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and all others similarly situated and aggrieved

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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By: Mariah Mora, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

TONYA BENENATI, an individual, on behalf
of herself and all others similarly situated and
aggrieved,

Plaintiff,

vs.

TOYOTA ARENA LLC, a California Limited
Liability Company; SMG ONTARIO
ARENA, LLC, a California Limited Liability
Company; SMG ONTARIO, LLC, a
California Limited Liability Company; and
DOES 1 through 25, inclusive,

Defendants.

Case No.: CIVSB2432257

**FIRST AMENDED CLASS ACTION & PAGA
REPRESENTATIVE ACTION COMPLAINT**

- (1) FAILURE TO PROVIDE MEAL PERIODS;**
- (2) FAILURE TO PROVIDE REST BREAKS;**
- (3) FAILURE TO PAY MINIMUM WAGES;**
- (4) FAILURE TO PAY OVERTIME WAGES;**
- (5) FAILURE TO FURNISH TIMELY AND
ACCURATE WAGE STATEMENTS;**
- (6) FAILURE TO PAY ALL WAGES UPON
SEPARATION;**
- (7) FAILURE TO REIMBURSE ALL
NECESSARY, BUSINESS-RELATED
EXPENSES; AND**
- (8) VIOLATION OF CALIFORNIA'S UNFAIR
COMPETITION LAW ("UCL"), CAL. BUS.
& PROF. CODE § 17200, *ET SEQ.*; AND**
- (9) CIVIL PENALTIES FOR VIOLATIONS
OF LABOR CODE, PURSUANT TO
CALIFORNIA'S PRIVATE ATTORNEYS
GENERAL ACT ("PAGA"), §§ 2698, *ET
SEQ.***

DEMAND FOR JURY TRIAL

1 **CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**

2 Plaintiff TONYA BENENATI (“Plaintiff” or “BENENATI”), on behalf of herself and all others
3 similarly situated and aggrieved, by and through her attorneys, Abramson Labor Group, hereby files this
4 First Amended Class Action and Private Attorneys General Act of 2004 (“PAGA”) Representative
5 Action Complaint against Defendants TOYOTA ARENA LLC, a California Limited Liability Company;
6 SMG ONTARIO ARENA, LLC, a California Limited Liability Company; SMG ONTARIO, LLC, a
7 California Limited Liability Company; and DOES 1 through 25 inclusive, (collectively, “Defendants”),
8 and states as follows:

9 **I. INTRODUCTION**

10 1. Plaintiff brings this class and representative action on behalf of herself, on behalf of a
11 class defined as all current and former hourly non-exempt employees of TOYOTA ARENA LLC; SMG
12 ONTARIO ARENA, LLC; and SMG ONTARIO, LLC in California at any time during the Class Period
13 beginning four years prior to the filing of the initial Complaint through the present (“Class Period”), and
14 on behalf of all Aggrieved Persons who worked for Defendants as hourly, non-exempt employees in
15 California at any time during the period beginning one year prior to the PAGA letter (defined below)
16 through the present (“PAGA Period”).

17 2. This is also an enforcement action under the Labor Code Private Attorneys General Act
18 of 2004, California Labor Code section 2698 *et seq.* (“PAGA”) to recover civil penalties and any other
19 available relief on behalf of Plaintiff, the State of California, and other current and former employees
20 who work or worked for Defendants in California as non-exempt, hourly employees and who received at
21 least one wage statement during their employment, and against whom one or more violations of any
22 provision in Division 2, Part 2, Chapter 1 of the Labor Code or any provision regulating hours and days
23 of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set
24 forth in this complaint (“Aggrieved Employees”), at any time between one year and 65 days prior to the
25 filing of this complaint (i.e., October 8, 2023) until judgment (the “PAGA Period”). Plaintiff’s share of
26 civil penalties sought in this action does not exceed \$75,000.

27 3. Defendants operate at least two arena-sized event spaces in Southern California, with at
28 least two locations in Ontario, California known as the Toyota Arena and the Ontario Convention Center.

1 The event spaces accommodate thousands of attendees of a variety of events including sports matches;
2 ceremonies; performances including musicians, stand-up comedians, et cetera; conferences, conventions,
3 and exhibitions.

4 4. Defendants' policy and practice is to deny earned minimum wages for compensable work
5 performed in the form of submitting to security checks off the clock both prior to entering Defendants'
6 facilities and upon exiting Defendants' facilities. Likewise, Defendants' policy and practice is to deny
7 earned wages, including premium and overtime pay, to their nonexempt employees in California.
8 Defendants do not provide their employees with legally compliant meal periods and rest breaks nor
9 premium pay in lieu thereof. Defendants also require their employees to be present and to perform work
10 uncompensated in excess of eight hours per day and/or 40 hours per work week by mandating that these
11 employees perform various forms of compensable work off-the-clock including, but not limited to,
12 regularly continuing or returning to work from meal periods early (before 30 minutes elapsed) to resume
13 work while not actually clocking in until the 30-minute meal period ended or else not clocking out at all
14 for meal periods. Additionally, Defendants do not provide minimum wages and overtime pay for this
15 off-the-clock time. These off-the-clock waiting periods exist for the sole benefit of Defendants and
16 occurred frequently and regularly at Defendants' locations throughout California. This illegal practice
17 has been in effect by Defendants since at least the start of the Class Period.

18 5. Moreover, Defendants fail to timely compensate employees for all wages earned upon
19 separation and fail to properly and accurately calculate minimum wages and overtime wages and report
20 wages earned, hours worked, and wage rates. For these reasons, Plaintiff brings this action on behalf of
21 herself and other hourly, nonexempt employees of Defendants to recover unpaid wages, overtime
22 compensation, unreimbursed business expenses, penalties, interest, injunctive relief, damages, and
23 reasonable attorneys' fees and costs.

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

27 7. Defendants' wage statements are noncompliant in that (1) Plaintiff and Class Members'
28 wage statements read "SMG Toyota Arena" rather than providing the correct legal name of Defendant—

1 Toyota Arena LLC—and (2) Plaintiff’s wage statements are inaccurate because Defendants failed to pay
2 Plaintiff and Class Members all of their meal period and rest break premiums for noncompliant meal
3 periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during,
4 and after their shifts and for all overtime wages due.

5 8. Defendants failed to pay Plaintiff and Class Members their final payment of all wages
6 within the requisite time based on the circumstances of their separation—immediately upon termination
7 or within 72 hours of resignation.

8 9. Defendants also failed to pay Plaintiff and Class Members all final wages based on
9 Defendants’ prior failings to pay all premiums owed for noncompliant meal periods and rest breaks and
10 minimum wages for off the clock work performed and, where eligible, overtime compensation.

11 10. Defendants fail to reimburse Plaintiff and Class Members for a variety of unreimbursed
12 business expenses associated with (1) the use of their personal cell phones, which were required to remain
13 in contact with supervisors and coworkers during their shifts; (2) uniform laundering expenses because
14 Claimants were provided too few uniform shirts to last throughout the workweek without requiring extra
15 loads of laundry; and (3) mileage expenses for travel from one arena to the other.

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

23 **II. JURISDICTION AND VENUE**

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

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

1 for jurisdiction.

