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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ODALYS A EGUIZABAL PEREZ, individually, and on behalf of other members of the general public similarly situated, Plaintiff, v. OPYA, INC., a Delaware corporation; and DOES 1 through 10, inclusive, Defendants.	Case No.: 24STCV26956 **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR:** 1. Failure to Pay Minimum and Straight Time Wages (Lab. Code §§ 204, 1194, 1194.2, and 1197); 2. Failure to Pay Overtime Wages (Lab. Code §§ 1194 and 1198); 3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512); 4. Failure to Authorize and Permit Rest Periods (Lab. Code §§ 226.7); 5. Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226); 6. Failure to Indemnify Employees for Expenditures (Lab. Code § 2802); 7. Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.); and 8. Civil Penalties Under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698 et seq.). **DEMAND FOR JURY TRIAL**

Plaintiff ODALYS A EGUIZABAL PEREZ ("Plaintiff"), based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, individually and on behalf of all other members of the public similarly situated, alleges as follows:

THE PARTIES

1. Plaintiff is a California resident who worked for Defendant OPYA, INC. and DOES 1 through 10 ("Defendants") in California as a nonexempt employee paid hourly from approximately January 2024 until present time.

2. Plaintiff reserves the right to seek leave to amend this complaint to add new Plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law, as well as to add additional claims.

3. Plaintiff alleges, on information and belief, that Defendants are, and at all times herein mentioned, were:

(a) Business entities qualified to do business and actually conducting business in numerous counties throughout the State of California, including in Los Angeles County; and,

(b) The former employers of Plaintiff and the current and/or former employer of the Class Members because Defendants engaged Plaintiff and the Class to work; and/or suffered and permitted Plaintiff and the Class to work, and/or controlled or had the power and authority to control their wages, hours, or working conditions;

4. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts, and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and of the Class. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior."

5. Plaintiff does not know the true names or capacities of the persons or entities sued

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herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants were in some manner legally responsible for the damages suffered by Plaintiff and the Class as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary. At all times mentioned herein, Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured Plaintiff and a significant number of the Class Members in the State of California.

6. Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts, and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and of the Class. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior."

7. Plaintiff alleges, on information and belief, that, at all relevant times, each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees described in the class definitions below, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor-in-interest and/or predecessor-in-interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff alleges, on information and belief, that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants. Defendants are thus jointly and severally liable to Plaintiff and the Class Members on the claims asserted in this action.

8. Plaintiff alleges, on information and belief, that, at all relevant times, Defendants, and each of them, were joint employers of Plaintiff and of the Class Members because they exerted

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significant control over these employees and dictated essential terms and conditions of employment, including, but not limited to, setting employees' wages and paying them, sending employees to different Defendants' places of business to perform part of their job duties there, and to work some of their work hours at different Defendants' locations, as well as to use various equipment types at those Defendants' locations. Defendants are thus jointly and severally liable to Plaintiff and the Class Members on the claims asserted in this action.

9. Plaintiff also alleges, on information and belief, that Defendants operated as an integrated enterprise and are thus jointly and severally liable to Plaintiff and the Class Members on the claims asserted in this action because they had (1) common ownership or financial control, (2) common management, (3) centralized control of labor relations, and/or (4) an interrelation of operations of Defendants.

10. Plaintiff is informed and believes, and, on that basis, alleges that those Defendants who are individuals ("Alter Ego Defendants") so dominated and controlled Defendants who were business entities (collectively, "Corporate Defendants") that failure to disregard the purported corporate entities, partnerships, companies, and/or organizations would sanction fraud and promote injustice.

11. Specifically, the Alter Ego Defendants:

(a) treated the assets of the Corporate Defendants, as if they were their own;

(b) diverted assets from the Corporate Defendants to themselves to the detriment of the creditors of the Corporate Defendants;

(c) were original incorporators and/or officers and/or directors and/or partners and/or trustees and/or members and/or managing members of the Corporate Defendants;

(d) were and/or are shareholders and/or members and/or managing members and/or have had equitable ownership in and/or financial interest in the Corporate Defendants;

(e) used the Corporate Defendants as a mere instrumentality or "alter ego";

(f) have preferred themselves, or their personal creditors, or creditors with

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personal guarantees as creditors of the Corporate Defendants, to the detriment of Plaintiff and of the Class Members;

(g) actively participated in or consciously ratified the acts, conduct, and event that the Corporate Defendants contend gives rise herein to any defense.

