

SUMMONS

(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

Electronically FILED by
Superior Court of California,
County of Los Angeles
1/27/2025 12:23 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By W. Lee, Deputy Clerk

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

HEAL THE BAY, a California corporation; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

DANA SMITH, on behalf of the State of California in her representative capacity as a private attorney general,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Los Angeles Superior Court

Santa Monica Courthouse - 1725 Main Street, Santa Monica, CA 90401

CASE NUMBER:
(Número del Caso):

25SMCV00413

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. T: (619) 255-9047 Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE:

(Fecha) 01/27/2025

Clerk, by David W. Slayton, Executive Officer/Clerk of Court, Deputy
(Secretario) W. Lee (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Rachel N. Newman (State Bar #350826)
Jennifer Gerstenzang (State Bar #279810)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
shani@zakaylaw.com
jackland@zakaylaw.com
rachel@zakaylaw.com
jenny@zakaylaw.com

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JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
jlapuyade@jcl-lawfirm.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DANA SMITH, on behalf of the State of
California in her representative capacity as a
private attorney general,

Plaintiff,

v.

HEAL THE BAY, a California corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No: **25SMCV00413**

REPRESENTATIVE ACTION
COMPLAINT FOR:

1) VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.

1 PLAINTIFF DANA SMITH ("PLAINTIFF") on behalf of the people of the State of
2 California, and as an "aggrieved employee" acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, alleges on information
4 and belief, except for her own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against HEAL THE BAY ("DEFENDANT" and/or
8 "DEFENDANTS") seeking only to recover PAGA civil penalties on behalf of all current and
9 former aggrieved employees that worked for DEFENDANT. PLAINTIFF does **not seek to**
10 **recover anything other than penalties as permitted by California Labor Code § 2699.** To the
11 extent that statutory violations are mentioned for wage violations, PLAINTIFF does not seek
12 underlying general and/or special damages for those violations, but simply the civil penalties
13 permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA which permits PLAINTIFF to bring an action on
15 behalf of others for PAGA penalties *only*, which is the precise and sole nature of this action.

16 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT'S
17 violations under PAGA and solely for the relief as permitted by PAGA that is, penalties and any
18 other relief the Court deems proper pursuant to PAGA. Nothing in this complaint should be
19 constructed as attempting to obtain any relief that would not be available in a PAGA- only action.

20 4. PLAINTIFF is not suing in her individual capacity; she is proceeding herein solely
21 under the PAGA, on behalf of the State of California for all aggrieved employees, including herself
22 and other aggrieved employees. Nothing in this complaint should be construed as PLAINTIFF
23 suing her individual capacity.

24 5. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
25 decreased their employment-related costs by systematically violating California wage and hour
26 laws.

27 6. DEFENDANT'S systematic pattern of wage and hour and IWC Wage Order
28 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- a. Failure to provide compliant meal and rest periods;
- b. Failure to allow employees to take duty-free meal and rest periods;
- c. Failure to pay all minimum, sick pay, regular and overtime wages;
- d. Failure to correctly calculate the regular rate of pay;
- e. Failure to pay within seven (7) days of the close of payroll;
- f. Failure to pay for all hours worked;
- g. Failure to maintain true and accurate records;
- h. Failure to reimburse for required business expenses;
- i. Failure to provide accurate itemized wage statements; and
- j. Failure to timely pay wages due during, and upon termination of employment.

7. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

THE PARTIES

8. Defendant HEAL THE BAY (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. DEFENDANT was the employer of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for.

10. DEFENDANT operates an environmental conservation nonprofit throughout the state of California, including in the county of Los Angeles where PLAINTIFF worked.

11. PLAINTIFF was employed by DEFENDANT in California from January of 2023 to June of 2024, as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

12. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANT in California and

1 classified as non-exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of
2 November 22, 2023, and the present (“PAGA Period”).

3 13. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor
4 Code § 2699(c) because she was employed by DEFENDANT and personally suffered each of the
5 alleged Labor Code violations committed by DEFENDANT.