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

12 15. Venue lies properly with this Court, as it is the place where at least one defendant resides,
13 is incorporated or has its principal place of business, or a substantial amount of the events which gave
14 rise to this suit occurred and/or a cause of action arose. Thus, venue is proper in this Court, because
15 Defendants employ persons in this county and employed at least one plaintiff in this county, and thus a
16 substantial portion of the transactions and occurrences related to this action occurred in this county.

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

20 **III. PARTIES**

21 17. Plaintiff TONYA BENENATI (“Plaintiff” or “ BENENATI”) is or was a resident of
22 Ontario, California. Defendants employed Plaintiff as an hourly-paid, non-exempt employee for
23 approximately 2.5 years from April 24, 2021 through approximately October 27, 2023. BENENATI’S
24 position was Security Officer. During her employment, Plaintiff worked at two of Defendants’ location
25 in Ontario, California located at 4000 Ontario Center, Ontario, California 91764 (Toyota Arena) and
26 200 Convention Center Way, Ontario, California 91764 (Ontario Convention Center). Plaintiff typically
27 worked five days per week for 8 or more hours per day and at least about forty (40) hours per week. At
28 the time Plaintiff’s employment ended, she was earning \$20.00 per hour.

1 18. Defendant TOYOTA ARENA LLC is, on information and belief, a California Limited
2 Liability Company doing business in California, with its principal place of business in 2000 East
3 Convention Center Way, Ontario, California 91764 and operations at 4000 Ontario Center, Ontario,
4 California 91764 (Toyota Arena) and at all times hereinafter mentioned, is an employer whose
5 employees are engaged throughout this county, in the State of California. TOYOTA ARENA LLC
6 operates at least the event space in Southern California known as the Toyota Arena.”¹ Upon information
7 and belief, SMG ONTARIO, LLC is the parent company of TOYOTA ARENA LLC.

8 19. Defendant SMG ONTARIO ARENA, LLC is, on information and belief, a California
9 Limited Liability Company doing business in California, with its principal place of business in 2000
10 East Convention Center Way, Ontario, California 91764 and operations at the same address (Ontario
11 Convention Center) and at all times hereinafter mentioned, is an employer whose employees are engaged
12 throughout this county, in the State of California. SMG ONTARIO ARENA, LLC operates at least the
13 event space in Southern California known as the Ontario Convention Center.”² Upon information and
14 belief, SMG ONTARIO, LLC is the parent company of SMG ONTARIO ARENA, LLC.

15 20. Defendant SMG ONTARIO, LLC is, on information and belief, a California Limited
16 Liability Company doing business in California and at all times hereinafter mentioned, is an employer
17 whose employees are engaged throughout this county, in the State of California. SMG ONTARIO, LLC
18 operates multiple facilities—at least two event spaces—in California.” Upon information and belief,
19 SMG ONTARIO, LLC is the parent company of TOYOTA ARENA LLC and SMG ONTARIO
20 ARENA, LLC.

21 21. TOYOTA ARENA LLC; SMG ONTARIO ARENA, LLC; SMG ONTARIO, LLC; and
22 DOES 1-25 inclusive, are collectively referred herein as “Defendants.”

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

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27 ¹ <https://www.toyota-arena.com/events> (last accessed October 23, 2024).

28 ² <https://gocvb.org/calendar-of-events/category/ontario-convention-center/> (last accessed October 23, 2024).

1 23. The practices and policies which are complained of by way of this Complaint are
2 enforced throughout the State of California, including in Ontario.

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

18 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

19 25. At all times relevant herein, Defendants operate at least two arena-sized event spaces in
20 Ontario, California (Plaintiff worked at both), one known as the Toyota Arena and the other known as
21 the Ontario Convention Center. These event spaces accommodate thousands of attendees of a variety
22 of events including sports matches; ceremonies; performances including musicians, stand-up
23 comedians, et cetera; conferences, conventions, and exhibitions.

24 26. Upon information and belief, Defendants maintain their corporate operations
25 headquarters, including Human Resources in Ontario, California. Upon information and belief,
26 Defendants maintain a single, centralized Human Resources (“HR”) department at their operations
27 headquarters in Ontario, California, which is responsible for conducting Defendants’ recruiting and
28 hiring of new employees, as well as communicating and implementing Defendants’ company-wide

1 policies, including timekeeping policies, to employees throughout California. In particular, Plaintiff
2 and other Class Members, on information and belief, received the same standardized documents
3 and/or written policies upon hire. Upon information and belief, the use of standardized documents
4 and/or written policies, including new hire documents, indicate that Defendants dictated policies at the
5 corporate-level and implemented them company-wide, regardless of their employees' assigned
6 locations or positions. On information and belief, all transactions regarding hiring, terminations,
7 promotions, and pay increases, etc., relating to Defendants' California employees were submitted to
8 and processed by Defendants' HR department in Ontario, California.

9 27. Upon information and belief, Defendants' corporate records, business records, data, and
10 other information related to Defendants, including, in particular, HR records pertaining to Defendants'
11 California employees, are also maintained at Defendants' operations headquarters in Ontario,
12 California.

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

16 29. At all times relevant herein, Plaintiff was employed by Defendants as an hourly,
17 nonexempt employee in the position of Security Officer in California during the Class Period.

18 30. At all times relevant herein, Plaintiff and Class Members were assigned to and required
19 and permitted to work without pay while performing tasks including, but not limited to: security-related
20 functions; food-service; ushering; janitorial; ticketing; and merchandise sales. Plaintiff and Class
21 Members were not properly compensated for some of this work.

22 31. Plaintiff and Class Members have been instructed to work through their meal periods and
23 indeed, Plaintiff did not clock out for meal periods and continued to perform compensable work as a
24 daily practice.

25 32. Similarly, Plaintiff and Class Members have been instructed and return to work early
26 from their 30-minute meal periods without clocking back in until the 30 minutes had elapsed even
27 though they resumed work before then, which is all compensable time worked off the clock. Defendants
28 do not compensate Plaintiff and Class Members for this compensable time worked off the clock.

1 33. At all times relevant herein, Plaintiff and Class Members were assigned to and required
2 to work for periods lasting in excess of five hours and were not authorized nor permitted to take full-
3 length 30-minute, uninterrupted, off-duty meal periods. Plaintiff and Class Members were required to
4 perform compensable work during their meal periods while clocked out for their meal periods when
5 they were asked to resume work early before the 30-minute meal period had finished. Defendants
6 instructed Plaintiff and Class Members to only clock back in once their 30-minute meal periods had
7 elapsed, however. Accordingly, Plaintiff's and Class Members' meal periods were on-duty for which
8 Defendants failed to compensate Plaintiff and Class Members with (1) premium pay for meal periods
9 under 30 minutes and (2) the time worked that was on-duty during these meal periods.

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

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

15 36. At all times relevant herein, Defendants failed to authorize and permit Plaintiff and Class
16 Members to take full, net 10-minute rest breaks during the Class Period. At the direction of Defendants
17 and/or Defendants' knowledge and acquiescence, Plaintiff and Class Members routinely missed their
18 entire 10-minute rest breaks and had to continue working and not leave their posts. This practice was
19 regular. Accordingly, all rest breaks were not off duty and thus were noncompliant. Consequently,
20 Defendants should have compensated Plaintiff and Class Members with premium pay for noncompliant
21 rest breaks but failed to do so.