12. Recognition of the separate existence of the Alter Ego Defendants would perpetrate a fraud and/or circumvent a statute and/or otherwise accomplish some wrongful or inequitable purpose. The facts are such that adherence to the fiction of the separate existence of the Alter Ego Defendants would, under the circumstances of this case, sanction a fraud or promote injustice or permit the Alter Ego Defendants to evade their liability;

13. Plaintiff is informed and believes, and, on that basis, alleges that the Corporate Defendants, and each of them, and at all times herein mentioned:

(a) were mere shells and shams without capital, assets, stock, or stockholders, and conduits, through which the Alter Ego Defendants carried on their business in the corporate name, exactly as before incorporation, exercising complete control and dominance of such business to such an extent that any individuality or separateness of the Corporate Defendants and the Alter Ego Defendants never existed;

(b) were conceived, intended, and used by the Alter Ego Defendants to avoid individual liability and for the purpose of substituting a financially insolvent business entity in the place of Alter Ego Defendants;

(c) were so inadequately capitalized that, compared with the business to be done by them and the risks of loss attendant thereon, its capitalization was illusory or trifling;

(d) had no stock authorized to be issued or issued, nor has any permit for issuance of stock been applied for;

(e) were being used, and their assets being used, by Alter Ego Defendants, for their personal uses, causing assets of the Corporate Defendants to be transferred to Alter Ego Defendants without adequate consideration, and

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withdrawing funds from the Corporate Defendants' bank accounts for personal use; and/or

(f) were completely controlled, dominated, managed, and operated by the Alter Ego Defendants, who intermingled the Corporate Defendants' assets to suit the convenience the Alter Ego Defendants.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this matter because Plaintiff brings this Complaint for various violations of the Labor Code (including a claim pursuant to the Private Attorney General Act of 2004) and California Industrial Welfare Commission ("IWC") orders, Defendants are business entities operating in California, and Plaintiff is a California resident.

15. This class action is brought pursuant to California Code of Civil Procedure section 382. The monetary damages, penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction. Plaintiff's share of damages, penalties, and other relief sought in this action does not exceed $75,000.

16. This Court has jurisdiction over Defendants because Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise 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 because there is no complete diversity, and this case falls within the statutory exceptions to "minimal diversity" jurisdiction under the Class action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information and belief, two-thirds or more of the Class Members and Defendants are citizens of California and/or (a) two-thirds of the Class Members and Defendants are citizens of California; (b) the alleged wage and hour violations occurred in California; (c) significant relief is being sought against Defendants, whose violations of California wage and hour laws form a significant basis for Plaintiff's claims; and (d) no other

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class action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

17. Venue is proper in this judicial district because Defendants maintain offices, have agents, and/or transact business in the County of Los Angeles, California.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

18. Plaintiff worked for Defendants in California as a non-exempt employee paid hourly. Defendants typically scheduled Plaintiff to work at least five days in a workweek and at least eight hours per day, but Plaintiff regularly worked more than eight hours in a workday and more than forty (40) hours in a workweek.

19. Plaintiff brings this action against Defendants for Labor Code violations and unfair business practices stemming from Defendants' failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide with legally compliant meal periods, failure to authorize and permit to take rest periods, failure to reimburse for business expenses, failure to furnish accurate wage statements. Employer's managers also engaged in systematic and a widespread altering of time records to hide violations of the Labor Code. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative of the class.

20. Plaintiff brings the First through Seventh Causes of Action individually and as a class action on behalf of herself and certain current and former employees of Defendants (hereinafter collectively referred to as the "Class" or "Class Members," and defined more fully below). The Class consists of Plaintiff and all other persons who have been employed by any Defendant in California as an hourly-paid or non-exempt employee during the statute of limitations period applicable to the claims pleaded here.

