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Attorney for Plaintiff, KELLY LETICIA GAINES

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

KELLY LETICIA GAINES, an individual,
on her own behalf and on behalf of all
others similarly situated,

Plaintiff,

v.

AMAWATERWAYS, LLC, a California
limited liability company; ASTON
CARTER, INC., a Maryland corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 24STCV32005

[Assigned for All Purposes to Hon. Elaine Lu, in
Dept. 9]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **FAILURE TO PAY PREMIUM OVERTIME WAGES DUE** (Cal. *Labor Code* §§ 510, 511, 558, 1194, 1198; IWC Wage Order No. 9);
2. **FAILURE TO PAY MINIMUM WAGES** (Cal. *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 9);
3. **FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS** (Cal. *Labor Code* §§ 226.7, 512; IWC Wage Order No. 9);
4. **FAILURE TO PROVIDE TIMELY OFF DUTY REST PERIODS** (Cal. *Labor Code* §§ 226.7, 512; IWC Wage Order No. 9);
5. **FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS** (Cal. *Labor Code* §226; IWC Wage Order No. 9);
6. **FAILURE TO PAY WAGES DUE ON TERMINATION** (Cal. *Labor Code* §§ 201-203);
7. **FAILURE TO REIMBURSE BUSINESS EXPENSES** (Cal. *Labor Code* § 2802);

FILED
Superior Court of California
County of Los Angeles

02/10/2025

David W. Slayton, Executive Officer / Clerk of Court

By: M. Tavakoli Deputy

- 1 8. **FAILURE TO ALLOW INSPECTION OF**
2 **EMPLOYMENT RECORDS (Cal. *Labor***
3 ***Code* §1198.5);**
4 **9. UNFAIR COMPETITION (Cal. *Bus. &***
5 ***Prof. Code* §§17200 *et seq.*); and**
6 **10. PRIVATE ATTORNEY GENERAL ACT**
7 **(“PAGA”)**

8 **DEMAND FOR A JURY TRIAL**

9 Action Filed: December 4, 2024
10 Trial Date: Not Set

11 All allegations in this First Amended Complaint are based upon information and belief
12 except for those allegations which pertain to the Plaintiff named herein and her counsel. Each
13 allegation has evidentiary support or is likely to have evidentiary support after a reasonable
14 opportunity for further investigation and discovery.

15 Kelly Leticia Gaines (“Plaintiff”) alleges the following:

16 1. This is a class action brought under California law by an individual who was
17 employed by AmaWaterways, LLC (“AmaWaterways”) and Aston Carter, Inc. (“AC”) (along
18 with DOES 1 through 100, collectively “Defendants”). Plaintiff brings this action on behalf of
19 herself and others similarly situated to recover wages from Defendants due to Defendants’
20 systematic failure to pay overtime, minimum wages, failure to provide meal breaks (or pay the
21 statutory compensation due), failure to provide rest breaks (or pay the statutory compensation
22 due), failure to issue accurate wage statements, failure to pay wages due on termination, failure
23 to reimburse business expenses and failure to allow inspection of employment records.

24 2. Plaintiffs have worked as employees for Defendants at their business in Calabasas,
25 California. While working, Plaintiffs have been forced to endure stressful and illegal workplace
26 conditions created by Defendants’ efforts to maximize profits and tightly control labor costs.

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3. Plaintiff, like her co-workers whom Defendants also employed during the applicable limitations period, spend their workdays in Calabasas, California, under illegal and highly regimented circumstances. That regimen results from Defendants' insistence to strictly monitor and curtail labor costs, which Defendants accomplish by not paying for all labor costs, failing to pay overtime, minimum wages, refusing to provide proper meal periods, refusing to provide proper rest periods, not paying the required extra hour for missed meal/rest breaks, failing to issue accurate wage statements, failing to pay all wages due on termination, failing to reimburse business expenses, failing to allow inspection of employment records, and by using other unlawful stratagems to ensure that labor costs remain artificially low.

4. Plaintiff brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to, overtime, minimum wages, missed meal/rest break wages, penalties for failure to provide accurate itemized wage statements, wages owed on termination, unreimbursed business expenses, to allow inspection of employment records and interest, attorneys' fees, costs, and expenses.

5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for herself and all members of the class, to compensate these workers for the unpaid wages and to protect current and future workers of Defendants from being subjected to similar wage theft and otherwise unlawful working conditions.

6. Plaintiff also brings an action seeking relief for Defendants' violations of California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and disgorgement of all compensation retained by Defendants as a result of their unlawful and unfair business practices, as well as injunctive relief.

7. Plaintiff now seeks to amend her Complaint to add a cause of action pursuant to PAGA under Labor Code §§ 2699, et seq.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this First Amended Complaint under Code of Civil Procedure §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business & Professions Code* §§ 17200 *et seq.*

9. Plaintiff Kelly Leticia Gaines brings this First Amended Complaint on her own behalf and on behalf of all persons in the Class as defined in paragraph 19 below.

10. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Los Angeles and because Defendants owned and operated their businesses in the County of Los Angeles.

THE PARTIES

PLAINTIFF

11. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Los Angeles County, California;
- (b) Employed as an hourly employee for Defendants in Calabasas, California;
- (c) Did not receive overtime required by *Labor Code* §§ 1194, 1198, and Industrial Welfare Commission Wage Order 9;
- (d) Did not receive minimum wages required by *Labor Code* §§ 1194, 1194.2, 1997, 1197.1, 1198 and Industrial Welfare Commission Wage Order 9;
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and Industrial Welfare Commission Wage Order 9;
- (f) Did not receive the rest periods required by *Labor Code* §266.7 and Industrial Welfare Commission Wage Order 9;
- (g) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (h) Was not paid all wages due on termination as required by *Labor Code* §§201-203;
- (i) Was not reimbursed for necessary business expenses as required by *Labor Code* § 2802; and
- (j) Was not provided her personnel records. Each of these was a violation of the *Labor Code*.