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

1 of 12 hours in one day or for all hours worked in excess of eight hours on the seventh consecutive day
2 of work in a workweek.

3 38. During the Class Period, Defendants require their hourly, nonexempt employees to
4 perform compensable work while off the clock, including submitting to compensable security checks
5 before entering the facility and upon exiting the facility (both while off the clock) and also performing
6 compensable work during their meal periods. Accordingly, during the Class Period, Defendants did not
7 provide minimum wages and overtime pay for this time worked off-the-clock that Plaintiff and the Class
8 endured.

9 39. Defendants regularly failed to pay their hourly, nonexempt employees the correct amount
10 of and rate for overtime wages. Defendants fail to record all hours as overtime by failing to record all
11 hours worked in a workday. This work, done primarily for the employer's benefit, is time that hourly,
12 nonexempt employees should be, but were not compensated for, both straight hours and overtime hours
13 worked in excess of 40 hours in a week, hours worked in excess of eight hours in a day, and for the first
14 eight hours worked on the seventh consecutive day of work in a workweek.

15 40. Supervisors employed by Defendants, including Plaintiff's location, had knowledge of
16 and required Plaintiff to perform compensable work pre- and post-shift and during meal periods.
17 Supervisors throughout California were aware that Plaintiff and others similarly situated were
18 performing work during these times without proper wages or overtime compensation.

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

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

27 43. At all times relevant herein, Defendants failed to pay Plaintiff and Class Members for all
28 hours worked. Thus, Defendants did not pay Plaintiff and Class Members minimum wages in

1 accordance with law and, because Class Members were not compensated for time worked during meal
2 periods, for shifts worked over eight hours in duration, Defendants also did not pay nonexempt
3 employees all overtime wages in accordance with law.

4 44. At all times relevant herein, Defendants failed to reimburse Plaintiff and Class Members
5 for expenses associated with (1) the use of their personal cell phones, which were required to remain in
6 contact with supervisors and coworkers during their shifts; (2) uniform laundering expenses because
7 Claimants were provided too few uniform shirts to last throughout the workweek without requiring extra
8 loads of laundry; and (3) mileage expenses for travel from one arena to the other. The mileage at issue
9 is based on Plaintiff and Class Members' miles traveled from one of Defendants' event spaces to the
10 other while on the clock using their personal vehicles.

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

16 46. Plaintiff has complied with the procedures for bringing suit specified in California Labor
17 Code section 2699.3. By letter dated October 8, 2024, Plaintiff gave written notice by certified mail to
18 the Labor and Workforce Development Agency ("LWDA"), and Defendants TOYOTA ARENA LLC;
19 SMG ONTARIO ARENA, LLC; and SMG ONTARIO, LLC of the specific provisions of the Labor
20 Code alleged to have been violated, including the facts and theories to support the alleged violations.

21 **V. CLASS ACTION AND REPRESENTATIVE ACTION ALLEGATIONS**

22 47. Plaintiff is a member of and seeks to be the representative for the Class of similarly
23 situated employees who all have been exposed to, have suffered, and/or were permitted to work under
24 Defendants' unlawful employment practices as alleged herein.

25 48. Plaintiff brings her first through eighth causes of action on behalf of herself and on behalf
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1 of the following Class³ of persons:

2 All current and former hourly non-exempt employees of TOYOTA
3 ARENA LLC; SMG ONTARIO ARENA, LLC; and SMG ONTARIO,
4 LLC in California at any time during the Class Period through the present.

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

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

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

- 16 a. Whether Defendants' policies and practices described in this Complaint were and are illegal;
17 b. Whether Plaintiff and each member of the Class were not paid minimum wage for each hour
18 worked or part thereof during which they were required to perform acts at the direction and
19 for the benefit of Defendants;
20 c. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and the
21 members of the Class who worked as hourly, nonexempt employees in California for the total
22 hours worked during the Class Period;
23 d. Whether Defendants have engaged in a common course of requiring or permitting their
24 hourly, nonexempt employees to not report all hours worked during the Class Period;

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28 ³ Plaintiff reserves the right under California Rules of Court, Rule 3.765, to amend or modify the Class description
with greater particularity or further division into subclasses or limitation to particular issues.

- 1 e. Whether Defendants have engaged in a common course of failing to maintain true and
2 accurate time records for all hours worked by their nonexempt employees;
- 3 f. Whether Defendants violated Labor Code section 226.7 and/or section 512 and engaged in a
4 pattern or practice of failing to provide timely, off-duty, 30-minute meal periods to Plaintiff
5 and members of the Class who worked as hourly, nonexempt employees in California during
6 the Class Period;
- 7 g. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the members
8 of the Class who worked as hourly, nonexempt employees in California during the Class
9 Period from taking full-length off-duty, 30-minute meal periods by imposing on-call
10 requirements and interruptions while clocked out that required employees to either forgo meal
11 periods entirely or return to work before 30 minutes had elapsed;
- 12 h. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the members
13 of the Class who worked as hourly, nonexempt employees in California during the Class
14 Period from taking full-length off-duty, 30-minute meal periods for their second meal periods
15 for shifts worked in excess of 10 hours but not more than 12 hours, where these second meal
16 periods were not waived by mutual consent;
- 17 i. Whether Defendants engaged in a pattern or practice of failing to properly compensate
18 Plaintiff and the members of the Class who worked as hourly, nonexempt employees in
19 California during the Class Period for missed, untimely, or on-duty meal periods as required
20 by California law;
- 21 j. Whether Defendants violated section 11 of the applicable California Industrial Welfare
22 Commission's ("IWC") Wage Order(s) by failing to provide Plaintiff and the members of the
23 Class who worked as hourly, nonexempt employees in California during the Class Period with
24 timely, off-duty, 30-minute meal periods;
- 25 k. Whether Defendants engaged in an unfair practice and violated California Business and
26 Professions Code, section 17200, *et seq.* by failing to provide Plaintiff and the members of
27 the Class who worked as hourly, nonexempt employees in California during the Class Period
28 with their statutory, off-duty, meal periods;

- 1 l. Whether Defendants maintained accurate time records of off-duty, 30-minute meal periods
2 taken by Plaintiff and members of the Class during the Class Period in accordance with section
3 7 of the applicable IWC Wage Order(s);
- 4 m. Whether Defendants engaged in a pattern or practice of failing to properly compensate
5 Plaintiff and the members of the Class who worked as hourly, nonexempt employees in
6 California during the Class Period for failing to provide full-length 10-minute rest breaks as
7 contemplated by California law for work periods in excess of four hours;
- 8 n. Whether Defendants failed to compensate, and therefore violated section 12 of the applicable
9 IWC Wage Order(s) and Labor Code section 226.7 by failing to provide 10-minute,
10 uninterrupted rest breaks as contemplated by California law for work periods in excess of four
11 hours;
- 12 o. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
13 overtime pay to Plaintiff and the Class for hours worked in excess of eight hours in a day;
- 14 p. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
15 double time for hours worked in excess of 12 hours in a day;
- 16 q. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable
17 IWC Wage Order(s) by failing to pay overtime pay to Plaintiff and the Class for hours worked
18 in excess of eight hours in a day;
- 19 r. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable
20 IWC Wage Order(s) by failing to pay overtime pay to Plaintiff and the Class for the first eight
21 hours worked in a day on the seventh consecutive day in a workweek and double time for all
22 hours worked in excess of eight hours on such days;
- 23 s. Whether Defendants violated Labor Code sections 218.5, 204, 1197, and 1198 due to failure
24 to compensate Plaintiff and the Class for those acts Defendants required Plaintiff and
25 members of the Class to perform for the benefit of Defendants;
- 26 t. Whether Defendants violated Labor Code section 226(a) by issuing inaccurate wage
27 statements to Plaintiff and members of the Class that failed to include payments for missed,
28 untimely, and/or on-duty meal periods among wages earned throughout the Class Period;