21. Plaintiff brings the Eighth Cause of Action as a representative action under the Labor Code Private Attorneys Act of 2004, Labor Code sections 2698 et seq. ("PAGA") to recover civil penalties that are owed to Plaintiff, the State of California, and past and present non-exempt employees employed by Defendants in the State of California during the statute of limitations period for their PAGA claim (herein after referred to as the "Aggrieved Employees").

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22. Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including Los Angeles County. As such and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to the Labor Code, Wage Orders issued by the IWC, and the California Business & Professions Code.

23. Despite these requirements, throughout the statutory period, Defendants willfully failed to comply with the Labor Code and IWC Wage Orders with respect to Plaintiff and the Class and instead maintained a systematic, company-wide policy and practice of including, but not limited to, the following violations on a regular basis:

(a) Failing to pay employees for all hours worked, including minimum, straight time, and overtime wages, as well as on-call/standby pay; for example, Defendants:

1) required employees to perform work off-the-clock, without compensation, including cleaning, recording case notes, obtaining parents' signatures, completing health screenings and attending HR Zoom meetings; and/or

2) failed to pay for all hours worked and failed to pay some of this unpaid work at the overtime rate, as required; and/or

3) required them to continue working during unpaid meal and rest periods; and/or

4) failed to maintain accurate records of the hours worked.

(b) Failing to provide employees with timely and duty-free meal periods; for example, Defendants:

1) required employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work; and/or

2) continued to assert control over employees by requiring, pressuring, or encouraging them to perform work tasks, which could not be

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completed without working in lieu of taking mandatory meal periods. For example, approximately two days per week, Plaintiff was unable to take a full 30-minute meal and/or was forced to take a late meal because of work demands; and/or

3) denied employees permission to take a meal period and/or to leave the premises for meal periods;

4) failed to maintain accurate records of all meal periods taken or missed and denied employees opportunities to do their own time-keeping. Defendants also clocked out Plaintiff automatically for meals as well as could not provide a compliant clocking system, preventing Employee from taking compliant meal periods.

(c) Failing to authorize and permit employees to take timely and duty-free rest periods; for example, Defendants:

1) required employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours); and/or

2) pressured Plaintiff to use her rest breaks to finish mandatory onboard videos and/or by combining two mandatory rest periods into one long period, denying the second mandatory period; and/or

3) failed to compensate employees for rest periods that were not authorized or permitted; and/or

4) continued to assert control over employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods.

(d) Falsifying and/or altering time records to avoid paying for all hours worked, overtime rates, and meal and rest break penalties;

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(e) Failing to provide employees with accurate, itemized wage statements containing all the information required by the Labor Code and IWC Wage Orders, such as the correct legal entity address, detailed paid sick leave balance, accurate hours worked, and meal and rest periods penalties, among other things;

(f) Failing to indemnify employees for work-related expenses, such as having to complete post-employment health screenings and background checks, including mileage, incurred every six months, as well as daily personal cell phone usage for work communications and mileage incurred for travel between clients' residences and Defendant's location.

24. On information and belief, Defendants, and each of them, were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

25. As a result of these violations of Labor Code § 226(a), Plaintiff and the Class suffered injury because, among other things:

(a) the violations led them to believe that they were not entitled to be paid minimum, straight time, overtime, meal period premium, and rest period premium wages, even though they were entitled;

(b) the violations led them to believe that they had been paid the minimum, straight time, overtime, meal period premium, and rest period premium wages, even though they had not been;

(c) the violations led them to believe they were not entitled to be paid minimum, straight time, overtime, meal period premium, and rest period premium wages at the correct California rate even though they were entitled;

(d) the violations led them to believe they had been paid minimum, straight time, overtime, meal period premium, and rest period premium wages at the correct California rate even though they had not been;

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(e) the violations hindered them from determining the amounts of minimum, straight time, overtime, meal period premium, and rest period premium wages owed to them;

(f) in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;

(g) by understating the wages truly due to them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;

(h) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff and the Class were entitled, and Plaintiff and the Class were paid less than the wages and wage rates to which they were entitled.