DEFENDANTS

12. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant AmaWaterways is, and at all times mentioned herein was:

- (a) A California limited liability company, with a principal place of business at 4500 Park Granada, Suite 200, Calabasas, California 91302. Defendant AmaWaterways has been authorized to do business and has been doing business in the County of Los Angeles;
- (b) The former employer of Plaintiff and the current and former employer of the putative Class members;
- (c) Paid Plaintiff and all Class Members on an hourly basis;
- (d) Failed to pay Plaintiff and all putative Class members overtime wages;
- (e) Failed to pay Plaintiff and all putative Class members minimum wages;
- (f) Failed to provide Plaintiff and all putative Class members with meal/rest periods and failed to provide Plaintiff and all putative Class members with accurate itemized wage statements;
- (g) Failed to pay Plaintiff and all putative Class members all wages due on termination;
- (h) Failed to reimburse Plaintiff and all putative Class members for necessary business expenses; and
- (i) Failed to provide their personnel records. Each of these was a violation of the *Labor Code*.

13. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant AC is, and at all times mentioned herein was:

- (a) A Maryland corporation, with a principal place of business at 7301 Parkway Drive, Hanover 21076. Defendant AC has been authorized to do business and has been doing business in the County of Los Angeles;
- (b) The former employer of Plaintiff and the current and former employer of the putative Class members;

- (j) Paid Plaintiff and all Class Members on an hourly basis;
- (c) Failed to pay Plaintiff and all putative Class members overtime wages;
- (d) Failed to pay Plaintiff and all putative Class members minimum wages;
- (e) Failed to provide Plaintiff and all putative Class members with meal/rest periods and failed to provide Plaintiff and all putative Class members with accurate itemized wage statements;
- (f) Failed to pay Plaintiff and all putative Class members all wages due on termination;
- (g) Failed to reimburse Plaintiff and all putative Class members for necessary business expenses; and
- (h) Failed to provide their personnel records. Each of these was a violation of the *Labor Code*.

14. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of Civil Procedure* § 474. Plaintiff will seek leave to amend her Complaint to allege the true names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

15. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which reside in or are authorized to do, or are otherwise doing, business in the State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and conduct business in the County of Los Angeles. Each of the Defendants DOES 1 through 100 was the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter ego and/or representative of one or more of the other Defendants named herein, and acting with permission, authorization, and/or ratification and consent of the other Defendants.

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16. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendants named in this First Amended Complaint, including DOES 1 through 100, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

17. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendants named in this First Amended Complaint, including DOES 1 through 100, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the other Defendants and that each Defendant was acting within the course and scope of his, hers or its authority as the agent, servant and/or employee of each of the other Defendants. Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the Class, for the damages sustained as a proximate result of their conduct.

18. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendants named in this First Amended Complaint, including DOES 1 through 100, inclusive, knowingly and willfully acted in concert, conspired and agreed together among themselves and entered into a combination and systemized campaign of activity to *inter alia* damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and belief, and to all appearances, Defendants, and each of them, represented a unified body so that the actions of one Defendant was accomplished in concert with, and with the knowledge, ratification, authorization and approval of each of the other Defendants.

CLASS ALLEGATIONS

A. The Definition of the Class

19. The Class (“the Class”) is defined as follows:

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1 (a) “All current and former employees who were hourly paid employees of Defendants
2 and worked for Defendants in California at any time during the period commencing on
3 the date that is four (4) years prior to the filing of this First Amended Complaint and
4 continuing through the present date (the “Class Period”).”

5 (b) “All persons who were hourly paid employees of Defendants and worked for
6 Defendants in California and left the employ of Defendants at any time during the period
7 commencing on the date that is within one (1) year prior to the filing of this First Amended
8 Complaint and continuing through the present date (the “Class Period”).”

9
10 20. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
11 amend or modify the Class description with greater specificity or further division into subclasses
12 or limitation to particular issues.

13 **B. Maintenance of the Action**

14 21. Plaintiff brings this action individually and on behalf of herself and as
15 representative of all similarly situated persons under *Business & Professions Code* §§ 17203 and
16 17204 and *Code of Civil Procedure* § 382.

17 **C. The Class Requisites**

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

19 23. The Class action meets the statutory prerequisites for maintaining a class action
20 under Code of Civil Procedure § 382 in that:

21 (a) The persons who comprise the Class are so numerous that the joinder of all those
22 persons is impracticable and the disposition of their claims as a Class will benefit
23 the parties and the Court;

24 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
25 raised in this First Amended Complaint are common to the Class and will apply
26 uniformly to every Class member;

27 (c) The claims of the representative Plaintiff are typical of the claims of each Class
28 member.

1 Plaintiff, like all Class members, has sustained damages arising from Defendant's
2 violations of the laws of the State of California. Plaintiff, and the Class members,
3 were and are similarly or identically harmed by the same unlawful, deceptive,
4 unfair, systematic and pervasive pattern of misconduct engaged in by the
5 Defendants;

- 6 (d) The representative Plaintiff has, and will continue to, fairly and adequately
7 represent and protect the interests of the Class and has retained counsel who are
8 competent and experienced in class action litigation. There are no material
9 conflicts between the claims of the representative Plaintiff and the Class members
10 that would make class certification inappropriate. Counsel for the Class will
11 vigorously assert the claims of all Class members.

12 24. The persons who comprise the Class are so numerous that joining all of them is
13 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
14 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
15 will fairly and adequately protect the interests of the Class she seeks to represent. Plaintiff does
16 not have any interests that are antagonistic to the Class she seeks to represent. Counsel for
17 Plaintiff are experienced, qualified and generally able to conduct complex class action litigation.