- u. Whether Defendants violated Labor Code section 226 by issuing inaccurate wage statements to Plaintiff and members of the Class that failed to accurately state the total hours worked and therefore, the total gross and net wages owed, to the detriment of Plaintiff and the Class;
- v. Whether Defendants have engaged in a common course of failing to pay nonexempt employees all wages due upon termination;
- w. Whether Defendants violated California Labor Code section 2802 by failing to reimburse Plaintiff and Class Members for all necessary business-related expenses they incurred;
- x. Whether Defendants have engaged in unfair competition by the above-listed conduct; and
- y. The nature and extent of class-wide injury and the measure of damages for the injury.

52. Typicality. Plaintiff's claims are typical of the members of the Class. Plaintiff, like other members of the Class working for Defendants in California, was subjected to Defendants' policy and practice of refusing to properly and fully pay premiums for meal period and rest break violations, overtime compensation, necessary business-related expenses, and all wages upon separation in violation of California wage and hour laws. Plaintiff's job duties were and are typical of those of other class members who worked for Defendants in California.

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

54. Superiority of Class Mechanism. The class action mechanism is superior to any alternatives that might exist for the fair and efficient adjudication of these claims. Proceeding as a class action would permit the large number of injured parties to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort and judicial resources. A class action is the only practical way to avoid the potentially inconsistent results that numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means by which Plaintiff can effectively litigate against a large, well-represented corporate defendant like Defendants. In the absence of a class action, Defendants would be unjustly enriched because they would

1 be able to retain the benefits and fruits of the many wrongful violations of the California state laws.
2 Numerous repetitive individual actions would also place an enormous burden on the courts as they are
3 forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and
4 over again.

5 **VI. FIRST CAUSE OF ACTION**

6 **Failure to Provide Meal Periods**

7 **in Violation of Cal. Labor Code §§ 512 and 226.7; IWC Wage Order No. 10-2001, § 11**

8 **(Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)**

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

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

14 57. IWC Wage Order No. 10-2001 (11)(A) provides, in pertinent part: "No employer shall
15 employ any person for a work period of more than five (5) hours without a meal period of not less than
16 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work
17 the meal period may be waived by mutual consent of the employer and the employee."

18 58. Section 512(k) of the California Labor Code provides, in pertinent part, that: "An
19 employer may not employ an employee for a work period of more than five hours per day without
20 providing the employee with a meal period of not less than 30 minutes, except that if the total work period
21 per day of the employee is no more than six hours, the meal period may be waived by mutual consent of
22 both the employer and employee. An employer may not employ an employee for a work period of more
23 than 10 hours per day without providing the employee with a second meal period of not less than 30
24 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be
25 waived by mutual consent of the employer and the employee only if the first meal period was not waived."

26 59. Due to short staffing and other considerations, Defendants enforce practices that
27 effectively require Plaintiff and other Class Members to remain at work or else on call, and therefore on-
28 duty during their meal periods as a daily practice. In effect, these policies and practices cause Plaintiff

1 and other Class Members to have noncompliant meal periods, and therefore, constitute a violation of
2 Labor Code section 226.7(a).

3 60. Defendant enforces practices that effectively require Plaintiff and other Class Members to
4 perform work during their meal periods, the effects of which Defendant could have mitigated by
5 increasing staff to at least provide coverage for other employees. However, Defendant instead chose to
6 instruct Plaintiff and other Class Members to remain at their posts, to remain at work or else on call
7 during their meal periods and to perform work during their meal periods. In effect, these policies and
8 practices cause Plaintiff and other Class Members to remain on-duty during meal periods, and therefore,
9 constitute a failure on Defendants' part to provide compliant meal periods.

10 61. Defendants also did not schedule second meal periods and had no policy for permitting
11 and authorizing Plaintiff and other employees to take second 30-minute meal periods on days they
12 worked in excess of 10 hours in one day. For example, during her employment, Plaintiff worked over
13 10 hours in a day but did not receive a second complaint meal period on those days, nor did she consent
14 to waiving them. Because of Defendants' companywide practice of denying hourly, nonexempt
15 employees second 30-minute meal periods, Plaintiff and other Class Members were not relieved of all
16 duties such that they could take full-length second 30-minute meal periods and instead had to work during
17 a portion of that time allotted for meal periods. Accordingly, Defendants failed to provide all meal
18 periods in violation of California Labor Code sections 226.7 and 512. Defendants knew or should have
19 known that their companywide adoption of the requirement that employees skip their meal period without
20 executing waivers to do so would result in a failure to provide Plaintiff and other Class Members with
21 full and timely meal periods as required by the applicable IWC Wage Order(s) and Labor Code sections
22 226.7 and 512(a). Furthermore, Plaintiff and other Class Members did not sign valid meal period waivers
23 on days that they were entitled to meal periods but were not relieved of all duties.

24 62. Moreover, Defendants engaged in a systematic, companywide policy to not pay meal
25 period premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members
26 one additional hour of premium pay for missed meal periods, Defendants did not pay Plaintiff and other
27 Class Members at the correct rate of pay for premium wages because Defendants failed to include all
28 forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the

1 regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other Class Members premium
2 pay for missed meal periods, it did so at a lower rate than required by law. As a result, Defendants failed
3 to provide Plaintiff and other Class Members compliant meal periods and failed to pay the full meal
4 period premiums due, in accordance with California Labor Code sections 204, 210, 226.7, and 512.

5 63. By their actions in requiring their employees to work during a portion of their meal periods
6 and/or their failure to relieve nonexempt, hourly, nonexempt employees of their duties for their off-duty
7 meal periods, Defendants have violated California Labor Code section 226.7 and section 11 of IWC
8 Wage Order No. 10-2001 and is liable to Plaintiff and the Class.

9 64. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived
10 of timely off-duty meal periods and are entitled to recovery under Labor Code section 226.7(b) and
11 section 11 of IWC Wage Order No. 10-2001, in the amount of one additional hour of pay at the
12 employee's regular rate of pay for each work period during each day in which Defendants failed to
13 provide their hourly, nonexempt employees with timely, statutory, off-duty meal periods.

14 **VII. SECOND CAUSE OF ACTION**

15 **Failure to Provide Rest Breaks**

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

17 **IWC Wage Order No. 10-2001, § 12**

18 **(Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)**

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

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

24 67. IWC Wage Order No. 10-2001, section (12)(A) provides, in pertinent part: "Every
25 employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall
26 be in the middle of each work period. The authorized rest period time shall be based on the total hours
27 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
28 However, a rest period need not be authorized for employees whose total daily work times is less than

1 three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
2 there shall be no deduction from wages.”