6 14. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant
7 times were, employees of DEFENDANT, within the meanings set forth in the California Labor
8 Code and the applicable Industrial Welfare Commission Wage Order.

9 15. Each of the fictitiously named defendants participated in the acts alleged in this
10 Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50,
11 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting
12 forth the true names and capacities of these fictitiously named Defendants when their true names
13 are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the
14 fictitious Defendants have participated in the acts alleged in this Complaint.

15 16. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively
16 “DEFENDANTS”), were PLAINTIFF’S employers or persons acting on behalf of PLAINTIFF’S
17 employer, within the meaning of California Labor Code § 558, who violated or caused to be
18 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
19 hours and days of work in any order of the Industrial Welfare Commission and, as such, are
20 subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all
21 relevant times.

22 17. DEFENDANTS were PLAINTIFF’S employer or persons acting on behalf of
23 PLAINTIFF’S employer either individually or as an officer, agent, or employee of another person,
24 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
25 employee a wage less than the minimum fixed by California state law, and as such, are subject to
26 civil penalties for each underpaid employee.

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1 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
2 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

3 **A. Meal Period Violations**

4 21. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
5 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning
6 the time during which an employee is subject to the control of an employer, including all the time
7 the employee is suffered or permitted to work. From time to time during the PAGA PERIOD,
8 DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying
9 them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT
10 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S
11 off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a
12 partial lunch. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
13 minimum wage and overtime compensation by regularly working without their time being
14 accurately recorded and without compensation at the applicable minimum wage and overtime
15 rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
16 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business
17 records.

18 22. From time to time during the PAGA PERIOD, as a result of their rigorous work
19 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
20 AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minute off duty
21 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
22 AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANT for more
23 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT
24 fails to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal
25 period for some workdays in which DEFENDANT requires these employees to work ten (10)
26 hours of work. The nature of the work performed by PLAINTIFF and other AGGRIEVED
27 EMPLOYEES does not qualify for the limited and narrowly construed "on-duty" meal period
28 exception. When they were provided with meal periods, PLAINTIFF and other AGGRIEVED

1 EMPLOYEES were, from time to time, required to remain on duty and on call. Further,
2 DEFENDANT from time to time required PLAINTIFF and other AGGRIEVED EMPLOYEES
3 to maintain cordless communication devices in order to receive and respond to work-related
4 communications during what was supposed to be their off-duty meal breaks. DEFENDANT'S
5 failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES Members with legally
6 required meal breaks is evidenced by DEFENDANT'S business records. PLAINTIFF and
7 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation and
8 in accordance with DEFENDANT's strict corporate policy and practice.

9 **B. Rest Period Violations**

10 23. From time to time during the PAGA PERIOD, PLAINTIFF and other
11 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being
12 provided ten (10) minute rest periods as a result of their rigorous work requirements and
13 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
14 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
15 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
16 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
17 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
18 time to time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED
19 EMPLOYEES were, from time to time, required to remain on premises, on duty and/or on call
20 and/or on the premises. Further, DEFENDANT from time to time required PLAINTIFF and other
21 AGGRIEVED EMPLOYEES to maintain cordless communication devices in order to receive and
22 respond to work-related communications during what was supposed to be their off-duty rest
23 breaks. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-
24 hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT'S
25 inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time
26 denied their proper rest periods by DEFENDANT and DEFENDANT'S managers.

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1 **C. Unreimbursed Business Expenses**

2 24. DEFENDANT as a matter of corporate policy, practice, and procedure,
3 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
4 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
5 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
6 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are
7 required to indemnify employees for all expenses incurred in the course and scope of their
8 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence
10 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
11 even though unlawful, unless the employee, at the time of obeying the directions, believed them
12 to be unlawful."