18 25. The Court should permit the action to be maintained as a class action under *Code*
19 *of Civil Procedure* § 382 because:

- 20 (a) The questions of law and fact common to the Class predominate over any question
21 affecting only individual members:
- 22 (b) A class action is superior to any other available method for fairly and efficiently
23 adjudicating the claims of the Class;
- 24 (c) The Class members are so numerous that it is impractical to bring all of them
25 before the Court;
- 26 (d) Plaintiff and other Class members will not be able to obtain effective and
27 economic legal redress unless the action is maintained as a class action;
- 28

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

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

- 7 i. Inconsistent or varying adjudications for individual Class members that
8 would establish incompatible standards of conduct for Defendant; and/or,
9 ii. Adjudication for individual Class members that would, as a practical
10 matter, dispose of other non-party members' interests, or that would
11 substantially impair or impede the non-parties' ability to protect their
12 interests, by, for example, potentially exhausting the funds available from
13 Defendants, and

14 (g) Defendant has acted or refused to act on grounds generally applicable to the
15 Classes, making final injunctive relief appropriate for the Class, as a whole.

16 26. Plaintiff contemplates eventually issuing notice to the proposed Class Members
17 that would set forth the subject and nature of the action. The Defendants' own business records
18 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that any
19 further notices may be required, Plaintiff would contemplate using additional media and/or
20 mailing.

21 **GENERAL ALLEGATIONS**

22 27. At all times material hereto, Defendant AmaWaterways has been and is, a cruise
23 line company.

24 28. At all times material hereto, Defendant AC has been and is, a staffing company.

25 29. Plaintiff and members of the Class were employed as Marketing Associates and
26 other non-exempt employees by Defendants in California at various times during the Class
27 Period.

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1 30. The employment by Defendants of the Class Members, and each them, is governed
2 by Industrial Welfare Commission Wage Order 9, which covers those persons employed in the
3 transportation industry.

4 **JOINT EMPLOYER ALLEGATIONS**

5 31. Plaintiff is informed and believes and thereon alleges that AmaWaterways
6 contracted with AC whereby AC would provide them with staffing/employment services.
7 Pursuant to that agreement, and given the amount of influence, control and direction
8 AmaWaterways and AC exerted over Plaintiff's employment, AmaWaterways and AC were
9 Plaintiff's co-employers.

10 32. Plaintiff is informed and believes and thereon alleges that AmaWaterways and AC
11 exercised control over Plaintiff's wages, hours and/or working conditions (start time, end time,
12 etc.) such that they were joint employers.

13 **THE CONDUCT**

14 33. Plaintiff seeks relief from Defendants' uniform policies and practices of denying
15 Plaintiff and members of the Class wages and compensation owed under California law.

16 34. Starting on or about May 5, 2023 and continuing to May 24, 2024, Defendants
17 employed Plaintiff on an hourly basis as a Marketing Associate in Calabasas, California. Plaintiff
18 built ads, created prototypes, edited videos, created flyers and trade marketing. Plaintiff also
19 attended sales conferences.

20 35. While employed by Defendants as a Marketing Associate Plaintiff worked 8 or
21 more hours per day, 5 days per week. Plaintiff earned \$27.88 per hour. Plaintiff worked in
22 Defendants' offices.

23 **OFF-THE-CLOCK WORK**

24 36. Employers must compensate non-exempt employees for "off-the-clock" work
25 (before punching in or after punching out on a time clock) if the employers knew or should have
26 known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22
27 Cal. 4th 575, 585.

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1 37. Defendants required Plaintiff and the Class to regularly perform compensable
2 tasks post-shift and during working lunch meetings off-the-clock for which they did not receive
3 any compensation. Specifically, at all times relevant, Plaintiff and Class members consistently
4 worked hours for which they were not paid because Plaintiff and the Class members were
5 required to attend working lunch meetings once every 2 months for 30 minutes after clocking
6 out. Further, at times Plaintiff and Class members would clock out for the end of their shifts, but
7 were required to continue working. At least 2 times per month, Plaintiff and Class members
8 answered messages for 5 minutes after clocking out for the end of their shifts. Defendants were
9 aware of Plaintiff and Class members' off-the-clock work.

10 38. As a result, and because they improperly treated such post-shift and working lunch
11 meeting time as non-compensable, Defendants failed to compensate Plaintiff and the Class for
12 such time.

13 **FAILURE TO PAY OVERTIME WAGES**

14 39. Under California law, non-exempt employees as defined by Wage Order 9, are
15 entitled to premium wages for overtime worked. Under California law, an hourly paid employee
16 is entitled to overtime pay when they exceed eight hours of work in a single day, exceed 40 hours
17 of work in a week or work seven days in a row.

18 40. During the period, it was the practice and policy of Defendants to not properly pay
19 employees' overtime because benefits were not incorporated into the overtime rate. Monies for
20 unpaid overtime remain due and owing. Further, throughout Plaintiff's and Class members'
21 employment, Plaintiff and Class members worked overtime hours and were not paid overtime
22 pay due to off-the-clock work.

23 **FAILURE TO PAY MINIMUM WAGES**

24 41. Under California law, non-exempt employees as defined by IWC Wage Order No.
25 9 are entitled to minimum wages. Labor Code Section 1197 states the California requirement that
26 employees must be paid at least the minimum wage fixed by the Commission or by any applicable
27 state or local law, and any payment of less than the minimum wage is unlawful.

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1 42. Similarly, Labor Code Section 1194 entitles “any employee receiving less than
2 the legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full
3 amount of this minimum wage.” IWC Wage Order No. 9, obligates employers to pay each
4 employee minimum wages for all hours worked.

5 43. These minimum wage standards apply to each hour employees worked or were
6 subject to control by the employer for which they were not paid. Therefore, an employer’s failure
7 to pay for any particular hour of time worked by an employee or subject to the employer’s control
8 is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results
9 in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th
10 314, 324 (2005).

11 44. Plaintiff and the Class were not paid minimum wages due to Defendants’ failure
12 to afford proper meal/rest breaks.