3 68. IWC Wage Order No. 10-2001, section (12)(B) provides, “If an employer fails to provide
4 an employee with a rest period in accordance with the applicable provisions of this order, the employer
5 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
6 workday that the rest period is not provided.”

7 69. As alleged herein, Defendants failed to authorize and permit compliant rest breaks during
8 the Class Period. Plaintiff and members of the Class were routinely required to work during their entire
9 rest breaks at the direction of Defendants and/or with Defendants’ knowledge and acquiescence.

10 70. Defendant enforces practices that effectively require Plaintiff and other Class Members to
11 remain at work, and therefore on-duty during their rest breaks. In effect, these policies and practices cause
12 Plaintiff and other Class Members to have noncompliant rest breaks, and therefore, constitute a failure
13 on Defendants’ part to provide compliant rest breaks.

14 71. Defendant enforces practices that effectively require Plaintiff and other Class Members to
15 perform work during their rest breaks, the effects of which Defendant could have mitigated by increasing
16 staff to at least provide coverage for other employees. However, Defendant instead chose to instruct
17 Plaintiff and other Class Members to continue working or else remain on call during their rest breaks and
18 to perform work during their rest breaks. In effect, these policies and practices cause Plaintiff and other
19 Class Members to have noncompliant rest breaks, and therefore, constitute a violation of Labor Code
20 section 226.7(a).

21 72. Furthermore, as with meal periods, Defendants’ staffing and job-assignment policies
22 required employees to forgo their 10-minute rest breaks, entirely preventing Plaintiff and Class Members
23 from being relieved of all duty in order to take compliant rest breaks; these practices forced Plaintiff and
24 other Class Members to remain on duty for part of their rest breaks. As a result, Plaintiff and Class
25 Members would work shifts in excess of 3.5 hours without the net 10-minute rest breaks to which they
26 were entitled. More specifically, throughout her employment, during 8-hour or longer shifts, Plaintiff
27 and Class Members regularly worked during the entirety of their 10-minute rest breaks by using that time
28 to continue performing work for Defendants.

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

10 74. Defendants' unlawful conduct alleged herein occurred in the course of employment of
11 Plaintiff and all others similarly situated and such conduct has continued through the filing of the initial
12 Complaint.

13 75. As a direct and proximate result of Defendants' unlawful action, Plaintiff and the Class
14 have been deprived of full-length 10-minute rest breaks and/or were not paid for rest breaks taken during
15 the Class Period and are entitled to recovery under Labor Code section 226.7(b) in the amount of one
16 additional hour of pay at the employee's regular rate of compensation for each work period during each
17 day in which Defendants failed to provide employees with compliant and/or paid rest breaks.

18 **VIII. THIRD CAUSE OF ACTION**

19 **Failure to Pay Minimum Wages**

20 **Upon Payment of Wages in Violation of Cal. Labor Code §§ 510, 1194, 1194.2,**

21 **and 1197; IWC Wage Order No. 10-2001, § 4**

22 **(Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)**

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

25 77. Labor Code section 510 provides in relevant part: "[e]ight hours of labor constitutes a
26 day's work. Any work in excess of eight hours in one work day and any work in excess of 40 hours in
27 any one workweek and the first eight hours worked on the seventh day of work in any one workweek
28 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an

1 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than
2 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
3 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay
4 of an employee.”

5 78. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
7 minimum so fixed is unlawful.”

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

10 80. Labor Code section 1194, subdivision (a) provides: “Notwithstanding any agreement to
11 work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime
12 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the
13 full amount of this minimum wage or overtime compensation, including interest thereon, reasonable
14 attorney’s fees, and costs of suit.”

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

19 82. Pursuant to IWC Wage Order No. 10-2001, section (2)(H), at all times material hereto,
20 “hours worked” includes “the time during which an employee is subject to the control of an employer,
21 and includes all the time the employee is suffered or permitted to work, whether or not required to do
22 so.”

23 83. At all times relevant during the liability period, under the provisions of IWC Wage Order
24 No. 10-2001, Plaintiff and each Class Member should have received not less than the minimum wage in
25 a sum according to proof for the time worked, but not compensated.

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

1 85. Pursuant to Labor Code section 1194, Plaintiff and Class Members are also entitled to
2 their attorneys' fees, costs, and interest according to proof.

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

5 87. As described above, Defendants required Plaintiff and other Class Members to work
6 before and after their shifts while clocked out and during their meal periods also while clocked out.
7 Defendants instructed Plaintiff and other Class Members to clock back in from their meal periods only
8 once their 30-minute meal periods had elapsed.

9 88. This off-the-clock time primarily occurred because Plaintiff and other Class Members
10 were required, while clocked out, to submit to security checks before entering the facility and after
11 leaving the facility. Defendant enforces practices that effectively require Plaintiff and other Class
12 Members to perform work during their off-the-clock meal periods, the effects of which Defendant could
13 have mitigated by increasing staff to at least provide coverage for other employees. However, Defendant
14 instead chose to instruct Plaintiff and other Class Members to submit to security checks—which
15 constitutes compensable work—before and after shifts while clocked out and also to continue working
16 or else remain on call during their meal periods and to work through their meal periods while off the
17 clock as a regular daily practice. In effect, these policies and practices cause Plaintiff and other Class
18 Members to remain on-duty during meal periods, and therefore, constitute a failure on Defendants' part
19 to provide minimum wages for all hours worked and premium compensation.

20 89. Also, Defendants did not pay at least minimum wages for off-the-clock hours that
21 qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify
22 for overtime premium pay, Defendants did not pay at least minimum wages for those hours worked off-
23 the-clock.

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

27 91. As a direct and proximate result of Defendants' violation of Labor Code sections 510 and
28 1197, Plaintiff and other Class Members have suffered irreparable harm and money damages entitling

1 them to damages, injunctive relief or restitution. Plaintiff, on behalf of herself and on behalf of the Class,
2 seeks damages and all other relief allowable including all wages due while working as Defendants'
3 hourly, nonexempt employees, attorneys' fees, liquidated damages, prejudgment interest, and as to those
4 employees no longer employed by Defendants, waiting time penalties pursuant to Labor Code sections
5 200, *et seq.*

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

9 **IX. FOURTH CAUSE OF ACTION**

10 **Failure to Pay Overtime Wages**

11 **in Violation of Cal. Labor Code §§ 510 and 1194, IWC Wage Order No. 10-2001, § 3**

12 **(Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)**

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

15 94. Pursuant to section 3 of IWC Wage Order No. 10-2001; California Code of Regulations,
16 Title 8, Chapter 5, section 11040, section 12; and Labor Code sections 200, 204, 226, 500, 510, 512,
17 1194, and 1198, Defendants were required to compensate Plaintiff and members of the Class for all
18 overtime hours worked, which is calculated at one and one-half (1½) times the regular rate of pay for
19 hours worked in excess of eight hours per day and/or 40 hours per week, and for the first eight hours on
20 the seventh consecutive work day, with double time after eight hours on the seventh day of any work
21 week, or after 12 hours in any work day.

