

October 4, 2024

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Private Attorneys General Act
Attn. PAGA Administrator
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San Francisco, CA 94102

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**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
*Aguilar v. EC Group Inc dba Dennis & Leen dba Formations, et al.***

Gentlepersons:

This office represents Plaintiff Jessica Aguilar (“Plaintiff”) and other similarly situated aggrieved non-exempt employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, EC Group Inc dba Dennis & Leen dba Formations; and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiff’s Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in Los Angeles Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.



We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff's class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked.

Additionally, Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically, Defendants had a uniform policy and practice of automatically deducting meal periods from timekeeping entries rather than recording the times meal periods were actually taken, and such deductions were done to the detriment of Aggrieved Employees in that the practice resulted in timekeeping records that did not account for all of the hours and minutes they actually worked. These inaccurate time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Because of the foregoing understatement of hours worked, Defendants also failed to pay Plaintiff and Aggrieved Employees proper overtime wages. Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants had a common policy and/or practice of denying Plaintiff and Aggrieved Employees proper meal periods. Specifically, Plaintiff and Aggrieved Employees were required to work through their meal periods which they were consistently denied. Furthermore, Defendants had a consistent policy and practice of automatically deducting meal periods from timekeeping entries rather than recording the times meal periods were actually taken, and such deductions were done to the detriment of Aggrieved Employees in that the practice resulted in timekeeping entries that did not account for all of the hours and minutes actually worked by Aggrieved Employees. Also, what meal periods Plaintiff and Aggrieved Employees did take, were consistently less than 30 minutes, taken well after their fifth consecutive hour of work, and were on-duty due to Defendants' policy and practice of interrupting meal breaks with work demands, all in violation of Labor Code and applicable Wage Orders. Similarly, when Aggrieved Employees were required to work in excess of ten (10) hours



a day, Defendants failed to provide a second meal compliant period, in violation of Labor Code and applicable Wage Orders.

Defendants have consistently failed to provide Plaintiff and Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Plaintiff and Aggrieved Employees were required to work through their rest breaks which they were continuously denied. What rest breaks were taken were on-duty due to Defendants' policy and practice of interrupting rest breaks with work demands.

Defendants consistently failed to issue accurate itemized wage statements in writing as required by Labor Code § 226(a). Specifically, the wage statements provided to Aggrieved Employees failed to list the rates of pay and hours worked at each rate of pay. The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and total hours worked due to inaccurate time keeping policies including automatically deducting meal periods, as discussed above.

Moreover, Defendants failed to pay Plaintiff and Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

Lastly, Defendants failed to maintain a reasonable temperature in their facilities and to take all feasible measures to reduce excessive heat and/or humidity in their facilities resulting in Aggrieved Employees working in unreasonably hot temperatures in violation of Wage Order 4, paragraph 15(A)-(B).

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable



IWC Wage Orders defines “Hours Worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants’ unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Specifically, Aggrieved Employees were not paid for the time that they worked, including as alleged above in connection with working during meal breaks and automatic deducting of meal periods resulting in inaccurate timekeeping entries that did not properly account for all minutes and hours worked by Aggrieved Employees. Thus, Plaintiff and Aggrieved Employees were required to work hours without wages. Additionally, Defendants did not pay Plaintiff and Aggrieved Employees at the applicable minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiff and Aggrieved Employees. In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to



Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Plaintiff and Aggrieved Employees earned wages and overtime. Specifically, Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time discussed above, including the time they worked through meal breaks, caused Plaintiff and Aggrieved Employees to work in excess of 8 hours a day and/or 40 hours a week, further entitling Plaintiff and Aggrieved Employees to overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. This unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Aggrieved Employees a reasonable protocol for correcting time records when Aggrieved Employees worked overtime hours or to fix



incorrect time entries or those that Defendants unlawfully under-recorded to the Aggrieved Employees' detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with meal periods late and well after the fifth hour of work, could not be relieved to take their meal periods, or were required to remain on-duty at all times and were unable to take off-duty meal periods or were otherwise not provided with the opportunity to take required meal periods.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendants' control due to Defendants' policy and practice of interrupting Aggrieved Employees' meal breaks, resulting in those meal breaks not being duty-free, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Specifically, Defendants had a uniform policy and practice of automatically deducting meal periods from timekeeping entries rather than recording the times meal periods were actually taken, and such deductions were done to the detriment of Aggrieved Employees in that it resulted in timekeeping entries that did not account for all of the hours and minutes actually worked by Aggrieved Employees. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as



provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations, and Defendants' policies and procedures required Aggrieved Employees to remain under Defendants' control during breaks by interrupting rest breaks and requiring Aggrieved Employees to respond to emergencies and other situations.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements provided to Plaintiff



and Aggrieved Employees failed to list the rates of pay and hours worked at each rate of pay. The wage statements given to Aggrieved Employees, by Defendants, also failed to accurately account for wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and reflected incorrect hours worked due to the automatic deducting of meal periods. The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance



with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours she worked after eight hours into a shift or over forty in a work week and was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not properly recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage



statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination or within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unreasonable and Excessive Warehouse Temperatures

Under the IWC's Wage Order 4, paragraph 15(A), "[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed." During their employ with Defendants, Plaintiff and Aggrieved Employees worked in facilities with unreasonably excessive temperatures due to Defendants' failure to "take all feasible means to reduce such excessive heat" in violation of Wage Order 4, paragraph 15(A)-(B).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiff and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.



Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, *et seq.*, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the



applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5 and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

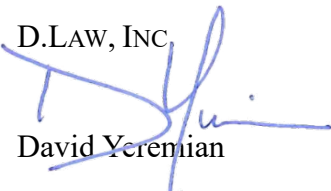
We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against EC Group Inc dba Dennis & Leen dba Formations, and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

D.LAW, INC.


David Yerehman

Cc: EC Group Inc dba Dennis & Leen dba Formations by Certified Mail

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on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JESSICA AGUILAR, on behalf of herself and
others similarly situated,

Plaintiff,

vs.

EC GROUP INC dba DENNIS & LEEN dba
FORMATIONS, a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code §
226.7;
4. Rest-Break Liability Under Labor Code §
226.7;
5. Violation of Labor Code § 226(a);
6. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and
1174.5
7. Penalties Pursuant to Labor Code § 203; and
8. Violation of Business & Professions Code §
17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff JESSICA AGUILAR, (hereinafter “Plaintiff”) on behalf of herself and all others
2 similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of herself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants EC GROUP INC
8 dba DENNIS & LEEN dba FORMATIONS, a California corporation; and DOES 1 through 50 (all
9 defendants being collectively referred to herein as “Defendants”). Plaintiff alleges that
10 Defendants, and each of them, violated various provisions of the California Labor Code, relevant
11 orders of the Industrial Welfare Commission (IWC) and California Business & Professions Code,
12 and seeks redress therefore.

13 2. Plaintiff is a resident of California and during the time period relevant to this
14 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
15 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
16 worked for Defendants in Los Angeles County, and in other nonexempt positions, throughout
17 California and, and consistently worked at Defendants’ behest without being paid all wages due.
18 More specifically, Plaintiff and the other similarly situated Class members were employed by
19 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
20 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
21 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
22 subjected to the same policies and practices, and (3) endured similar violations at the hands of
23 Defendants as the other Employee Class members who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to perform work
25 while remaining under Defendants’ control before and after being on the clock for their daily work
26 shift. Defendants further failed to accurately record time worked by Plaintiff and Employee Class
27 members by automatically deducting meal periods from timekeeping records to reflect scheduled
28 start and end times as opposed to actual hours worked. Defendants also had a uniform policy and

1 practice of not providing Employees rest breaks. Defendants thus failed to pay Plaintiff and the
2 Class members for all hours worked and provided them with inaccurate wage statements that
3 prevented Plaintiff and the Class from learning of these unlawful pay practices. Defendants also
4 failed to provide Plaintiff and the Class with lawful meal and rest periods, as employees were not
5 provided with the opportunity to take timely, uninterrupted, and duty-free meal and rest periods as
6 required by the Labor Code.

7 **THE PARTIES**

8 **A. The Plaintiff**

9 4. Plaintiff JESSICA AGUILAR has resided in California and during the time period
10 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
11 the State of California.