13 45. At all times during the relevant time period, Plaintiff and the Class routinely
14 worked schedules such that they were due pay at minimum wage rates. During this period, it was
15 the practice and policy of Defendants to not pay employees’ minimum wages. Monies for unpaid
16 minimum wages remain due and owing.

17 **INTERRUPTED/NOT AFFORDED MEAL BREAKS**

18 46. Under California law, non-exempt employees as defined by IWC Wage Order No.
19 9, are entitled to a 30-minute lunch period for each 5 hours worked, or major fraction thereof.
20 Non-exempt employees are entitled to one hour pay at their regular pay rate for each day the
21 requisite meal periods are not provided.

22 47. Under California law, non-exempt employees as defined by IWC Wage Order No.
23 9, are entitled to a 30-minute lunch period for each 5 hours worked, or major fraction thereof.
24 Non-exempt employees are entitled to one hour pay at their regular pay rate for each day the
25 requisite meal periods are not provided.

26 48. Defendants’ policies and procedures were applied to all non-exempt employees in
27 California and resulted in non-exempt employees working time which was not compensated by
28 any wages in violation of Labor Code sections 510, 1194 and the IWC Wage Order No. 9.

49. As a result, Defendants owe wages at the legal minimum wage rate for unpaid minimum wages to each of their California non-exempt employees whose daily hours were reduced and their meals periods were not afforded.

FAILURE TO AFFORD REST PERIODS

50. At times Plaintiff and Class members were not afforded breaks. On days when Plaintiff and Class members worked 10–12-hour shifts, they were not afforded third breaks.

FAILURE TO ISSUE ACCURATE WAGE STATEMENTS

51. As a result of Defendants’ failure to pay employees at required overtime rates, minimum wages and premium pay for missed meal/rest breaks, the wage statements issued to the employees did not comply with *Labor Code* §226 and the California Industrial Welfare Commission (“IWC”) Wage Order No. 9 in that they did not accurately reflect all wages earned and due and owing.

FAILURE TO PAY WAGES DUE ON TERMINATION

52. As a further result of Defendants’ failure to pay employees at required overtime rates, minimum wage rates, afford proper meal/rest breaks, when the employees left their employ, they were not timely paid all wages due them, as required by Labor Code §§ 201, 202 and IWC Wage Order No. 9. Further, it was the practice of Defendants to not pay employees their final paychecks within the time periods mandated by Labor Code §§201, 202 and the IWC Wage Order No. 9.

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

53. Defendants failed to reimburse Plaintiff and Class members for their necessary business expenses such as personal vehicle use.

FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS

54. Defendants failed to allow Plaintiff to timely inspect her records and payroll files.

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1 **EXCLUSION OF EXTRA BENEFITS FROM REGULAR RATE OF PAY**

2 55. California law uses the terms “compensation” and “pay” interchangeably and
3 requires that all applicable remuneration, including but not limited to, commissions, and/or non-
4 discretionary bonuses, and/or gift cards and/or cash payments based on sales numbers, etc., be
5 included when calculating an employee's regular rate of pay.

6 56. Defendants failed to properly pay and calculate wages due to excluding extra
7 benefits from regular rate of pay calculations. Such benefits payments are required under
8 California law to be included in an employee’s regular rate of pay for wage calculation.
9 Defendants failed to do so, thereby failing to pay employees their full wages as required under
10 the Labor Code.

11 57. Plaintiff and members of the Class received benefits that must be included when
12 calculating their regular rates of pay for purposes of wages. However, Defendants failed to
13 correctly calculate Plaintiff and members of the Class’s regular rate of pay to include all
14 applicable remuneration, including, but not limited to, extra benefits. Defendant provided extra
15 benefits such as discounts up to 40% on more than 4 million products and services. The extra
16 benefits were not blended into Plaintiff and Class member’s regular rate of pay.

17 58. Plaintiff’s paystubs do not show any extra benefits paid to Plaintiff.

18 59. For example, Plaintiff’s paystub dated 3/15/2024, shows that Plaintiff was paid
19 Double Time at exactly 2 times the base rate. Thus, the extra benefits were not incorporated into
20 the double time rate. Also, on the same paystub, Plaintiff was paid “Cell Allowance” to reimburse
21 her for cell phone usage, at the same time as “Double Time”, which was paid at exactly 2 times
22 the base rate. Thus, the allowance was not incorporated into the double time pay. Moreover, on
23 the same paystub, Plaintiff was paid “Internet Allowance” to reimburse her for home internet use.
24 However, double time was paid at exactly 2 times the base rate. Thus, the internet allowance was
25 not incorporated into the double time pay.

26 60. Further, Plaintiff’s paystubs dated 10/13/2023, 11/10/2023, 1/19/2024, 3/15/2024,
27 and 5/10/2024, show that Plaintiff was paid a “Meal Award” at exactly base rate. Thus, the extra
28 benefits were not incorporated into the meal period premium pay.

1 61. On those same dates, Plaintiff was paid a “Cell Allowance”, but the “Meal Award”
2 was paid at exactly the base rate. Thus, the “Cell Allowance” was not incorporated into the meal
3 period premium pay. Additionally, on the same dates, Plaintiff was paid “Internet Allwnc” to
4 reimburse her for home internet use. However, the “Meal Award” was paid at exactly the base
5 rate. Thus, the internet allowance was not incorporated into the meal period premium pay.

6 62. Additionally, Plaintiff’s paystub dated 11/24/2023, shows that she was paid “Air
7 Travel Frng” at the same time as “Pto”, paid at exactly the base rate. Thus, “Air Travel Frng” pay
8 was not incorporated into the PTO pay.

