintiff and the Aggrieved Employees with compliant meal periods or compensation in lieu thereof, the penalties in Labor Code sections 558 and 2699 apply.

71. With respect to violations of Labor Code section 226.7 for Defendants' failure to provide Plaintiff and the Aggrieved Employees with compliant rest periods or compensation in lieu thereof, the penalties in Labor Code section 2699 apply.

72. With respect to violations of Labor Code section 1197 for Defendants' failure to compensate Plaintiff and the Aggrieved Employees for all minimum wages earned, the penalties in Labor Code sections 1197.1 and 2699 apply.

73. With respect to violations of Labor Code section 510 for Defendants' failure to compensate Plaintiff and the Aggrieved Employees for all overtime wages earned, the penalties in Labor Code sections 558, 1197.1, and 2699 apply.

74. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code sections 226.3 and 2699 apply.

75. With respect to violations of Labor Code section 203 for failure to pay all wages due to Plaintiff and the Aggrieved Employees and the conclusion of their employment, the penalties in Labor Code section 2699 apply.

1 76. Pursuant to Labor Code section 2699(k)(1), Plaintiff further seeks public injunctive relief in
2 the form of an Order enjoining Defendants from continuing to violate the California Labor Code in
3 the manner alleged herein.

4 77. Additionally, Plaintiff and the Aggrieved Employees are entitled to attorney's fees pursuant
5 to Labor Code section 2699(g).

6 **NINTH CAUSE OF ACTION**

7 **Violation of California Government Code § 12940 et seq. – Disability Discrimination**

8 **By Plaintiff Against All Defendants**

9 78. Plaintiff incorporates by reference the paragraphs above.

10 79. Government Code § 12940(a) prohibits an employer from discriminating against an
11 employee in compensation or in terms, conditions, or privileges of employment because of the
12 employee's "race," "national origin, ancestry, physical disability, mental disability, medical
13 condition" or "sex."

14 80. During their employment with Defendants, Plaintiff was subjected to discrimination based
15 on their disability (alcoholism).

16 81. Plaintiff was subjected to discrimination based on their disability (described supra).

17 82. Plaintiff informed Defendants of his relapse from alcoholism and sought assistance with
18 rehabilitation.

19 83. Plaintiff underwent rehabilitation and informed Defendants of the progress.

20 84. Shortly after finishing his rehabilitation and returning to work, Plaintiff was terminated by
21 Defendants.

22 85. The discriminatory actions of Defendants against Plaintiff constitute unlawful discrimination
23 in violation of FEHA. Such violations were a proximate cause in Plaintiff's damages as stated
24 below.

25 **TENTH CAUSE OF ACTION**

26 **Violation of Government Code § 12940(m) - Failure to Accommodate Disability**

27 **By Plaintiff Against All Defendants**

28 86. Plaintiff incorporates by reference the paragraphs above.

1 87. At all relevant times herein, Plaintiff was an individual with a disability as defined by
2 FEHA.

3 88. FEHA requires an employer to make reasonable accommodations for the known disabilities
4 of employees to enable them to perform a position's essential functions, unless doing so would
5 produce undue hardship to the employer's operations. Govt. Code §12940(m).

6 89. As a result of Plaintiff's disability, Plaintiff was in need of certain reasonable
7 accommodations, as set forth herein.

8 90. Defendants were on notice of Plaintiff's need for reasonable accommodations in connection
9 with their disability.

10 91. Defendants, and each of them, failed and refused to grant reasonable accommodations, as
11 required by law, to Plaintiff (described supra).

12 92. The actions of Defendants against Plaintiff constitutes unlawful failure to accommodate a
13 disability, in violation of FEHA. Such violations were a proximate cause in Plaintiff's damages as
14 stated below.

15 **ELEVENTH CAUSE OF ACTION**

16 **Violation of California Government Code § 12940 (n) – Failure to Engage in the Interactive**
17 **Process**

18 **By Plaintiff Against All Defendants**

19 93. Plaintiff incorporates by reference the paragraphs above.

20 94. At all relevant times herein, Plaintiff was individuals with a disability as defined by FEHA.

21 95. Govt. Code §12940(n) requires employers to engage in a timely, good faith, interactive
22 process with an employee to determine effective reasonable accommodations if an employee with a
23 disability so requests. The interactive process is the key mechanism for facilitating the integration of
24 disabled employees in the workplace and liability may be imposed on the employer for failing to
25 engage in the process.

26 96. As a result of Plaintiff's disability, Plaintiff was in need of certain reasonable
27 accommodations, as set forth herein.

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1 97. Defendants were on notice of Plaintiff's need for reasonable accommodations in connection
2 with their disability.

3 98. Despite having notice of Plaintiff's disability and need for accommodations, Defendants
4 engaged in unlawful employment practices when they failed and refused to engage in the interactive
5 process (described supra).

6 99. The actions of Defendants against Plaintiff constitutes unlawful failure to engage in the
7 interactive process, in violation of FEHA. Such violations were a proximate cause in Plaintiff's
8 damage as stated below.