12 **B. The Defendants**

13 5. Defendant EC GROUP INC dba DENNIS & LEEN dba FORMATIONS is a
14 California corporation with its principle executive offices in West Hollywood, California and has
15 been listed as the employer on Plaintiff's paystubs during the relevant time period. EC GROUP
16 INC dba DENNIS & LEEN dba FORMATION lists a California address in West Hollywood with
17 the California Secretary of State, and employs Plaintiff and the Class members at Defendants'
18 offices and facilities in Torrance, California, and throughout California and conducts business
19 throughout California.

20 6. The true names and capacities, whether individual, corporate, associate, or
21 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
22 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
23 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
24 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
25 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
26 this Complaint to reflect the true names and capacities of the Defendants designated herein as
27 Does 1 through 50 when their identities become known.

28 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in

1 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
2 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
3 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
4 all respects as the employers or joint employers of Employees. Defendants, and each of them,
5 exercised control over the wages, hours or working conditions of Employees, or suffered or
6 permitted Employees to work, or engaged, thereby creating a common law employment
7 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
8 employed Employees.

9 **JURISDICTION AND VENUE**

10 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
11 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
12 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
13 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
14 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
15 obligations and liabilities giving rise to this lawsuit occurred at least in part in Los Angeles
16 County and Defendants maintain and operate company offices and facilities in Los Angeles
17 County, and employ Plaintiff and other Class members in Los Angeles County and throughout
18 California.

19 **FACTUAL BACKGROUND**

20 9. The Employees who comprise the Class and Collective, including Plaintiff, are
21 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
22 Employees who work in nonexempt positions at the direction of Defendants in the State of
23 California. Plaintiff and the Class members were either not paid by Defendants for all hours
24 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
25 Defendants had a uniform policy and practice of automatically deducting meal periods from
26 timekeeping entries rather than recording the times meal periods were actually taken, and such
27 deductions were done to the detriment of Plaintiff and Class members in that the practice resulted
28 in timekeeping records that did not account for all of the hours and minutes they actually worked.

1 These inaccurate time entries were inputted into Defendants' payroll system from which wage
2 statements and payroll checks were created. Plaintiff also contends that Defendants failed to pay
3 Plaintiff and the Class members all wages due and owing, failed to provide meal and rest breaks,
4 and failed to furnish accurate wage statements, all in violation of various provisions of the
5 California Labor Code and applicable Wage Orders.

6 10. During the course of Plaintiff and the Class members' employment with
7 Defendants, they were not paid all wages they were owed, including for all work performed and
8 for all overtime hours worked and were forced to work during their meal and rest breaks.
9 Defendants also failed to maintain timekeeping records for Plaintiff that would permit her to
10 discover the nature and extent of Defendants' unlawful timekeeping policies.

11 11. As a matter of uniform Company policy, Plaintiff and the Class members were
12 required to work during their meal and rest breaks which were not compensated by Defendants in
13 violation of the California Labor Code. Plaintiff and the Class members were also not paid
14 regular wages and overtime for the time they were required to comply with other requirements
15 imposed upon them, which they had to complete while working through their meal and rest
16 breaks and without compensation. As a result, Plaintiff and the Class members worked shifts over
17 eight (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the
18 appropriate overtime rate for all such hours, including by being required to perform work duties
19 and tasks without pay and while off-the-clock, and due to Defendants' unlawful timekeeping
20 policies. As a result, Plaintiff and the Class members worked substantial overtime hours during
21 their employment with Defendants for which they were not compensated, in violation of the
22 California Labor Code, applicable IWC Wage Orders.

23 12. As a result of the above described unlawful timekeeping policies, the daily work
24 demands and pressures to work through breaks, and the other wage violations they endured at
25 Defendants' hands, Plaintiff and the Class members were not properly paid for all wages earned
26 and for all wages owed to them by Defendants, including when working more than eight (8) hours
27 in any given day and/or more than forty (40) hours in any given week. As a result of Defendants'
28 unlawful policies and practices, Plaintiff and Class members incurred overtime hours worked for

1 which they were not adequately and completely compensated. To the extent applicable,
2 Defendants also failed to pay Plaintiff and the Class members at an overtime rate of 1.5 times the
3 regular rate for the first eight hours of the seventh consecutive work day in a week and overtime
4 payments at the rate of 2 times the regular rate for hours worked over eight (8) on the seventh
5 consecutive work day, as required under the Labor Code, applicable IWC Wage Orders.