26. Thus, Plaintiff and the Class are owed the amounts provided for in Labor Code § 226(e) and injunctive relief under Labor Code § 226(h).

CLASS ACTION ALLEGATIONS

27. Plaintiff brings certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure section 382.

28. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

29. The proposed Class consists of and is defined as:

> All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period beginning four years before the filing of the initial complaint in this action and ending on the first day of trial in this matter.

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

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31. Plaintiff undertook this concerted activity to improve the wages and working conditions of all Class Members.

32. There is a well-defined community of interest in the litigation and the Class is readily ascertainable:

(a) Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiff at this time; however, the Class is estimated to be greater than forty (40) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest, and Plaintiff's claims are typical of all Class Members' claims as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly, and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no conflicts with or interests antagonistic to any Class Member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: A Class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;

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2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;

3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and,

4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the Class Members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

33. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, Defendants have:

(a) Failed to pay Class Members for all hours worked, including minimum, straight time, and overtime wages;

(b) Failed to provide meal periods and pay meal period premium wages to Class Members;

(c) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;

(d) Failed to provide Class Members with accurate wage statements;

(e) Failed to indemnify Class Members for expenditures;

(f) Violated California Business & Professions Code §§ 17200 *et. seq*. as a result of their illegal conduct as described above.

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34. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

(a) The questions of law and fact common to the Class predominate over any question affecting only individual members;

(b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;

(c) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;

(d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;

(e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;

(f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:

1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or,

2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,

(g) Defendants have acted or refused to act on grounds generally applicable to

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the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

35. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff contemplates the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Against All Defendants for Failure to Pay Minimum and Straight Time Wages for All Hours Worked)

36. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

37. "Hours worked" is 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.

38. At all relevant times herein mentioned, Defendants knowingly failed to pay to Plaintiff and the Class compensation for all hours they worked. For example, Defendants required Plaintiff to clean up, take notes about children, obtain parents' signatures, commit health screenings, and to attend HR Zoom meetings "off-the-clock" as well as to perform work and to finish onboard videos during uncompensated meal and rest periods. By their failure to pay compensation for each hour worked as alleged above, Defendants willfully violated the provisions of Labor Code § 1194, and any additional applicable Wage Orders that require such compensation to non-exempt employees.

39. Accordingly, Plaintiff and the Class are entitled to recover minimum and straight time wages for all non-overtime hours worked for Defendants.

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40. By and through the conduct described above, Plaintiff and the Class have been deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

41. By virtue of the Defendants' unlawful failure to pay additional compensation to Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class and which will be ascertained according to proof at trial.

42. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage compensation due Plaintiff and the Class.

43. Pursuant to Labor Code § 1194.2, Plaintiff and the Class are entitled to recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

44. Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required by law, including minimum and straight time wages. However, during all such times, Defendants systematically failed and refused to pay Plaintiff and the Class all such wages due and failed to pay those wages twice a month.

45. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum and straight time wages, interest, and reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5, 218.6, and 1194(a).

<u>SECOND CAUSE OF ACTION</u>

(Against All Defendants for Failure to Pay Overtime Wages)

46. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

47. Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

48. Labor Code §§ 1194 and 1198 provide that employees in California shall not be

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employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

49. At all times relevant hereto, Plaintiff and the Class have worked more than eight hours in a workday and/or more than forty (40) hours in a workweek, as employees of Defendants, including but not limited to cleaning up, taking notes about children, obtaining parents' signatures, committing health screenings, and attending HR Zoom meetings after the end of working days as well as performing work and finishing onboard videos during uncompensated meal and rest periods.

50. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class overtime compensation for the hours they have worked in excess of the maximum hours permissible by law as required by Labor Code §§ 510 and 1198.

51. By virtue of Defendants' unlawful failure to pay additional premium rate compensation to Plaintiff and the Class for their overtime hours worked, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to them but which exceed the jurisdictional minimum of this Court and which will be ascertained according to proof at trial.

52. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of overtime compensation due to Plaintiff and the Class.

53. Plaintiff and the Class also request recovery of overtime compensation according to proof, interest, attorneys' fees and costs pursuant to Labor Code § 1194(a), as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the Labor Code and/or other statutes.

54. Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. The Wage Orders also provide that every employer shall pay to each employee, on the established payday for the period involved, overtime wages for all overtime hours

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worked in the payroll period. Defendants failed to provide Plaintiff and the Class with all compensation due, in violation of Labor Code § 204.

THIRD CAUSE OF ACTION

(Against All Defendants for Failure to Provide Meal Periods)

55. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

56. Under California law, Defendants have an affirmative obligation to relieve Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the start of Plaintiff's and the Class's sixth hour of work in a workday, and to take their second meal periods no later than the start of the eleventh hour of work in the workday. Labor Code § 512, and Section 11 of the applicable Wage Orders require that an employer provide unpaid meal periods of at least thirty (30) minutes for each five-hour period worked. It is a violation of Labor Code § 226.7 for an employer to require any employee to work during any meal period mandated under any Wage Order.

57. Despite these legal requirements, Defendants regularly failed to provide Plaintiff and the Class with both meal periods as required by California law. For example, approximately every two days per working week Plaintiff had meal periods that are less than 30 minutes long, and sometimes Plaintiff had late meal breaks, provided after the start of the sixth hour of work in the workday, or interrupted by a supervisor. Defendants also clocked out Plaintiff automatically for meals and after eight ours of daily work as well as could not provide a compliant clocking system, preventing Employee from taking compliant meal periods. By their failure to permit and authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted meal periods), Defendants willfully violated the provisions of Labor Code § 226.7 and the applicable Wage Orders.

58. Under California law, Plaintiff and the Class are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s), plus interest thereon.

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FOURTH CAUSE OF ACTION

(Against All Defendants for Failure to Authorize and Permit Rest Periods)

59. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

60. Defendants are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Labor Code § 512, the applicable Wage Orders require that the employer permit and authorize all employees to take paid rest periods of ten minutes each for each 4-hour period worked. Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks, as required, is itself a violation of California's rest break laws. It is a violation of Labor Code § 226.7 for an employer to require any employee to work during any rest period mandated under any Wage Order.

61. Despite these legal requirements, Defendants failed to authorize Plaintiff and the Class to take rest breaks, regardless of whether employees worked more than four hours in a workday, including but not limited to pressuring Plaintiff to use her rest breaks to finish mandatory onboard videos and/or by combining two mandatory rest periods into one long period, denying the second mandatory period. By their failure to permit and authorize Plaintiff and the Class to take rest periods as alleged above (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted rest periods), Defendants willfully violated the provisions of Labor Code § 226.7 and the applicable Wage Orders.

62. Under California law, Plaintiff and the Class are entitled to be paid one hour of premium wages rate for each workday they were not provided with all required rest break(s), plus interest thereon.

FIFTH CAUSE OF ACTION

(Against All Defendants for Failure to Provide and Maintain Accurate and Compliant Wage Records)

63. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

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64. At all material times set forth herein, Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (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, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

65. In addition, Labor Code § 246(i) required employer to provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement “unlimited.”

66. Defendants have intentionally and willfully failed to provide employees with complete and accurate wage statements compliant with these Labor Code sections. For example, Plaintiff’s paystubs did not list the accurate Employer’s legal entity address, and detailed paid sick leave balance, accurate hours worked, and meal and rest periods penalties, among other things.

67. As a result of Defendants’ violation of Labor Code §§ 226(a) and 246(i), Plaintiff and the Class have suffered injury and damage to their statutorily protected rights.

68. Specifically, Plaintiff and the members of the Class have been injured by Defendants’ intentional violations of California §§ 226(a) and 246(i) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under Labor Code § 226(a).

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69. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

70. Plaintiff and the Class are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code §§ 226(a) and 246(i), or an aggregate penalty not exceeding four thousand dollars ($4,000) per employee.

71. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of attorney's fees and costs to ensure compliance with this section, pursuant to Labor Code § 226(h).

SIXTH CAUSE OF ACTION

(Against All Defendants for Failure to Indemnify Employees for Expenditures)

72. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

73. As set forth above, Plaintiff and the Class were required to incur substantial necessary expenditures and losses in direct consequence of the discharge of their duties or of their obedience to directions of Defendants.

74. Defendants violated Labor Code § 2802, by failing to pay and indemnify Plaintiff and the Class for necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of Defendants, including but not limited to post-employment health screenings and background checks, mileage incurred every six months, as well as daily personal cell phone usage for work communications and mileage incurred for travel between clients' residences and Defendant's location.

75. As a result, Plaintiff and the Class were damaged at least in the amounts of the expenses they paid, or which were deducted by Defendants from their wages.

76. Plaintiff and the Class are entitled to reasonable attorney's fees, expenses, and costs of suit pursuant to Labor Code § 2802(c) and interest pursuant to Labor Code § 2802(b).

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SEVENTH CAUSE OF ACTION

(Against All Defendants for Violations of California Business & Professions Code §§ 17200, et seq.)

77. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

78. Defendants, and each of them, are "persons" as defined under California Business & Professions Code § 17201.

79. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class Members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

80. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, et seq.

81. A violation of California Business & Professions Code §§ 17200, et seq. may be predicated on the violation of any state or federal law. All of the acts described above in the foregoing causes of action are unlawful and in violation of public policy; and are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, et seq.

82. By and through their unfair, unlawful, and/or fraudulent business practices described herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and all persons similarly situated, and has deprived Plaintiff, and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

83. Plaintiff and the Class Members suffered monetary injury as a direct result of Defendants' wrongful conduct.

84. Plaintiff, individually, and on behalf of members of the putative Class, is entitled to, and does, seek such relief as may be necessary to disgorge money and/or property which the

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Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the Class are not obligated to establish individual knowledge of the wrongful practices of Defendants in order to recover restitution.

85. Plaintiff, individually, and on behalf of members of the putative class, is further entitled to, and does, seek a declaration that the above-described business practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

86. Plaintiff, individually, and on behalf of members of the putative class, has no plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on behalf of members of the putative Class, has suffered and will continue to suffer irreparable harm unless the Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

87. Plaintiff also alleges that, if Defendants are not enjoined from the conduct set forth herein above, they will continue to avoid paying the appropriate taxes, insurance, and other withholdings.

88. Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiff and putative Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

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EIGHTH CAUSE OF ACTION

(By Plaintiff Against All Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, et seq.)

89. Plaintiff incorporates by reference and reallege, as if fully stated herein, the above paragraphs.

90. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

91. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this 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 specified in Section 2699.3."

92. On October 15, 2024, Plaintiff gave written notice by online filing pursuant to California Labor Code § 2699.3 to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff and current and former aggrieved employees, including the facts and theories to support the violations. Plaintiff also paid the filing fee. Plaintiff's PAGA case number is LWDA-CM-1056270-24 (*Odalys A Eguizabal Perez v. OPYA, Inc*.). More than 65 days passed, and The Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants' Labor Code violations discussed in the notice. Plaintiff hereby commences a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

93. Based on the conduct described in this Complaint, Plaintiff is entitled to an award of civil penalties on behalf of Plaintiff, the State of California, and similarly situated Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is an amount to be

shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

94. In addition, Plaintiff seeks an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated only with respect to the class claims, prays for relief and judgment against Defendants, jointly and severally, as follows:

CLASS CERTIFICATION

1. That this action be certified as a class action with respect to all of its causes of action;

2. That Plaintiff be appointed as the representative of the Class; and,

3. That counsel for Plaintiff be appointed as Class Counsel.

AS TO THE FIRST CAUSE OF ACTION

4. That the Court declare, adjudge, and decree that Defendants violated Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay failed to pay Class Members for all hours worked, including minimum, straight time, and overtime wages, as well as on-call/standby pay;