22 95. Plaintiff and members of the Class were and are nonexempt employees entitled to the
23 protections of IWC Wage Order No. 10-2001; California Code of Regulations, Title 8, section 11040,
24 section 12; and Labor Code sections 200, 226, 500, 510, 512, 1194, and 1198. In addition, during the
25 Class Period, Plaintiff and other members of the Class consistently worked five days per week for shifts
26 of eight hours or more. During the course of Plaintiff's employment, and during the course of the
27 employment of the members of the Class, Defendants failed to compensate Plaintiff and the Class for
28 overtime hours worked as required under the aforementioned Labor Codes and Regulations.

1 96. Under the aforementioned Wage Orders, statutes, and regulations, Plaintiff and members
2 of the Class are entitled to one and one-half (1½) times and/or double their regular rate of pay for overtime
3 work performed during the four years preceding the filing of this Complaint, based on appropriate
4 calculations of the “total remuneration” for each workweek.

5 97. In violation of state law, Defendants have knowingly and willfully refused to perform
6 their obligations to compensate Plaintiff and the Class for all wages earned and all hours worked. As a
7 direct result, Plaintiff and the Class have suffered, and continue to suffer, substantial losses related to the
8 use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys’ fees in seeking
9 to compel Defendants to fully perform their obligations under state law, all to their respective damage in
10 amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this
11 Court.

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

17 99. Defendants’ conduct described herein violates IWC Wage Order No. 10-2001; California
18 Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510,
19 512, and 1198. Therefore, pursuant to Labor Code sections 200, 203, 204, 226, 226.7, 512, 558, and
20 1194, Plaintiff and the Class are entitled to recover the unpaid balance of overtime compensation
21 Defendants owes Plaintiff and the Class, plus interest, penalties, attorneys’ fees, expenses, and costs of
22 suit.

23 **X. FIFTH CAUSE OF ACTION**

24 **Failure to Furnish Timely and Accurate Wage Statements**

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

26 **(Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)**

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

1 101. Labor Code section 226(a) sets forth reporting requirements for employers when they pay
2 wages, as follows: “Every employer shall . . . at the time of each payment of wages, furnish his or her
3 employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked
4 by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the
5 employee is paid on a piece-rate basis” Section (e) provides: “An employee suffering injury as a
6 result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled
7 to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
8 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
9 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an
10 award of costs and reasonable attorney’s fees.”

11 102. Defendants failed to accurately record all hours worked, including overtime hours worked
12 by Plaintiff and Class Members.

13 103. Defendants’ wage statements are noncompliant in that (1) Plaintiff and Class Members’
14 wage statements read “SMG Toyota Arena” rather than providing the correct legal name of Defendant—
15 Toyota Arena LLC—and (2) Plaintiff’s wage statements are inaccurate because Defendants failed to pay
16 Plaintiff and Class Members all of their meal period and rest break premiums for noncompliant meal
17 periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during,
18 and after their shifts and for all overtime wages due.

19 104. Additionally, Defendants failed to accurately record all rates of pay in effect during the
20 pay period.

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

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

27 ///

28 ///

1 **XI. SIXTH CAUSE OF ACTION**

2 **Failure to Pay All Wages Owed Upon Separation**

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

4 **(Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)**

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

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

9 109. Labor Code section 202 provides, in relevant part, “[I]f an employee not having a written
10 contract for a definite period quits his or her employment, his or her wages shall become due and payable
11 not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her
12 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

13 110. Section 203 of the California Labor Code provides that if an employer willfully fails to
14 pay compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the
15 employer is liable for penalties in the form of continued compensation up to 30 workdays.

16 111. At all times relevant during the liability period, Plaintiff and the other members of the
17 Class were employees of Defendants covered by Labor Code section 203. Pursuant to Labor Code
18 section 201, upon Plaintiff’s and the Class Members’ separation dates, Defendants were required to pay
19 Plaintiff and the Class Members all wages earned.

20 112. Defendants failed to pay Plaintiff her final payment of all wages within the requisite time
21 based on the circumstances of her separation—within 72 hours of her resignation.

22 113. At the time of Plaintiff’s and the Class Members’ respective separation dates, Plaintiff and
23 Class Members had unpaid wages. Defendants willfully failed to pay Plaintiff and other members of the
24 Class who are no longer employed by Defendants for their uncompensated hours, uncompensated
25 overtime, and missed, untimely, or on-duty meal periods and rest breaks, upon their termination or
26 separation from employment with Defendants as required by California Labor Code sections 201 and
27 202. Thus, in violation of Labor Code section 201, Defendants failed to pay Plaintiff and the Class
28 Members the full amount of wages due and owing them, in amounts to be proven at the time of trial, but

1 in excess of the jurisdictional minimum of this Court.

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

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

10 **XII. SEVENTH CAUSE OF ACTION**

11 **Failure to Reimburse All Necessary, Business-Related Expenses**

12 **in Violation of Cal. Labor Code § 2802**

13 **(Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)**

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

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

20 118. During the applicable statutory period, Plaintiff and Class Members incurred necessary
21 expenditures and losses in direct consequence of the discharge of their employment duties and their
22 obedience to the directions of Defendants, Defendants did not reimburse Plaintiff and Class Members for
23 these expenditures or losses. Such expenses include, but are not limited to, expenses associated with (1)
24 the use of their personal cell phones, which were required to remain in contact with supervisors and
25 coworkers during their shifts; (2) uniform laundering expenses because Claimants were provided too few
26 uniform shirts to last throughout the workweek without requiring extra loads of laundry; and (3) mileage
27 expenses for travel from one arena to the other.

28 119. Defendants have failed to fully reimburse Plaintiff and Class Members for necessary

1 business-related expenses and losses.

2 120. Plaintiff and Class Members are entitled to recover their necessary unreimbursed
3 business-related expenses and losses incurred during the course and scope of their employment, plus
4 interest accrued from the date on which the employee incurred the necessary expenditures at the same
5 rate as judgments in civil actions in the State of California, pursuant to California Labor Code section
6 2802.

7 **XIII. EIGHTH CAUSE OF ACTION**

8 **Violations of California's Unfair Competition Law ("UCL"),**

9 **California Business and Professions Code §§ 17200, *et seq.***

10 **(Brought by Plaintiff on Behalf of Herself and the Class Against All Defendants)**

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

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

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

18 124. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the
19 statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to, failure
20 to pay Class Members wages and compensation they earned through labor provided, and failing to
21 otherwise compensate Class Members and also failure to reimburse all necessary, business-related
22 expenses, as alleged herein. Defendants' fraudulent conduct includes, but is not limited to, issuing wage
23 statements containing false and/or misleading information about the time the Class Members worked and
24 the amount of wages or compensation due.

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

28 126. Plaintiff has standing to assert this claim because she has suffered injury in fact and has

1 lost money as a result of Defendants' conduct.