6 13. Therefore, from at least four (4) years prior to the filing of this lawsuit and
7 continuing to the present, Defendants had a consistent policy or practice of failing to pay
8 Employees for all hours worked and failing to pay minimum wage for all time worked as required
9 by California Law.

10 14. Additionally from at least four (4) years prior to the filing of this lawsuit and
11 continuing to the present, Defendants had a consistent policy or practice of failing to pay
12 Employees overtime compensation at premium overtime rates for all hours worked in excess of
13 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
14 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
15 sections of IWC Wage Orders.

16 15. Additionally from at least four (4) years prior to the filing of this lawsuit and
17 continuing to the present, Defendants have regularly required Employees to work shifts in excess
18 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
19 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
20 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
21 hour of wages at each Employee’s effective regular rate of pay, for each meal period that
22 Defendants failed to provide or deficiently provided.

23 16. From at least four (4) years prior to the filing of this lawsuit and continuing to the
24 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
25 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
26 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
27 provided or were deficiently provided at one hour of wages at each Employee’s effective regular
28 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

1 17. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
2 continuing to the present, Defendants have consistently failed to provide Employees with timely,
3 accurate, and itemized wage statements as required by California wage-and-hour laws.
4 Specifically, the wage statements given to Employees by Defendants failed to accurately account
5 for wages, overtime, and premium pay for deficient meal periods and rest breaks all of which
6 Defendants knew or reasonably should have known were owed to Employees, as alleged
7 hereinabove. The wage statements provided to Employees were confusing and required
8 Employees to engage in discovery and refer to outside sources to verify whether their pay was
9 correct, potentially resulting in a miscalculation by the Employees.

10 18. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
11 continuing to the present, Defendants have consistently failed to provide Employees with timely,
12 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

13 19. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
14 continuing to the present, Defendants have consistently failed to keep accurate time and wage
15 records as required by California wage-and-hour laws.

16 20. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
17 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to
18 Employees at the time of their termination or within seventy-two (72) hours of their resignation, as
19 required by California wage-and-hour laws.

20 21. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
21 to the present,, Plaintiff and Employees worked in facilities with unreasonably excessive
22 temperatures.

23 22. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
24 Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12,
25 1185, 1194, 1194.2 1197, and 1199.

26 23. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
27 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
28 enjoyed from their violations of Labor Code.

CLASS ALLEGATIONS

24. Plaintiff brings this class action on behalf of herself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows: all individuals employed by Defendants within the State of California at any time within four (4) years of the filing of this lawsuit.

25. Further, Plaintiff seeks to represent the following Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

d. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

e. Subclass 5. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

f. Subclass 6. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

g. Subclass 7. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

1 h. Subclass 8. UCL Subclass. All Class members who are owed restitution as a
2 result of Defendants' business acts and practices, to the extent such acts and practices are found to
3 be unlawful, deceptive, and/or unfair.

4 26. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
5 modify the class description with greater particularity or further division into subclasses or
6 limitation to particular issues.

7 27. This action has been brought and may properly be maintained as a class action
8 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
9 of interest in litigation and proposed class is easily ascertainable.

10 **A. Numerosity**

11 28. The potential members of the class as defined are so numerous that joinder of all
12 the member of the class is impracticable. While the precise number of class members has not been
13 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
14 time period relevant to this lawsuit, employed more than 100 individuals within the State of
15 California.

16 29. Accounting for employee turnover during the relevant time period increases this
17 number substantially. Plaintiff alleges that Defendants' employment records will provide
18 information as to the number and location of all class members.