9 **TWELFTH CAUSE OF ACTION**

10 **Violation of California Government Code § 12940 (h) - Retaliation**

11 **By Plaintiff Against All Defendants**

12 100. Plaintiff incorporates by reference the paragraphs above.

13 101. Government Code § 12940(h) makes it unlawful for an employer to discriminate against any
14 employee who opposes or makes a complaint for practices forbidden by FEHA.

15 102. Plaintiff engaged in protected activity under § 12940(h) as set forth herein.

16 103. Defendants retaliated against Plaintiff in violation of California Government Code §
17 12940(h).

18 104. The actions of Defendants against Plaintiff constitute unlawful retaliation, in violation of
19 FEHA. Such violations were a proximate cause in Plaintiff's damage as stated below.

20 **THIRTEENTH CAUSE OF ACTION**

21 **Violation of California Government Code § 12940 (m)(2) – Retaliation for Requesting**
22 **Accommodation**

23 **By Plaintiff Against All Defendants**

24 105. Plaintiff incorporates by reference the paragraphs above.

25 106. At all times hereto, the FEHA was in full force and effect and was binding upon Defendants
26 and each of them.

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1 107. Government Code § 12940(m)(2) prohibits an employer from retaliating or otherwise
2 discriminating against a person for requesting accommodations, regardless of whether the request
3 was granted.

4 108. As detailed above, Plaintiff engaged in protected activity by requesting accommodations in
5 connection with their medical condition.

6 109. Defendants retaliated against Plaintiff in violation of FEHA by harassing Plaintiff in
7 connection with their request for accommodations. Such violations were a proximate cause in
8 Plaintiff's damage as stated below.

9 **FOURTEENTH CAUSE OF ACTION**

10 **Wrongful Termination in Violation of Public Policy**

11 **By Plaintiff Against All Defendants**

12 110. Plaintiff incorporates by reference the paragraphs above.

13 111. At all times mentioned in this complaint, it was a fundamental policy of the State of
14 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
15 race, national origin, ancestry, physical disability, mental disability, medical condition, sex, and/or
16 engagement in protected activity.

17 112. Based on the actions described above, Defendants terminated Plaintiff for engaging in
18 protected activity.

19 113. Defendants actions were in violation of California Public Policy.

20 114. As a proximate result of the acts of Defendants, and each of them, Plaintiff has suffered and
21 will continues to suffer damages, as stated below.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

24 **First Cause of Action**

- 25 1. Damages and/or penalties pursuant to Labor Code section 226.7
26 2. Interest
27 3. Attorneys' fees
28 4. Costs

1 5. Other relief the court deems proper

2 Second Cause of Action

3 1. Damages and/or penalties pursuant to Labor Code section 226.7

4 2. Interest

5 3. Attorneys' fees

6 4. Costs

7 5. Other relief the court deems proper

8 Third Cause of Action

9 1. Damages and/or penalties pursuant to Labor Code sections 558, 1194, 1197, and 1197.1

10 2. Liquidated damages

11 3. Interest

12 4. Attorneys' fees

13 5. Costs

14 6. Other relief the court deems proper

15 Fourth Cause of Action

16 1. Damages and/or penalties pursuant to Labor Code sections 510, 558, and 1194

17 2. Interest

18 3. Attorneys' fees

19 4. Costs

20 5. Other relief the court deems proper

21 Fifth Cause of Action

22 1. Penalties pursuant to Labor Code section 226

23 2. Attorneys' fees

24 3. Costs

25 4. Other relief the court deems proper

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1 Sixth Cause of Action

- 2 1. Penalties pursuant to Labor Code section 203
3 2. Attorneys' fees
4 3. Costs
5 4. Other relief the court deems proper

6 Seventh Cause of Action

- 7 1. Restitution of all wrongfully withheld wages
8 2. Attorneys' fees
9 3. Costs
10 4. Other relief the court deems proper

11 Eighth Cause of Action

- 12 1. All applicable civil penalties available pursuant to Labor Code section 2698, et seq.
13 2. Public injunctive relief in the form of an Order enjoining Defendants from continuing to
14 violate the California Labor Code in the manner alleged herein
15 3. Attorneys' fees
16 4. Costs
17 5. Other relief the court deems proper

18 Ninth to Thirteenth Cause of Action

- 19 1. Compensatory damages
20 2. Punitive damages
21 3. Attorneys' fees
22 4. Costs
23 5. Other relief the court deems proper

24 Fourteenth Cause of Action

- 25 1. Back pay and front pay
26 2. Interest on the above amounts
27 3. Compensatory damages
28 4. Punitive damages

- 1 5. Attorneys' fees
2 6. Costs
3 7. Other relief the court deems proper
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5 DATED: February 25, 2025

FRONTIER LAW CENTER

/s/ Daniel Ginzburg

DANIEL GINZBURG

Attorneys for Plaintiff
NICHOLAS ROBERT BURSON,
individually and on behalf of all others
similarly situated

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