13 25. In the course of their employment, DEFENDANT required PLAINTIFF and other
14 AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell phones,
15 vehicles, for the purchase and maintenance of work uniforms, and for the purchase of office
16 supplies as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
17 AGGRIEVED EMPLOYEES were required to use personal cell phones, vehicles, purchase and
18 maintain work uniforms, and purchase office supplies in order to perform work related tasks.
19 However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED
20 EMPLOYEES for the personal expenses incurred for the use of their personal cell phones,
21 personal vehicles, and personal home internet, purchase office supplies and work uniforms, and
22 maintain their work uniforms. As a result, in the course of their employment with DEFENDANT,
23 the PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business
24 expenses that included, but were not limited to, costs related to the use of their personal cell
25 phones, personal vehicles, and personal home internet, purchase office supplies and work
26 uniforms, and maintain their work uniforms, all on behalf of and for the benefit of DEFENDANT.

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D. Wage Statement Violations

26. California Labor Code Section 226 requires an employer to furnish its employees and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

27. From time to time during the PAGA PERIOD, when PLAINTIFF and other AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show, among other things, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period, and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

28. In addition to the foregoing, DEFENDANT, from time to time, failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES Members with wage statements that comply with Cal. Lab. Code § 226(a)(1)-(9).

29. Specifically, DEFENDANT issued PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that failed to accurately report total hours worked in violation of Cal. Lab. Code § 226(a)(2). For example, DEFENDANT from time to time issued PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that included items, including but not limited to, meal period premiums and holiday pay into the calculation of total hours worked. However, meal period premiums and holiday pay are not considered hours worked for purposes of Cal. Lab. Code § 226(a)(2).

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1 30. As a result, DEFENDANT issued PLAINTIFF and AGGRIEVED EMPLOYEES
2 with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's violations are
3 knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or
4 inadvertent mistake.

5 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

6 31. During the PAGA PERIOD, from time-to-time DEFENDANT failed and
7 continues to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours
8 worked.

9 32. During the PAGA PERIOD, from time-to-time DEFENDANT required
10 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work, including
11 but not limited to, updating supervisors' timesheets, performing security sweeps, performing
12 opening and closing keyholder duties, sending and receiving work-related communications, and
13 scheduling. This resulted in PLAINTIFF and AGGRIEVED EMPLOYEES to have to work while
14 off-the-clock.

15 33. DEFENDANT directed and directly benefited from the undercompensated off-the-
16 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

17 34. DEFENDANT controlled the work schedules, duties, and protocols, applications,
18 assignments, and employment conditions of PLAINTIFF and AGGRIEVED EMPLOYEES.

19 35. DEFENDANT was able to track the amount of time PLAINTIFF and
20 AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track,
21 or pay PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and owed for all the work
22 they performed.

23 36. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt employees,
24 subject to the requirements of the California Labor Code.

25 37. DEFENDANT'S policies and practices deprived PLAINTIFF and the other
26 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
27 the off-the-clock work activities. Because PLAINTIFF and AGGRIEVED EMPLOYEES
28

1 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
2 DEFENDANT’S policies and practices also deprived them of overtime pay.

3 38. DEFENDANT knew or should have known that PLAINTIFF and AGGRIEVED
4 EMPLOYEES’ off-the-clock work was compensable under the law.

5 39. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
6 them for all hours worked at DEFENDANT’S direction, control, and benefit for the time spent
7 working while off-the-clock. DEFENDANT’S uniform policy and practice to not pay
8 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
9 applicable law is evidenced by DEFENDANT’S business records.

10 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
11 **and Redeemed Sick Pay**

12 40. From time to time during the PAGA PERIOD, DEFENDANT failed and continues
13 to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES
14 for their overtime and double time hours worked, meal and rest period premiums, and redeemed
15 sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages
16 due to them for working overtime without compensation at the correct overtime and double time
17 rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANT’S uniform
18 policy and practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES Members at the
19 correct rate for all overtime and double time worked, meal and rest period premiums, and
20 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT’S business
21 records.

22 41. State law provides that employees must be paid overtime at one-and-one-half times
23 their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES were
24 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
25 employee’s performance.