19 **B. Commonality**

20 30. There are questions of law and fact common to the class that predominate over any
21 questions affecting only individual class members. These common questions of law and fact
22 include:

- 23 a. Whether Defendants failed to pay Employees minimum wages;
- 24 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 25 c. Whether Defendants failed to pay Employees overtime as required under Labor
26 Code § 510;
- 27 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
28 IWC Wage Orders, by failing to provide Employees with requisite meal periods or

premium pay in lieu thereof;

- e. Whether Defendants violated Labor Code § 226.7, and the applicable IWC Wage Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code § 226(a);
- g. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- i. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- j. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

31. The claims of the named plaintiff are typical of those of the other Employees. Employees all sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

32. Plaintiff will fairly and adequately represent and protect the interest of Employees. Counsel who represents Employees are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

33. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

34. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

1 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY MINIMUM WAGES**

4 **(Against All Defendants)**

5 35. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 36. Defendants failed to pay Employees minimum wages for all hours worked.
8 Defendants had a consistent policy of misstating Employees time records and failing to pay
9 Employees for all hours worked. Employees would work hours and not receive wages, including
10 as alleged above in connection with working during meal breaks and automatic deducting of
11 meal periods resulting in inaccurate timekeeping entries. Additionally, Defendants had a
12 consistent policy of failing to pay Employees for hours worked during alleged meal periods for
13 which Employees were consistently denied, as also addressed herein. Defendants have also
14 intentionally and improperly rounded, changed, adjusted, and/or modified Employee hours, while
15 benefiting Defendants. Defendants thus regularly failed to pay minimum wages to Plaintiff and
16 Class members, including by unlawful timekeeping policies that did not properly account for all
17 minutes and hours worked by Employees. Moreover, Defendants did not pay Plaintiff and
18 Employees at the applicable minimum wage for all hours worked. Defendants' uniform pattern of
19 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a
20 whole, as a result of implementing a uniform policy and practice that denied accurate
21 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

22 37. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
23 states:

24 The minimum wage for employees fixed by the commission is the
25 minimum wage to be paid to employees, and the payment of a less
wage than the minimum so fixed is unlawful.

26 38. The applicable minimum wages fixed by the commission for work during the
27 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
28 therefore entitled to double the minimum wage during the relevant period.

1 39. The minimum wage provisions of California Labor Code are enforceable by private
2 civil action pursuant to California Labor Code § 1194(a) which states:

3 Notwithstanding any agreement to work for a lesser wage, any
4 employee receiving less than the legal minimum wage or the legal
5 overtime compensation applicable to the employee is entitled to
6 recover in a civil action the unpaid balance of the full amount of
7 this minimum wage or overtime compensation, including interest
8 thereon, reasonable attorney's fees and costs of suit.

9 40. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
10 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

11 41. California Labor Code § 1194.2 also provides for the following remedies:

12 In any action under Section 1194 . . . to recover wages because of
13 the payment of a wage less than the minimum wages fixed by an
14 order of the commission, an employee shall be entitled to recover
15 liquidated damages in an amount equal to the wages unlawfully
16 unpaid and interest thereon.

17 42. Defendants have the ability to pay minimum wages for all time worked and have
18 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
19 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

20 43. Wherefore, Employees are entitled to recover the unpaid minimum wages
21 (including double minimum wages), liquidated damages in an amount equal to the minimum
22 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
23 to California Labor Code § 1194(a).

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

26 **(Against All Defendants)**

27 44. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

 45. By their conduct, as set forth herein, Defendants violated California Labor Code §
510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
(a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked

1 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
2 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
3 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
4 paying Employees wages for all hours worked including as alleged above in connection with
5 denying Employees meal periods and automatically deducting meal periods from timekeeping
6 entries resulting in inaccurate timekeeping records. Employees regularly worked over 8 hours on
7 a given day without receiving overtime compensation.

8 46. Defendants' failure to pay compensation in a timely fashion also constituted a
9 violation of California Labor Code § 204, which requires that all wages shall be paid
10 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
11 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
12 and overtime compensation earned by Employees. Each such failure to make a timely payment of
13 compensation to Employees constitutes a separate violation of California Labor Code § 204.

14 47. Employees have been damaged by these violations of California Labor Code §§
15 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

16 48. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
17 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
18 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
19 reasonable attorneys' fees and costs.

20 **THIRD CAUSE OF ACTION**

21 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

22 **(Against All Defendants)**

23 49. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 50. Employees regularly worked shifts greater than five (5) hours and greater than ten
26 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
27 more than five (5) hours without providing him or her with a meal period of not less than thirty
28 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second

1 meal period of not less than thirty (30) minutes.