9 63. Plaintiff’s paystubs dated 10/13/2023, 11/10/2023, 1/19/2024, 3/15/2024, and
10 5/10/2024, show that Plaintiff was paid “Cell Allowance”, but “Pto” was paid at exactly base
11 rate. Thus, the allowance was not incorporated into the PTO pay. Additionally, on the same dates,
12 Plaintiff was paid “Internet Allwnc” to reimburse her for home internet use. However, “Pto” was
13 paid at exactly the base rate. Thus, the internet allowance was not incorporated into the PTO pay.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME**

16 **(Labor Code §§510, 511, 558, 1194, 1198 and IWC Wage Order No. 9 by Plaintiffs Against**
17 **Defendants and Does 1-100)**

18 64. Plaintiff and the Class reallege and incorporate by reference all of the allegations
19 set forth in this First Amended Complaint.

20 65. During Plaintiff’s entire employment with Defendants, pursuant to Cal. Lab. Code
21 §§510, 1194, and 1198, and IWC Wage Order No. 9, Defendants were required to compensate
22 Plaintiff and Class members with premium pay for all overtime work performed, for hours
23 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight
24 (8) hours on the seventh (7th) consecutive day of any work week.

25 66. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
26 who had not been paid overtime compensation could recover the unpaid balance of the full
27 amount of overtime wages due, including interest thereon, together with reasonable attorneys’
28 fees and costs of suit.

1 67. Pursuant to IWC Wage Order No. 9, § 3, “Employment beyond eight (8) hours in
2 any workday is permissible provided the employee is compensated for such overtime at not less
3 than: (a) One and one-half (1 1/2) times the employee’s regular rate of pay for all hours worked
4 in excess of eight (8) hours up to and including twelve (12) hours in any workday... “

5 68. California Labor Code section 558 provides in pertinent part:

6 (a) Any employer or other person acting on behalf of an employer who
7 violates, or causes to be violated, a section of this chapter or any provision
8 regulating hours and days of work in any order of the Industrial Welfare
9 Commission shall be subject to a civil penalty as follows:

10 (1) For any initial violation, fifty dollars (\$50) for each underpaid
11 employee for each pay period for which the employee was underpaid in
12 addition to an amount sufficient to recover underpaid wages.

13 (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was
15 underpaid in addition to an amount sufficient to recover underpaid wages.

16 (3) Wages recovered pursuant to this section shall be paid to the affected
17 employee...

18 (c) The civil penalties provided for in this section are in addition to any
19 other civil or criminal penalty provided by law.

20 69. Throughout Plaintiff’s and Class members’ employment, Plaintiff and Class
21 members worked overtime hours and were not paid overtime pay. Plaintiff and Class members
22 engaged in off the clock work without compensation.

23 70. The regular rate of pay under California law includes all remuneration for
24 employment paid, on behalf of the employer, to the employee. Employers must properly factor
25 all economic items into the regular rate of pay for purposes of calculating the overtime wages due
26 to their employees. *See Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th 542,
27 554, 568 (the regular rate of pay must include the “value of any nonhourly compensation,”
28 including bonuses).

71. Specifically, Defendants had a company-wide policy of failing to properly pay and calculate wages due.

72. Defendants violated the rights of Plaintiff and the members of the Class by not correctly calculating their regular rate of pay. Plaintiff and Class members' extra benefits were not incorporated into their regular rate of pay.

73. The foregoing overtime compensation is owed and unpaid. As a direct and proximate result of Defendants' failure and refusal to pay overtime, Plaintiff and Class members suffered damages in an amount to be proven at trial.

74. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover Plaintiff's attorneys' fees, costs and interest.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES DUE

(IWC Wage Order No. 9; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs

Against Defendants and Does 1 through 100)

75. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

76. Labor Code §§ 1194(a) 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."

77. *Labor Code* § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order 9-2001 also obligates employers to pay each employee minimum wages for all hours worked.

1 78. These minimum wage standards apply to each hour employees worked for which
2 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
3 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked,
4 paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*,
5 135 Cal. App. 4th 314, 324 (2005).

6 79. Pursuant to IWC Wage Order No. 9, Defendants are required to pay the members
7 of the Class for all hours worked, meaning the time during which an employee is subject to the
8 control of an employer, including all the time the employee is suffered or permitted to work,
9 whether or not required to do so.

10 80. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work and
11 the standard conditions of labor fixed by the commission shall be the maximum hours of work
12 and the standard conditions of labor for employees. The employment of any employee for longer
13 hours than those fixed by the order or under conditions of labor prohibited by the order is
14 unlawful.”

15 81. Defendants failed to satisfy minimum wage requirements because they improperly
16 failed to afford Plaintiff and Class members meal/rest breaks in violation of *Labor Code* §§ 226.7,
17 1197, 1198 and IWC Wage Order No. 9.

18 82. Defendants’ pattern, practice and uniform administration of corporate policy
19 regarding illegal employee compensation as described herein is unlawful and creates an
20 entitlement, pursuant to *Labor Code* § 218, to recovery by Plaintiff and the members of the Class,
21 in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
22 appropriate rate.

23 83. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
24 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
25 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid for
26 all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for the
27 time associated with the overtime for which they received no compensation. *See Sillah v.*
28 *Command Int’l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing

1 for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed
2 they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp.
3 3d 1115, 1132-33 (N.D. Cal. 2016).

4 84. Plaintiff and the other Class members suffered and continue to suffer losses related
5 to the use and enjoyment of compensation due and owing to them as a direct result of Defendants'
6 unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and
7 within the jurisdictional limitations of this Court.

8 85. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
9 Class are entitled to recover the unpaid balances of the minimum wages Defendants owe them,
10 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

11 **THIRD CAUSE OF ACTION**

12 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

13 **(IWC Wage Order No. 9; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendants and**
14 **Does 1 through 100)**

15 86. Plaintiff and the Class reallege and incorporate by reference all of the allegations
16 set forth in this First Amended Complaint.