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

6 **XIV. NINTH CAUSE OF ACTION**

7 **For Civil Penalties Pursuant to California's Private Attorneys General Act of 2004 ("PAGA"),**
8 **§§ 2698, *et seq.*, for Violations of California Labor Code Sections**
9 **(Brought by Plaintiff on Behalf of Herself and the General Public Against All Defendants)**

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

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

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

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

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

- 27 a. The aggrieved employee shall give written notice ("Employee's Notice") by online filing
28 to the LWDA and by certified mail to the employer of the specific provisions of the

California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;

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

133. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, including Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those listed in section 2699.5 after the following requirements have been met:

- a. The aggrieved employee shall give written notice by online filing ("Employee's Notice") to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The Employee's Notice filed with the LWDA is accompanied by a \$75 filing fee; and
- c. The employer may cure the alleged violation within 33 calendar days of the postmark date of the Employee's Notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

134. On October 8, 2024, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's notice to the LWDA was accompanied by the \$75 filing fee. A

1 true and correct copy of Plaintiff's written notice to the LWDA; TOYOTA ARENA LLC; SMG
2 ONTARIO ARENA, LLC; and SMG ONTARIO, LLC dated October 8, 2024 is attached hereto as
3 "**Exhibit 1**" and is incorporated herein.

4 135. As of the filing date of the initial complaint, over 65 days have passed since Plaintiff sent
5 the LWDA Notice described above, and the LWDA has not responded that it intends to investigate
6 Plaintiff's claims. Defendants have not given notice that it has cured the alleged violations set forth in
7 this Complaint. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code
8 section 2699.3(a) and (c) to recover civil penalties against all defendants, in addition to other remedies,
9 for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d),
10 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

- 25 a. Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage
26 Order(s) for Defendants' failure to provide Plaintiff and other Class Members with
27 compliant meal periods and/or rest breaks, as set forth above;
- 28 b. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable

IWC Wage Order(s) for Defendants' failure to compensate Plaintiff and other Class Members with at least minimum wages for all hours worked as set forth above;

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

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

e. Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order(s) for failure to maintain payroll records. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order(s). Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order(s), employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants failed, on a companywide basis, to keep records of meal period start and stop times for Plaintiff and other non-party aggrieved employees in violation of section 1198. California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments" During the relevant time period, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party aggrieved employees showing

the daily hours they actually worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked;

- f. Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth above;
- g. Violations of Labor Code section 204 for failure to pay all earned wages during employment as set forth above;
- h. Violations of Labor Code section 2802 for failure to reimburse employees for all necessary, business-related expenses incurred during employment as set forth above;
- i. Plaintiff and other non-party aggrieved employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereupon, pursuant to Labor Code section 2699(f)-(g); and
- j. Any and all additional applicable civil penalties and sums as provided by the California Labor Code and/or other relevant statutes.

139. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party aggrieved employees, and the State of California against all defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

XV. PRAYER FOR RELIEF

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

1. An order that this action may proceed and may be maintained as a class action;

2. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member on their minimum wage claims;
3. All unpaid overtime wages due to Plaintiff and each Class Member;
4. One hour of wages due to Plaintiff and each Class Member for each work period of more than four hours when they did not receive an uninterrupted 10-minute rest break;
5. One hour of wages due to Plaintiff and each Class Member for each work period of more than five hours when they did not receive an uninterrupted 30-minute meal period;
6. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member on their minimum wage claim;
7. For restitution of all monies due to Plaintiff and members of the Class and disgorged profits from the unlawful business practices of Defendants;
8. For waiting time penalties pursuant to Labor Code section 203;
9. Statutory penalties under Labor Code section 226(e);
10. For reimbursement of business expenses under California Labor Code section 2802;
11. For penalties pursuant to Labor Code sections 204, 206, 210, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1194.2, 1197.1, 1198, and 2802;
12. For injunctive relief enjoining Defendants from engaging in the unlawful and unfair business practices complained of herein;
13. For all civil penalties permitted by California's Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, based on all the alleged statutory violations set forth in this Complaint;
14. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;
15. Prejudgment interest at the maximum legal rate on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;
16. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, 1194, 2699(g), and Code of Civil Procedure section 1021.5;
17. Accounting of Defendants' records for the liability period;
18. General, special, and consequential damages, to the extent allowed by law; and
19. All such other and further relief that the Court may deem just and proper.

1 Dated: December 13, 2024

ABRAMSON LABOR GROUP

2
3 By: 
4 Cheryl A. Kenner

5 Attorneys for Plaintiff TONYA BENENATI
6 and all others similarly situated and aggrieved
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff TONYA BENENATI, on behalf of herself and all others similarly situated and aggrieved,
3 hereby demands a jury trial with respect to all issues triable of right by jury.
4

5 Dated: December 13, 2024

ABRAMSON LABOR GROUP

6
7 By: Cheryl Kenner
8 Cheryl A. Kenner

9 Attorneys for Plaintiff TONYA BENENATI
10 and all others similarly situated and aggrieved
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EXHIBIT 1

October 8, 2024

VIA ONLINE SUBMISSION

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

VIA CERTIFIED MAIL

SMG Ontario, LLC
Attn: Legal Department
4000 Ontario Center
Ontario, CA 91764

SMG Ontario, LLC
Attn: Legal Department
2000 E. Convention Center Way
Ontario, CA 91764

SMG Ontario Arena, LLC
Attn: Legal Department
2000 E. Convention Center Way
Ontario, CA 91764

Toyota Arena LLC
Attn: Legal Department
2000 E. Convention Center Way
Ontario, CA 91764

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

To: The California Labor and Workforce Development Agency; Toyota Arena LLC;
SMG Ontario Arena, LLC; SMG Ontario, LLC

From: Ms. Tonya Benenati, on behalf of herself and all other current and former hourly
nonexempt employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by former employee Ms. Tonya Benenati (“Ms. Benenati”) to seek compensation and all other available relief, including civil penalties on her behalf and on the behalf of all those similarly aggrieved (collectively with Ms. Benenati, “Claimants”) who have been injured by Toyota Arena LLC; SMG Ontario Arena, LLC; and SMG Ontario, LLC’s (collectively, “SMG”) violations of the California Labor Code. Ms. Benenati, on behalf of herself and all other similarly aggrieved current and former hourly nonexempt employees

of SMG, intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Factual Statement:

SMG operates two arena-sized event spaces in Southern California, with both locations in Ontario, California known as the Toyota Arena and the Ontario Convention Center. The types of events accommodate thousands of attendees of sports matches; ceremonies; performances including musicians, stand-up comedians, et cetera; conferences, conventions, and exhibitions.

Claimant Ms. Benenati worked for SMG at both the Toyota Arena and the Ontario Convention Center as an hourly, nonexempt employee in the position of Security Officer, earning \$20.00 per hour from approximately April 24, 2021 through approximately October 27, 2023. Ms. Benenati, on behalf of herself and all other similarly aggrieved current and former employees in California in various positions, are or were engaged in providing a variety of event-related services to attendees at one of SMG's event spaces, Claimant and other hourly, nonexempt employees, collectively, "hourly nonexempt employees," are or were assigned to and required to suffer and permitted to work—some without pay—while performing tasks collectively including, but not limited to, security-related functions; food-service; ushering; janitorial; ticketing; and merchandise sales.