2 51. Defendants failed to provide Employees with meal periods as required under the
3 Labor Code. Employees were consistently required to work through their meal periods which they
4 were consistently denied. Employees were also required to take meal periods after working well
5 beyond the fifth (5) hour of their shifts. In addition, Defendants had a policy and practice of
6 automatically deducting meal periods from timekeeping entries, and such deductions were done to
7 the detriment of Plaintiff and Class members in that it resulted in timekeeping records that did not
8 account for all of the hours and minutes they actually worked. What meal periods were provided
9 were also not duty-free due to Defendants' practice of interrupting Employees' meal breaks.
10 Furthermore, Employees were regularly required to work for more than 10 hours in a given shift
11 without receiving a second uninterrupted thirty (30) minute meal period as required by law.

12 52. Moreover, Defendants failed to compensate Employees for each meal period not
13 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
14 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
15 employee a meal period in accordance with this section, the employer shall pay the employee one
16 hour of pay at the employee's regular rate of compensation for each workday that the meal period
17 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
18 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
19 and 20 of the applicable IWC Wage Order. Additionally, as detailed above, when Defendants did
20 pay meal period premiums, they did so at the normal regular rate of pay without factoring in all
21 forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

22 53. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
23 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
24 period not provided or deficiently provided, a sum to be proven at trial.

25 **FOURTH CAUSE OF ACTION**

26 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

27 **(Against All Defendants)**

28 54. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 55. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
3 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
4 not less than ten (10) minutes for each consecutive four (4) hour shift.

5 56. Defendants failed to provide Employees with timely rest breaks of not less than ten
6 (10) minutes for each consecutive four (4) hour shift. What rest breaks were provided were also
7 not duty-free due to Defendants' policy and practice interrupting rest breaks and requiring
8 Employees to respond to emergencies and other situations.

9 57. Moreover, Defendants failed to compensate Employees for each rest period not
10 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
11 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
12 accordance with this section, the employer shall pay the employee one hour of pay at the
13 employee's regular rate of compensation for each workday that the rest period is not provided.
14 Defendants failed to compensate the Employees in the Class for each rest period not provided or
15 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
16 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did
17 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
18 or by otherwise incorrectly calculating the regular rate.

19 58. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
20 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
21 worked without the required rest breaks, a sum to be proven at trial.

22 **FIFTH CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE § 226(a)**

24 **(Against All Defendants)**

25 59. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 60. California Labor Code § 226(a) requires an employer to furnish each of his or her
28 employees with an accurate, itemized statement in writing showing the gross and net earnings,

1 total hours worked, and the corresponding number of hours worked at each hourly rate; these
2 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
3 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
4 statements may be given to the employee separately from the payment of wages; in either case the
5 employer must give the employee these statements twice a month or each time wages are paid.

6 61. Defendants failed to provide Employees with accurate itemized wage statements in
7 writing, as required by the Labor Code. Specifically, the wage statements provided to Plaintiff and
8 Class members failed to list the rates of pay and hours worked at each rate of pay. The wage
9 statements given to Employees, by Defendants, also failed to accurately account for wages,
10 overtime, and premium pay for deficient meal periods and rest breaks, and reflected incorrect
11 hours worked due to the automatic deducting of meal periods, all of which Defendants knew or
12 reasonably should have known were owed to Employees, as alleged hereinabove. The wage
13 statements provided to Employees were confusing and required Employees to engage in discovery
14 and refer to outside sources to verify whether their pay was correct, potentially resulting in a
15 miscalculation by the Employees.

16 62. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
17 Employees suffered injuries, including among other things confusion over whether they received
18 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
19 forcing them to make mathematical computations to analyze whether the wages paid in fact
20 compensated them correctly for all hours worked.

21 63. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
22 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
23 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
24 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
25 award of costs and reasonable attorneys' fees.

26 64. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
27 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
28 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each

1 employee for each pay period.

2 65. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
3 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
4 shown according to proof.

5 **SIXTH CAUSE OF ACTION**

6 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**
7 **AND 1174.5**

8 **(Against All Defendants)**

9 66. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 67. California Labor Code § 1174 requires that all employers shall keep accurate time
12 and wage records for all employees. California Labor Code § 1174.5 further requires that any
13 employee suffering injury due to a willful violation of the aforementioned obligations may seek
14 damages, including civil penalties, from the employer.