26 42. The second component of PLAINTIFF’S and other AGGRIEVED EMPLOYEES’
27 compensation was DEFENDANT’S non-discretionary incentive program that paid PLAINTIFF
28 and other AGGRIEVED EMPLOYEES’ incentive wages based on their performance for

1 DEFENDANT. The non-discretionary bonus program provided all employees paid on an hourly
2 basis with bonus compensation when the employees met the various performance goals set by
3 DEFENDANT.

4 43. From-time-to-time, when calculating the regular rate of pay, in those pay periods
5 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid
6 meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary
7 bonus, DEFENDANT failed to accurately include the non-discretionary bonus compensation as
8 part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all
9 non-overtime hours worked. Management and supervisors described the incentive/bonus program
10 to potential and new employees as part of the compensation package. As a matter of law, the
11 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
12 included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment
13 of overtime and double time compensation, meal and rest period premiums, and redeemed sick pay
14 to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANT. Specifically, California
15 Labor Code Section 246 mandates that paid sick time for non-employees shall be calculated in the
16 same manner as the regular rate of pay for the workweek in which the non-exempt employee uses
17 paid sick time, whether or not the employee actually works overtime in that workweek.
18 DEFENDANT'S conduct, as articulated herein, by failing to include the incentive compensation as
19 part of the "regular rate of pay" for purposes of sick pay compensation was in violation of Cal. Lab.
20 Code § 246 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202,
21 203 and/or 204.

22 44. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
24 matter of company policy, practice, and procedure, intentionally and knowingly failed to
25 compensate PLAINTIFF and AGGRIEVED EMPLOYEES at the correct rate of pay for all
26 overtime and double time worked, meal and rest period premiums, and sick pay. This uniform
27 policy and practice of DEFENDANT is intended to purposefully avoid the payment of the correct
28 overtime and double time compensation, meal and rest period premiums, and sick pay as required

1 by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
2 over competitors who complied with the law. To the extent equitable tolling operates to toll
3 claims by the AGGRIEVED EMPLOYEES members against DEFENDANT, the PAGA
4 PERIOD should be adjusted accordingly.

5 **G. Sick Pay Violations**

6 45. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
7 July 1, 2015, works in California for the same employer for 30 or more days within a year from
8 the commencement of employment is entitled to paid sick days as specified in this section.”
9 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From
10 time to time, DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF
11 and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave. As of January 1, 2024,
12 DEFENDANT failed to adhere to the law in that they failed to provide and allow employees to
13 use at least 40 hours or five days of paid sick leave per year.

14 46. California Labor Code Section 246(i) requires an employer to furnish its
15 employees with written wage statements setting forth the amount of paid sick leave available.
16 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF
17 and AGGRIEVED EMPLOYEES with wage statements setting forth the amount of paid sick
18 leave available.

19 **H. Violations for Untimely Payment of Wages**

20 47. Pursuant to California Labor Code section 204, PLAINTIFF and the
21 AGGRIEVED EMPLOYEES members were entitled to timely payment of wages during their
22 employment. PLAINTIFF and the AGGRIEVED EMPLOYEES members, from time to time, did
23 not receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
24 meal period premium wages, and rest period premium wages within permissible time period.

25 48. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
26 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
27 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
28 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours

1 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
2 wages at the time of quitting.” PLAINTIFF and the AGGRIEVED EMPLOYEES were, from time
3 to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at
4 the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202. Further, DEFENDANT’S
5 violations are willful and intentional, were not isolated due to an unintentional payroll error due
6 to clerical or inadvertent mistake.

7 49. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
8 paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose
9 employment ended during the PAGA PERIOD.

10 **I. Unlawful Deductions**

11 50. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
12 and AGGRIEVED EMPLOYEES’ pay without explanations and without authorization to do so
13 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES Members. As a result,
14 DEFENDANTS violated Labor Code § 221.

15 **J. Unlawful Rounding Practices**

16 51. During the PAGA Period, DEFENDANT did not have in place an immutable
17 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED
18 EMPLOYEES for the actual time these employees worked each day, including overtime hours.
19 Specifically, DEFENDANT had in place an unlawful rounding policy and practice that resulted
20 in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated for all of their time
21 worked. As a result, DEFENDANT was able to and did in fact unlawfully, and unilaterally round
22 the time recorded in DEFENDANT’S timekeeping system for PLAINTIFF and AGGRIEVED
23 EMPLOYEES in order to avoid paying these employees for all their time worked, including the
24 applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other
25 AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time worked
26 by working without their time being accurately recorded and without compensation at the
27 applicable overtime rates.