17 87. California Labor Code §226.7(a) prohibits an employer from requiring an
18 employee to work during any meal period mandated by Industrial Welfare Commission Wage
19 Order 9. Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not
20 require an employee to work during a meal or rest break or recovery period mandated pursuant
21 to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
22 Commission..."

23 88. California Labor Code §1198 makes unlawful the employment of an employee
24 under conditions the IWC prohibits.

25 89. IWC Wage Order No. 9 provides, in relevant part: "No employer shall employ any
26 person for a work period of more than five (5) hours without a meal period of not less than 30-
27 minutes, except that when a work period of not more than six (6) hours will complete the day's
28 work the meal period may be waived by mutual consent of the employer and the employee."

1 90. IWC Wage Order No. 9, section (11)(c) further provides, in relevant part: "Unless
2 the employee is relieved of all duty during a 30-minute meal period, the meal period shall be
3 considered an 'on duty' meal period and counted as time worked."

4 91. Section 512(a) of the California Labor Code provides, in relevant part, that:

5 An employer may not employ an employee for a work period of more than five
6 hours per day without providing the employee with a meal period of not less than
7 30-minutes, except that if the total work period per day of the employee is no
8 more than six hours, the meal period may be waived by mutual consent of both
9 the employer and employee. An employer may not employ an employee for a
10 work period of more than 10 hours per day without providing the employee with
11 a second meal period of not less than 30-minutes, except that if the total hours
worked is no more than 12 hours, the second meal period may be waived by
mutual consent of the employer and the employee only if the first meal period
was not waived.

12 92. The Labor Code and Wage Order provisions cited above require California
13 employers to provide employees with off-duty 30-minute meal periods on or before the fifth hour
14 of their shifts. To satisfy this obligation, California employers must: (1) make employees aware
15 of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and (2) ensure
16 that employees are actually free of job duties for thirty minutes per day on or before the fifth hour
17 of their shifts.

18 93. As alleged herein, Defendants failed to relieve employees of duties for compliant
19 meal breaks throughout the Class Period. Further, Plaintiff and the members of the Class's meal
20 periods were routinely interrupted or not afforded at all. Defendants required Plaintiff and Class
21 members to attend working lunch meetings once every two months after clocking out for their
22 meal breaks.

23 94. Under California law, employers must also record their employees' meal periods:
24 "Every employer shall keep accurate information with respect to each employee, including the
25 following: ... Meal periods ... shall also be recorded. Meal periods during which operations cease
26 ... need not be recorded." IWC Wage Order No. 9, § (7)(A)(3).

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1 95. Where the employer has failed to keep records required by statute, the
2 consequences of such failure should fall on the employer, not the employee. In such a situation,
3 imprecise evidence by the employee can provide a sufficient basis for liability." *Hernandez v.*
4 *Mendoza*, 199 Cal. App. 3d 721, 727 (1988). Inasmuch as Defendants had an obligation under
5 the record-keeping requirements of the Wage Order to track meal periods unless "all work
6 ceases", Defendants knew or should have known its employees were regularly missing meal
7 periods and/or their meal periods were interrupted during the Class Period.

8 96. Defendants have a policy or practice of failing to ensure that Plaintiff and
9 members of the Class take proper meal periods required by California Labor Code §226.7 and
10 IWC Wage Order No. 9, §11.

11 97. By their actions in not affording Plaintiff and Class members compliant meal
12 periods, Defendants violated Cal. Lab. Code §226.7(b) and section 11 of Wage Order No. 9 in
13 the amount of one additional hour of pay at the employee's regular rate of compensation for each
14 work period during each day in which Defendants failed to provide employees with proper
15 statutory off-duty meal periods.

16 98. Defendants also have a policy or practice of failing to pay each of their employees
17 who was not provided with a proper meal period an additional one hour of compensation at each
18 employee's regular rate of pay.

19 99. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to bring
20 a private right of action to recover wages due based on the deprivation of proper meal periods
21 under Cal. Labor Code § 226.7(b).

22 100. As a direct and proximate result of Defendants' unlawful conduct as alleged
23 herein, Plaintiff and members of the Class have sustained economic damages, including but not
24 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
25 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
26 relief due to Defendants' violations of the California Labor Code and IWC Wage Order No. 9.

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FOURTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE REST PERIODS
(Labor Code § 226.7 and IWC Wage Order No. 9 By Plaintiffs Against Defendants and Does 1 through 100)

101. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

102. Labor Code § 226.7 and IWC Wage Order No. 9 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

103. Labor Code § 226.7 and IWC Wage Order No. 9 provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

104. Defendants have intentionally and improperly denied rest periods to Plaintiff and the Class in violation of Labor Code § 226.7 and IWC Wage Order No. 9. At times, Plaintiff and Class members were not afforded rest breaks. On days when Plaintiff and Class members worked 10 or more hours, they were not afforded third rest breaks.

105. At all times relevant hereto, Plaintiff and members of the Class have worked 8 or more hours daily.

106. At all times relevant hereto, Defendants failed to provide proper rest periods as required by Labor Code § 226.7 and IWC Wage Order No. 9.

107. By virtue of Defendants' unlawful failure to provide proper rest periods to the Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional limits of the Court, and which will be ascertained according to proof at trial.

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FIFTH CAUSE OF ACTION
FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE
ITEMIZED STATEMENTS

**(Labor Code §226 and IWC Wage Order No. 9 By Plaintiffs Against Defendants and Does
1 through 100)**

108. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

109. Pursuant to IWC Wage Order No. 9, Defendants were the employers of Plaintiff and the Class.

110. Pursuant to California Labor Code sections 226 and 1174, and IWC Wage Order No. 9, section 7, Defendants are required to maintain and provide accurate records relating to employee compensation including all formulas and production records used to calculate wages due.

111. Defendants are further required to provide, *inter alia*, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the employee is being paid; (5) the name of the employee; and (6) the name and address of the legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

112. Section 226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

113. Notwithstanding these provisions. Defendants have engaged in a uniform practice of refusing to maintain and provide the accurate records and wage statements required by California law.