15 68. During the course of Plaintiff's and Employees' employment, Defendants
16 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
17 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
18 overtime, and premium pay as discussed above.

19 69. Accordingly, Defendants are liable for civil penalties pursuant to the California
20 Labor Code § 1174.5. for the three (3) years prior to the filing of this Complaint.

21 **SEVENTH CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE § 203**

23 **(Against All Defendants)**

24 70. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 71. Numerous Employees are no longer employed by Defendants; they either quit
27 Defendants' employ or were fired therefrom.

28 72. Defendants failed to pay these Employees all wages due and certain at the time of

1 termination or within seventy-two (72) hours of resignation.

2 73. The wages withheld from these Employees by Defendants remained due and owing
3 for more than thirty (30) days from the date of separation of employment.

4 74. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
5 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
6 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
7 to thirty (30) days from the date they were due.

8 **EIGHTH CAUSE OF ACTION**

9 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

10 **(Against All Defendants)**

11 75. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 76. Plaintiff, on behalf of herself, Employees, and the general public, brings this claim
14 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in
15 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
16 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
17 meaning of Code of Civil Procedure § 1021.5.

18 77. Plaintiff is a "person" within the meaning of Business & Professions Code
19 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
20 relief, restitution, and other appropriate equitable relief.

21 78. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
22 business practices.

23 79. Wage-and-hour laws express fundamental public policies. Paying employees their
24 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
25 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
26 to enforce minimum labor standards, to ensure that employees are not required or permitted to
27 work under substandard and unlawful conditions, and to protect law-abiding employers and their
28 employees from competitors who lower costs to themselves by failing to comply with minimum

1 labor standards.

2 80. Defendants have violated statutes and public policies. Through the conduct alleged
3 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
4 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
5 violation of Business & Professions Code § 17200 *et seq.* Defendants' conduct has deprived
6 Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and
7 privileges guaranteed to all employees under the law.

8 81. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
9 violation of the Business & Professions Code § 17200 *et seq.*

10 82. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
11 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
12 care should have known that their conduct was unlawful; therefore their conduct violates the
13 Business & Professions Code § 17200 *et seq.*

14 83. As a proximate result of the above-mentioned acts of Defendants, Employees have
15 been damaged, in a sum to be proven at trial.

16 84. Unless restrained by this Court, Defendants will continue to engage in such
17 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
18 should make such orders or judgments, including the appointment of a receiver, as may be
19 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
20 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
21 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
22 have unlawfully failed to pay.

23 **RELIEF REQUESTED**

24 WHEREFORE, Plaintiff prays for the following relief:

- 25 1. For an order certifying this action as a class action;
- 26 2. For compensatory damages in the amount of the unpaid minimum wages for work
27 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
28 the filing of this action, as may be proven;

1 3. For liquidated damages in the amount equal to the unpaid minimum wage and
2 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

3 4. For compensatory damages in the amount of the hourly wage made by Employees
4 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
5 years prior to the filing of this action, as may be proven;

6 5. For compensatory damages in the amount of the hourly wage made by Employees
7 for each day requisite rest breaks were not provided or were deficiently provided and where no
8 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
9 be proven;

10 6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

11 7. For penalties pursuant to Labor Code § 226.3, as may be proven;

12 8. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
13 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

14 9. For penalties pursuant to Labor Code § 1174.5, as may be proven;

15 10. For restitution for unfair competition pursuant to Business & Professions Code
16 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

17 11. For an order enjoining Defendants and their agents, servants, and employees, and
18 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
19 duties adumbrated in this Complaint;

20 12. For all general, special, and incidental damages as may be proven;

21 13. For an award of pre-judgment and post-judgment interest;

22 14. For an award providing for the payment of the costs of this suit;

23 15. For an award of attorneys' fees; and

24 16. For such other and further relief as this Court may deem proper and just.

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1 DATED: October 4, 2024

D.LAW, INC.

2
3 By



David Yermian
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
JESSICA AGUILAR
and the putative class

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: October 4, 2024

D.LAW, INC.

By



David Yermian
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
JESSICA AGUILAR
and the putative class