28 ///

52. Further, the mutability of DEFENDANT'S timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.

K. Timekeeping Manipulation

53. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest break.

54. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time-to-time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

55. The mutability of the timekeeping system also allowed DEFENDANT to alter employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT'S timekeeping system so as to create the appearance that PLAINTIFF and AGGRIEVED EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT'S uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

56. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due them for all hours worked at DEFENDANT'S direction, control and benefit for the time the timekeeping system was inoperable. DEFENDANT'S uniform policy and practice to not pay

1 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
2 applicable law is evidenced by DEFENDANT’S business records.

3 57. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
4 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
5 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
6 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
7 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
8 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
9 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
10 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
11 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
12 without additional compensation and in accordance with DEFENDANT’S strict corporate policy
13 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
14 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF
15 for required business expenses related to the personal expenses incurred for the use of her personal
16 cell phone, personal vehicle, and personal home internet, purchase office supplies and work
17 uniforms, and maintain their work uniforms, on behalf of and in furtherance of her employment
18 with DEFENDANT. To date, DEFENDANT has not fully paid PLAINTIFF the minimum,
19 overtime and double time compensation still owed to her or any penalty wages owed to her under
20 Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed
21 the sum or value of \$75,000.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

24 **(Cal. Lab. Code §§2698 et seq.)**

25 **(Alleged by PLAINTIFF against all Defendants)**

26 58. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
27 herein, the prior paragraphs of this Complaint.

28 ///

1 59. PAGA is a mechanism by which the State of California itself can enforce state
2 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
3 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
4 fundamentally a law enforcement action designed to protect the public and not to benefit private
5 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
6 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
7 PAGA, the California Legislature specified that "it was ... in the public interest to allow
8 aggrieved employees, acting as private attorneys general to recover civil penalties for Labor
9 Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to
10 arbitration.

11 60. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
12 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the
13 meaning of Labor Code Section 2699(c).

14 61. Labor Code Sections 2699(a) and (k) authorize an AGGRIEVED EMPLOYEE,
15 like PLAINTIFF, on behalf of herself and other current or former employees, to bring a civil
16 action to recover civil penalties pursuant to the procedures specified in Labor Code Section
17 2699.3

18 62. PLAINTIFF complied with the procedures for bringing suit specified in Labor
19 Code Section 2699.3. By certified letter, return receipt requested, dated November 22, 2024,
20 PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA")
21 and to DEFENDANT of the specific provisions of the Labor Code alleged to have been violated,
22 including the facts and theories to support the alleged violations. See Exhibit #1.

23 63. As of the date of this complaint, more than sixty-five (65) days after serving the
24 LWDA with notice of DEFENDANT'S violations, the LWDA has not provided any notice by
25 certified mail of its intent to investigate the DEFENDANT'S alleged violations as mandated by
26 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
27 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

28 ///

1 64. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
2 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANT'S violations of
3 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
4 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802 and
5 2804 in the following amounts:

6 a. For violation of Labor Code Sections 201, 202, 203, and 204, up to (\$200)
7 per AGGRIEVED EMPLOYEE per pay period [penalty per Labor Code
8 Section 2699(f)];

9 b. For violations of Labor Code Section 226(a), a civil penalty in the amount
10 of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for
11 any initial violation and one thousand dollars for each subsequent violation
12 [penalty per Labor Code Section 226.3];

13 c. For violations of Labor Code Sections 204, a civil penalty in the amount of
14 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial
15 violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for
16 each subsequent violation [penalty per Labor Code Section 210];

17 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty
18 in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED
19 EMPLOYEE for the initial violation and hundred dollars (\$100) for each
20 underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty
21 per Labor Code Section 558];

22 e. For violations of Labor Code Section 1174(d), a civil penalty in the amount
23 of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per
24 Labor Code Section 1174.5].