Claimant Ms. Benenati regularly worked five (5) days per week for 8 hours or more hours per day. During the entire course of her employment, SMG failed to provide Ms. Benenati and continues to fail to provide those similarly aggrieved with some overtime pay and compliant meal periods and rest breaks. SMG has also failed to pay minimum wages to Ms. Benenati and other hourly, nonexempt employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 10-2001. As a consequence, SMG has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission ("IWC") Wage Orders, including but not limited to, IWC Wage Order No. 10-2001. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, SMG has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

SMG has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, SMG has failed and continues to fail to provide timely, accurate wage statements to Ms. Benenati and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by SMG, including Ms. Benenati, SMG has violated Labor Code section 203 by failing to pay all wages due upon separation. SMG has failed and continues to fail to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for (1) cell phone expenses; (2) uniform laundering expenses, and (3) mileage expenses for travel from one arena to the other, in violation of Labor Code section 2802. Ms. Benenati is informed and believes that such violations are ongoing, systematic, and continuous. Ms. Benenati intends to bring an action

against SMG under the Private Attorneys General Act (“PAGA”) to recover wages and penalties as provided by California law.¹

Theories of Labor Code Violations and Remedies:

Claimant Ms. Benenati was employed by SMG from approximately April 24, 2021 through approximately October 27, 2023 as a Security Officer. For a period of at least four (4) years prior to October 2024, but for our purposes here, one (1) year prior, SMG has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. SMG has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and section 4 of IWC Wage Order No. 10-2001. First, Defendant Claimants worked a substantial amount of time while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred because Claimants were required to submit to personal searches both before entering and upon exiting the arena, all times of which they were not clocked in for work. Claimants’ off-the-clock time was never subsequently added and, therefore, uncompensated. Accordingly, Claimants were not paid for that time spent working off the clock. Second, Defendant enforces practices that effectively require Claimants to perform work during their meal periods (assuming SMG auto-deducts time for meal periods) and rest breaks, the effects of which Defendant could have mitigated by increasing staff to at least provide coverage for other employees. However, Defendant instead chose to instruct Claimants to remain on call, and therefore on-duty, during their meal periods and rest breaks and to work through their rest breaks when staff were in demand. In effect, these policies and practices cause Claimants to remain on-duty during meal periods and rest breaks, and therefore, constitute a failure on SMG’s part to provide compliant meal periods and rest breaks. With that, SMG’s corresponding failure to provide premium pay at the correct regular rate, if any premiums were paid at all, in lieu of compliant meal periods and rest breaks constitutes SMG’s failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. SMG’s failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further

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

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

detail below, also constitutes a failure to pay minimum wages to Claimants. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 10-2001.

Claimants were at all times entitled to unpaid off-duty, uninterrupted **meal periods**. As explained in the preceding paragraph, SMG failed to authorize and permit timely, full-length meal periods for Ms. Benenati and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 10-2001. Ms. Benenati and Claimants simply were not able to take their meal periods, which was because there was too few staff to be able to provide such relief. As a result, SMG did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. Claimants also worked 12 hours without a second meal period despite not signing valid second-meal period waivers. Nonetheless, SMG did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. Accordingly, since SMG required Ms. Benenati and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, section 20 of IWC Wage Order No. 10-2001, and 2699(f).

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

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, SMG was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Ms. Benenati and Claimants regularly worked overtime hours. SMG has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, SMG failed to provide Ms. Benenati and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 10-2001, section 3.

Pursuant to Labor Code sections 201–203, Claimants who have since separated from SMG, including Ms. Benenati, were entitled to be paid all **wages owed upon separation** within the statutorily allotted time—immediately (resignation with notice and termination) or within seventy-two (72) hours (resignation without notice). Claimants, including Ms. Benenati, did not receive her final pay of all wages within the requisite time based on the circumstances of her separation nor did she receive the wages SMG did pay based on SMG’s prior failings to pay all wages owed every pay period, including but not limited to minimum wage, overtime, and meal and rest premiums owed and for all hours worked, as explained above. SMG paid Ms. Benenati her final wages at least a week after her resignation, not within 72 hours of resigning.

Claimants were at all times entitled to be provided timely and accurate **wage statements** from SMG pursuant to Labor Code section 226. First, Ms. Benenati’s wage statements read “SMG Toyota Arena” rather than providing the correct legal name of Defendant—Toyota Arena LLC. Second, because SMG failed to pay Claimants all of their meal period and rest break premiums for noncompliant meal periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants’ wage statements were inaccurate in reflecting meal period and rest break premiums owed, overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants’ wage statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by SMG for all necessary, **business-related expenses** they incurred in executing their duties for SMG. California Labor Code section 2802 provides that “An employer shall indemnify her or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her or her duties, or of her or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” SMG, however, has failed to fully reimburse Ms. Benenati and Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for the expenses associated with (1) the use of their personal cell phones, which were required to remain in contact with supervisors and coworkers during their shifts; (2) uniform laundering expenses because Claimants were provided too few uniform shirts to last throughout the workweek without requiring extra loads of laundry; and (3) mileage expenses for travel from one arena to the other. Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

SMG’s uniform failure to pay minimum and overtime wages, failure to authorize and permit full-length, off-duty meal periods and rest breaks or pay Claimants adequate premium compensation in lieu thereof, failure to keep accurate time records, failure to furnish timely and accurate wage statements, failure to reimburse all necessary, business-related expenses, and failure to pay all wages owed upon separation all violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1182.12, 1194, 1197, and 2802 and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys’ fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Ms. Benenati, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against SMG for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 2802.

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

Sincerely,

ABRAMSON LABOR GROUP

A handwritten signature in black ink that reads "Cheryl Kenner". The signature is written in a cursive, flowing style.

Cheryl A. Kenner

3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

5 I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and
6 not a party to the within action; my business address is 1700 West Burbank Boulevard, Burbank,
7 California 91506.

8 On December 13, 2024, I served the foregoing document, described as **FIRST AMENDED**
9 **CLASS ACTION AND PAGA REPRESENTATIVE ACTION COMPLAINT** on all interested
10 parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

11 **TOYOTA ARENA LLC; SMG**
12 **ONTARIO ARENA, LLC; SMG**
13 **ONTARIO, LLC**
14 c/o Frank J. Lizarraga Jr.
15 2000 E. Convention Center Way
16 Ontario, CA 91764

Agent for service of process for TOYOTA
ARENA LLC; SMG ONTARIO ARENA, LLC;
and SMG ONTARIO, LLC

17 ☒ **(BY MAIL)** I placed such envelope, with postage thereon prepaid, in the United States mail at
18 Los Angeles, California. I am "readily familiar" with the firm's practice of collecting and
19 processing correspondence for mailing. Under that practice, it would be deposited with the U.S.
20 Postal Service on that same day, with postage thereon fully prepaid, at Burbank, California, in the
21 ordinary course of business. I am aware that, on motion of the party served, Service is presumed
22 invalid if the postal cancellation or postage meter date is more than one day after the date of
23 deposit for mailing in this affidavit.

24 ☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the attorney at
25 the offices of the addressee.

26 ☐ **(BY FED EX)** I placed such envelope in a designated Federal Express pick-up box at Santa
27 Monica, California.

28 ☐ **(VIA CASE ANYWHERE)** I caused such documents described herein to be uploaded
electronically onto the website www.caseanywhere.com per a mutual agreement between the
parties. I uploaded the above-entitled document(s) with the understanding that all parties will
have access and be able to download said documents.

☐ **(BY ELECTRONIC MAIL)** I sent such document via electronic mail to the email(s) noted
above.

☒ **(STATE)** I declare, under penalty of perjury under the laws of the State of California, that the
above is true and correct.

Executed on December 13, 2024, at Burbank, California.

Cheryl Kenner
Cheryl A. Kenner