114. On some of Plaintiff’s paystubs, such as 5/23/2024, there is no company address listed for the company name on the paystub.

1 115. Throughout the Class Period, Defendants intentionally and knowingly provided
2 Plaintiff and other members of the Class with weekly itemized wage statements containing
3 inaccurate information regarding the wages earned by Plaintiff and members of the Class in that
4 the payments owed to Plaintiff and the members of the Class for overtime compensation,
5 minimum wage compensation, missed or late meal/rest periods, were not included in gross wages
6 earned by Plaintiff and members of the Class.

7 116. As a result, Plaintiff and members of the Class have been injured by having been
8 deprived of the true facts pertaining to their compensation and employment.

9 117. Plaintiff and members of the Class were damaged by these failures because,
10 among other things, the failures led them to believe that they were not entitled to overtime
11 compensation, minimum wages, pay for meal/rest periods not timely provided, even though they
12 were so entitled and these failures hindered them from determining the amounts of wages owed
13 to them.

14 118. Plaintiff and members of the Class are entitled to the amounts provided in Labor
15 Code §226(e), plus attorneys' fees and costs.

16 119. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
17 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are provided
18 by law for Defendants' improper conduct.

19 120. Plaintiff and the Class reallege and incorporate by reference all of the allegations
20 set forth in this First Amended Complaint.

21 121. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due
22 and payable immediately. Labor Code § 202(a) provides that when an employee resigns from
23 employment, unpaid wages are due and payable within 72 hours of resignation.

24 122. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
25 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
26 paid, not to exceed thirty days.

27 123. Plaintiff and the Class were discharged and/or resigned from Defendants' employ
28 and Defendants willfully failed to pay Plaintiff and the Class wages due them.

1 124. Plaintiff was terminated on or about May 24, 2024, and she was not paid all wages
2 due to her for overtime, minimum wages and meal/rest breaks not afforded.

3 125. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's wages
4 for each day he or she was not timely paid, not to exceed 30 days' wages.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

7 **(Labor Code § 2802 – By Plaintiffs Against Defendants and Does 1 through 100)**

8 126. .. Plaintiff and the Class reallege and incorporate by reference all of the allegations
9 set forth in this First Amended Complaint.

10 127. Labor Code §2802 requires employers to indemnify employees for all necessary
11 expenditures incurred by employees in the discharge of their duties.

12 128. At all times relevant herein, Defendants were aware that Plaintiff and Class
13 members were using their personal vehicles for business, but failed to indemnify Plaintiff and
14 Class members for all their business-related expenses, including wear and tear expenses, in
15 accordance with Labor Code §2802. Plaintiff is informed and believes and thereon alleges that at
16 all relevant times, Defendants maintained a practice of not reimbursing Plaintiff and Class
17 Members for their work-related expenses that they incurred in using their vehicles for work-
18 related purposes.

19 129. As a result of Defendants' conduct, Plaintiff and Class Members suffered damages
20 in an amount, subject to proof, to the extent they were not reimbursed for all of their business-
21 related expenses incurred in the discharge of their duties.

22 130. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to recover
23 the full amount of their unreimbursed business expenses, reasonable attorneys' fees and costs of
24 suit.

25 **EIGHTH CAUSE OF ACTION**

26 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

27 **(Labor Code §1198.5 By Plaintiffs Against Defendants and Does 1 through 100)**
28

1 131. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this First Amended Complaint.

3 132. California Labor Code Section 1198.5 provides:

4 (a) Every current and former employee, or his or her representative, has the right to
5 inspect and receive a copy of the personnel records that the employer maintains
6 relating to the employee's performance or to any grievance concerning the employee.

7 (b) The employer shall make the contents of those personnel records available for
8 inspection to the current or former employee, or his or her representative, at
9 reasonable intervals and at reasonable times, but not later than 30 calendar days from
10 the date the employer receives a written request, unless the current or former
11 employee, or his or her representative, and the employer agree in writing to a date
12 beyond 30 calendar days to inspect the records, and the agreed-upon date does not
13 exceed 35 calendar days from the employer's receipt of the written request to inspect
14 the records. Upon a written request from a current or former employee, or his or her
15 representative, the employer shall also provide a copy of the personnel records,.....
16 later than 30 calendar days from the date the employer receives the request...

17 (k) If an employer fails to permit a current or former employee, or his or her
18 representative, to inspect or copy personnel records within the times specified I this
19 section... the current or former employee may recover a penalty of seven hundred fifty
20 dollars (\$750) from the employer.

21 (1) A current or former employee may also bring an action for injunctive relief to obtain
22 compliance with this section, and may recover costs and reasonable attorney's fees in
23 such an action.

24 133. Additionally, pursuant to IWC Wage Order No. 9, at section 7 re: Records,
25 employers are required to keep accurate payroll records on each employee, and such records must
26 be made readily available for inspection by the employee upon reasonable request. The employer
27 must also maintain accurate production records.

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1 134. On or about December 3, 2024, Plaintiff's counsel issued a written request to
2 Defendants for copies of her personnel records.

3 135. Under California Labor Code Sections 226, 432 and 1198.5, such records were to
4 include all records relating to Plaintiff's hours worked, wage statements and compensation.
5 Plaintiff's counsel and Defendants did not enter into an agreement to enlarge the time for
6 Defendants' compliance, and Defendants have failed and refused to permit Plaintiff copies of her
7 records.

8 136. As a direct result and consequence of Defendants' failure and refusal to permit
9 Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an order or
10 decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a result
11 of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty
12 of \$750 based upon Defendants' violation of §1198.

13 **NINTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendants and Does**
16 **1 through 100)**

17 137. Plaintiff and the Class reallege and incorporate by reference all of the allegations
18 set forth in this First Amended Complaint.