25 f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199,
26 a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED
27 EMPLOYEE per pay period for the initial violation and two hundred dollars
28 fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent

violation [penalty per Labor Code Section].

65. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of up to two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(k)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

1. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;
2. For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and
3. For such other relief as the Court deems just and proper.

DATED: January 27, 2025

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client # 95401

November 22, 2024

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

HEAL THE BAY

c/o Richard Wegman

1444 9th Street

Santa Monica, CA 90401

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 2308 6625 29

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

This notice is being sent in compliance with Cal. Lab. Code § 2699.3. Our offices represent Plaintiff DANA SMITH (“Plaintiff”) and other aggrieved employees. Plaintiff was employed by Defendant HEAL THE BAY (“Defendant” and/or “Defendants”) in California from January of 2023 through June of 2024, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks.

Plaintiff alleges that within the past year, she personally suffered violations of the following Labor Codes Sections as a result of Defendant’s failure to pay Plaintiff for all time worked, provide Plaintiff with compliant meal periods, provide Plaintiff with compliant rest periods, provide Plaintiff with accurate itemized wage statements that facially comply with the requirements provided for in Labor Code Section 226, furnish wages to Plaintiff with the frequency as set forth under Labor Code Section 204, and reimburse Plaintiff for necessary business expenses: Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804. These violations are actionable under California Labor Code section 2699.3.

The information below provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. If the agency needs any further information, please do not hesitate to ask.

Plaintiff seeks to represent a group of aggrieved employees defined as any person currently or formerly employed by Defendant who performed work in California and against whom one or more of the alleged violations listed above were committed during the relevant claim period (“Aggrieved Employees”). Plaintiff believes this group to be comprised of all current and former non-exempt employees who performed work for Defendant in California during

the period beginning one year prior to the date of this Notice and continuing through the present.

In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, Defendants as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate Plaintiff and other Aggrieved Employees for missed meal and rest periods, failed to pay Plaintiff and other Aggrieved Employees for all time worked, failed compensate Plaintiff and other Aggrieved Employees for off-the-clock work, failed to pay Plaintiff and other Aggrieved Employees overtime at the correct regular rate of pay, failed to compensate Plaintiff and other Aggrieved Employees meal and rest premiums at the regular rate of pay, failed to pay Plaintiff and other Aggrieved Employees redeemed sick pay at the regular rate of pay, failed to reimburse Plaintiff and other Aggrieved Employees for business expenses, and failed to issue to Plaintiff and other Aggrieved Employees accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. Defendant’s uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows Defendants to illegally profit and gain an unfair advantage over competitors who comply with the law.

Meal Period Violations: Pursuant to the Industrial Welfare Commission Wage Orders, Defendants were required to pay Plaintiff and the Aggrieved Employees for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the last year, Defendants required Plaintiff and other Aggrieved Employees to work without paying them for all the time they were under Defendants’ control. Specifically, Defendants required Plaintiff to work while clocked out during what was supposed to be Plaintiff’s off-duty meal break. Indeed, there were many days where Plaintiff did not even receive a partial lunch. As a result, Plaintiff and other Aggrieved Employees forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. Defendants’ uniform policy and practice not to pay Plaintiff and other Aggrieved Employees for all time worked is evidenced by Defendants’ business records.

During the last year, as a result of their rigorous work schedules and Defendants’ inadequate staffing practices, Plaintiff and other Aggrieved Employees were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. Plaintiff and other Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during some shifts without receiving a meal break. Further, Defendants failed to provide Plaintiff and other Aggrieved Employees with a second off-duty meal period for some workdays in which these employees were required by Defendants to work ten (10) hours of work. The nature of the work performed by Plaintiff and other Aggrieved Employees does not qualify for the limited and narrowly construed “on-duty” meal period exception. When they were provided with meal periods, Plaintiff and other Aggrieved Employees were, from time to time, required to remain on duty and on call. Defendant’s failure to provide Plaintiff and other Aggrieved Employees with legally required meal breaks is evidenced by Defendants’ business records. As a result of their rigorous work schedules and Defendants’ inadequate staffing, Plaintiff and other Aggrieved Employees therefore forfeited meal breaks without additional compensation and in accordance with Defendants’ strict corporate policy and practice.