5. For unpaid wages as may be appropriate;

6. For liquidated damages;

AS TO THE SECOND CAUSE OF ACTION

7. That the Court declare, adjudge, and decree that Defendants violated Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due;

8. For unpaid wages at overtime wage rates as may be appropriate;

9. For such other and further relief as the Court may deem equitable and appropriate.

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AS TO THE THIRD CAUSE OF ACTION

10. That the Court declare, adjudge, and decree that Defendants violated Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

11. For unpaid meal period premium wages as may be appropriate;

12. For such other and further relief as the Court may deem equitable and appropriate.

AS TO THE FOURTH CAUSE OF ACTION

13. That the Court declare, adjudge, and decree that Defendants violated Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

14. For unpaid rest period premium wages as may be appropriate;

AS TO THE FIFTH CAUSE OF ACTION

15. That the Court declare, adjudge, and decree that Defendants violated the record keeping provisions of Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;

16. For all actual damages, according to proof;

17. For statutory penalties pursuant to Labor Code § 226(e);

18. For injunctive relief to ensure compliance with this section, pursuant to Labor Code § 226(h);

AS TO THE SIXTH CAUSE OF ACTION

19. That the Court declare, adjudge, and decree that Defendants violated Labor Code § 2802 by willfully failing to indemnify employees for expenditures;

20. For unpaid wages or unreimbursed business expenses as may be appropriate;

AS TO THE SEVENTH CAUSE OF ACTION

21. That the Court declare, adjudge, and decree that Defendants violated California Business & Professions Code §§ 17200, et seq. by the foregoing violations.

22. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment interest from the day such amounts were due and payable;

23. For the appointment of a receiver to receive, manage and distribute all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a

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result of violations of California Business & Professions Code §§ 17200 et seq.;

24. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, et seq.

AS TO THE EIGHTH CAUSE OF ACTION

25. That the Court declare, adjudge, and decree that Defendants violated the California Labor Code by failing to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify employees for expenditures;

26. An award of civil penalties on behalf of Plaintiff, individually, and on behalf of the State of California, and all similarly aggrieved employees pursuant to PAGA;

27. Pre-judgment and post-judgment interest at the maximum rate allowed;

28. Attorneys' fees and costs reasonably incurred;

29. Injunctive and declaratory relief to the extent allowed by PAGA; and,

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AS TO ALL CAUSES OF ACTION

30. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due or as provided by law;

31. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5 and/or Labor Code § 1194(a) and/or Labor Code § 2699(g) or as otherwise provided by law as to all causes of action that allow recovery of attorney's fees;

32. For a trial by jury as to all causes of action triable by jury; and

33. For any additional relief that the Court deems just and proper.

Respectfully submitted,

Dated: December 10, 2024

WILSHIRE LAW FIRM

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By: ______________________________
Molly DeSario, Esq.
James Yoo, Esq.
Ruby Carrera, Esq.

Attorneys for Plaintiff

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PROOF OF SERVICE

I, **Manuel Martinez**, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010.

On **December 10, 2024**, I served the foregoing document on the interested parties as addressed below and via one of the methods of service set forth below:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

Amanda G. Papac
Adam Y. Siegel
Maia Mdinaradze
Jackson Lewis P.C.
725 South Figueroa Street, Suite 2500
Los Angeles, CA 90017
213-689-0404
Amanda.Papac@jacksonlewis.com; Adam.Siegel@jacksonlewis.com;
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Attorneys for Defendant

(By Mail) I declare that I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] (By E-mail or Electronic Transmission) Based on Cal. Code Civ. Proc. § 1013(g), a court order, or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(By Overnight Mail) I am readily familiar with the firm's practice of collection and processing correspondence for overnight delivery of documents. Under that practice it would be delivered to an authorized agent or driver of an overnight mail carrier with the fees paid or provided for on the date of service and delivered the next day.

(By Personal Service) I caused such envelope to be hand-delivered to the above address.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 10, 2024, at Los Angeles, California.

Manuel Martinez