19 138. Pursuant to IWC Wage Order No. 9, Defendants were the employers of Plaintiff
20 and the Class. Defendants are also "person(s)" as that term is defined in Business & Professions
21 Code §17021.

22 139. The Business & Professions Code defines unfair competition as any unlawful,
23 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
24 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
25 Plaintiff and the Class overtime; (2) pay Plaintiff and Class members minimum wages; (3) pay
26 Plaintiff and the Class for meal periods not afforded, (4) pay Plaintiff and the Class for rest
27 periods not afforded, (5) furnish Plaintiff and the Class with accurate itemized wage statements,
28 as mandated by the applicable Labor Code and Industrial Welfare Commission requirements, (6)

1 pay all wages due on termination, (7) reimburse business expenses, and (8) provide personnel
2 records, all in violation of Business & Professions Code §§ 17200 *et seq.*

3 140. By and through the unfair and unlawful business practices described herein,
4 Defendants have obtained valuable property, money and services from the Plaintiff and the Class
5 and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of
6 Plaintiff and the Class.

7 141. All the acts described herein are violations of, among other things, the Labor Code
8 and Industrial Commission Wage Order No. 9, are unlawful and in violation of public policy; and
9 in addition are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair
10 and unlawful business practices in violation of Business & Professions Code §§ 17200 *et seq.*

11 142. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary
12 to restore to them the money and property which Defendants have acquired, or of which Plaintiff
13 and the Class have been deprived by means of the above-described unfair and unlawful business
14 practices.

15 143. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
16 above-described business practices are unfair and unlawful and that injunctive relief should be
17 issued restraining Defendants from engaging in any of the above described unfair and unlawful
18 business practices in the future.

19 144. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
20 redress the injuries which they have suffered as a consequence of the unfair and unlawful business
21 practices of Defendants. As a result of the unfair and unlawful business practices described
22 above, Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless
23 Defendants are restrained from continuing to engage in these unfair and unlawful business
24 practices. In addition, Defendants should be required to disgorge the unpaid moneys to Plaintiff
25 and the Class.

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1 **TENTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEY GENERAL ACT**

3 **(Damages Pursuant to Private Attorney General Act Against All Defendants and Does 1**
4 **through 100)**

5 145. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this First Amended Complaint.

7 146. Plaintiff brings this action on her behalf and others similarly situated to recover
8 wages from Defendants due to Defendants' systematic failure to pay overtime, to pay minimum
9 wages, provide meal/rest breaks (or pay the statutory compensation due), to issue accurate wage
10 statements, to pay wages due on termination, to reimburse business expenses, to allow inspection
11 of employment records and unfair competition.

12 147. On December 3, 2024, Plaintiff, pursuant to California Labor Code §§2699, et
13 seq., by and through Plaintiff's attorneys, uploaded a Private Attorney General Act ("PAGA")
14 claim to the State of California Labor and Workforce Development Agency ("LWDA") and sent
15 a letter via Certified Mail Return Receipt Requested to the Defendants.

16 148. More than 65 days have passed since the above letter, and Plaintiff's counsel has
17 not received any notice from the LWDA stating an intention to prosecute Plaintiff's PAGA
18 claims.

19 149. Plaintiff has, therefore, complied with the administrative exhaustion requirements
20 of PAGA.

21 150. Plaintiff seeks Labor Code penalties, attorney's fees, and costs in an amount
22 according to proof at trial, as provided by the Labor Code Private Attorney General Act.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor
25 and against Defendants, and each of them, as follows:

26 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff and
27 Class members, according to proof;

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2. For compensatory damages in the amount of unpaid minimum wages due to Plaintiff and Class member, according to proof;
3. For payment of unpaid wages in accordance with California labor and employment law;
4. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a meal period was not afforded;
5. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a rest period was not afforded;
6. For payment to Plaintiff and Class Members of waiting time penalties pursuant to *Cal. Lab. Code* §203, in an amount equal to their respective daily rates of pay at the time of termination or layoff, multiplied by the total amount of days elapsed between the date of the involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;
7. For specific relief enforcing waiting time penalties of 30 days of per diem wages pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;
8. For compensatory damages in the amount of Plaintiff and Class members' out-of-pocket expenses for vehicle use and/or reimbursement of monies incurred while performing Defendants' business-related duties plus interests, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);
9. For an award of consequential damages in Plaintiff and Class Members' favor and against Defendants, in an amount to be proven at trial;
10. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
11. For specific relief enforcing waiting time penalties of 30 days of per diem wages pursuant to *Cal. Bus. & Prof. Code* §17200, according to proof;
12. For prejudgment interest accrued on all due and unpaid overtime and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a), according to proof;

13. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.3, 226.7, 1198.5, according to proof;

14. For civil penalties pursuant to *Cal. Labor Code* §1198 and IWC Wage Order No. 9;

15. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802, *Cal. Code of Civ. Proc.* §1021.5, and/or Private Attorney General Act;

16. For penalties pursuant to *Cal. Labor Code* § 2699(g);

17. For an award of restitution of wages to Plaintiff and Class members in an amount equal to the amount of wages owed and unpaid, according to proof;

18. For injunctive relief requiring Defendants to comply with Labor Code 1198.5(b)(1);

19. For injunctive relief ordering the continuing unfair business acts and practices to cease, as the Court deems just and proper;

20. For other injunctive relief ordering Defendants to notify Plaintiff and Class members that they have not been paid the proper amounts in accordance with California law;

21. For punitive and exemplary damages in a sum to be determined at trial; and

22. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Kelly Leticia Gaines hereby respectfully requests a trial by jury for all claims and issues raised in her First Amended Complaint that may be entitled to a jury trial.

Date: February 10, 2025

LIPELES LAW GROUP, APC

By: 

Jasmine J. Badawi
Attorneys for Plaintiff,
KELLY LETICIA GAINES