Rest Period Violations: From time to time during the past year, Plaintiff and other Aggrieved Employees were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and Defendants' inadequate staffing. Further, for the same reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, Plaintiff and other Aggrieved Employees were, from time to time, required to remain on premises, on duty and/or on call, and not fully relieved of all duties. Plaintiff and other Aggrieved Employees were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules and Defendants' inadequate staffing, Plaintiff and other Aggrieved Employees were from time to time denied their proper rest periods by Defendants and Defendants' managers.

Unreimbursed Business Expenses: Defendants as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the Plaintiff and other Aggrieved Employees for required business expenses incurred by the Plaintiff and other Aggrieved Employees in direct consequence of discharging their duties on behalf of Defendants. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

Within the last year, in the course of their employment, Defendants required Plaintiff and other Aggrieved Employees to incur personal expenses for the use of their personal cell phones, personal vehicles, personal home internet, and for the purchase of office supplies and work uniforms, including for uniform maintenance as a result of and in furtherance of their job duties. Specifically, Plaintiff and other Aggrieved Employees were required to incur personal expenses for the use of their personal cell phones, personal vehicles, personal home internet, and for the purchase of office supplies and work uniforms, including for uniform maintenance in order to perform work related tasks. However, Defendants unlawfully failed to reimburse Plaintiff and other Aggrieved Employees for the personal expenses incurred for the purchase and maintenance of their work uniforms. As a result, in the course of their employment with Defendants, the Plaintiff and other Aggrieved Employees incurred unreimbursed business expenses that included, but were not limited to, costs related to the personal expenses incurred for the use of their personal cell phones, personal vehicles, personal home internet, and for the purchase of office supplies and work uniforms, including for uniform maintenance, all on behalf of and for the benefit of Defendants.

Wage Statement Violations: California Labor Code Section 226 requires an employer to furnish its employees and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name

and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. From time to time during the last year, when Plaintiff and other Aggrieved Employees missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, Defendants also failed to provide Plaintiff and other Aggrieved Employees with complete and accurate wage statements which failed to show, among other things, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period, and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Defendants also failed to provide Plaintiff and other Aggrieved Employees with complete and accurate wage statements that included all required elements listed above. Specifically, Defendant issued Plaintiff and other Aggrieved Employees with wage statements that failed to accurately report total hours worked in violation of Cal. Lab. Code § 226(a)(2). For example, Defendant from time to time issued Plaintiff and other Aggrieved Employees with wage statements that included items, including but not limited to, meal period premiums and holiday pay into the calculation of total hours worked. However, meal period premiums and holiday pay are not considered hours worked for purposes of Cal. Lab. Code § 226(a)(2). As a result, Defendants issued Plaintiff and other Aggrieved Employees with wage statements that violate Cal. Lab. Code § 226. Further, Defendants' violations are knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations: During the last year, from time-to-time, Defendants failed and continue to fail to accurately pay Plaintiff and other Aggrieved Employees for all hours worked. During the last year, from time-to-time Defendants required Plaintiff and other Aggrieved Employees to perform pre-shift or post-shift work. This resulted in Plaintiff and other Aggrieved Employees having to work while off-the-clock. Defendants directly benefited from the undercompensated off-the-clock work performed by Plaintiff and other Aggrieved Employees. Defendants controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of Plaintiff and other Aggrieved Employees.

Defendants were able to track the amount of time Plaintiff and other Aggrieved Employees spent working; however, Defendants failed to document, track, or pay Plaintiff and other Aggrieved Employees all wages earned and owed for all the work they performed. Plaintiff and other Aggrieved Employees were non-exempt employees, subject to the requirements of the California Labor Code. Defendants' policies and practices deprived Plaintiff and other Aggrieved Employees of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because Plaintiff and other Aggrieved Employees typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day, Defendants' policies and practices also deprived them of overtime pay.

Defendants knew or should have known that Plaintiff's and other Aggrieved Employees' off-the-clock work was compensable under the law. As a result, Plaintiff and other Aggrieved Employees forfeited wages due to them for all hours worked at Defendants' direction, control, and benefit for the time spent working while off-the-clock, including but not limited to, undergoing pre-shift and post-shift work. Defendants' uniform policy and practice to not pay Plaintiff and other Aggrieved Employees wages for all hours worked in accordance with applicable law is evidenced by Defendants' business records.

Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay: From time to time during the last year, Defendants failed and continue to fail to accurately calculate and pay Plaintiff and other Aggrieved Employees for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, Plaintiff and other Aggrieved Employees forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. Defendants’ uniform policy and practice not to pay Plaintiff and other Aggrieved Employees at the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by Defendants’ business records.

State law provides that employees must be paid overtime at one-and-one-half times their “regular rate of pay.” Plaintiff and other Aggrieved Employees were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee’s performance. The second component of Plaintiff’s and other Aggrieved Employees’ compensation was Defendants’ non-discretionary incentive program that paid Plaintiff and other Aggrieved Employees incentive wages based on their performance for Defendants. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus compensation when the employees met the various performance goals set by Defendants. However, from time to time, when calculating the regular rate of pay in those pay periods where Plaintiff and other Aggrieved Employees worked overtime, double time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary bonuses, Defendants failed to accurately include the non-discretionary bonus compensation as part of the employee’s “regular rate of pay” and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by Plaintiff and other Aggrieved Employees must be included in the “regular rate of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double time compensation, meal and rest period premium payments, and redeemed sick pay to Plaintiff and other Aggrieved Employees by Defendants.

Specifically, California Labor Code Section 246 mandates that paid sick time for non-exempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. Defendants’ conduct, as articulated herein, by failing to include the incentive compensation as part of the “regular rate of pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, Defendants as a matter of company policy, practice, and procedure, intentionally and knowingly failed to compensate Plaintiff and other Aggrieved Employees at the correct rate of pay for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay as required by California law which allowed Defendants to illegally profit and gain an unfair advantage over competitors who complied with the law.

Unlawful Deductions: During the last year, Defendants, from time-to-time, unlawfully deducted wages from Plaintiff and Aggrieved Employees' pay without explanations and without authorization to do so or notice to Plaintiff and the Aggrieved Employees. As a result, Defendants violated Labor Code § 221.

Timekeeping Manipulation: During the last year, Defendants, from time-to-time, did not have an immutable timekeeping system to accurately record and pay Plaintiff and other Aggrieved Employees for the actual time Plaintiff and other Aggrieved Employees worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, Defendants were able to and did in fact, unlawfully, and unilaterally alter the time recorded in Defendants' timekeeping system for Plaintiff and other Aggrieved Employees in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest breaks. As a result, Plaintiff and other Aggrieved Employees, from time-to-time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

The mutability of the timekeeping system also allowed Defendants to alter employee time records by recording fictitious thirty (30) minute meal breaks in Defendants' timekeeping system so as to create the appearance that Plaintiff and other Aggrieved Employees clocked out for thirty (30) minute meal break when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of Defendants' uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks. As a result, Plaintiff and other Aggrieved Employees forfeited wages due to them for all hours worked at Defendants' direction, control and benefit for the time the timekeeping system was inoperable. Defendants' uniform policy and practice to not pay Plaintiff and the Aggrieved Employees wages for all hours worked in accordance with applicable law is evidenced by Defendants' business records.

Unlawful Rounding Practices: During the last year, Defendants did not have in place an immutable timekeeping system to accurately record and pay Plaintiff and other Aggrieved Employees for the actual time these employees worked each day, including overtime hours. Specifically, Defendants had in place an unlawful rounding policy and practice that resulted in Plaintiff and the Aggrieved Employees being undercompensated for all of their time worked. As a result, Defendants were able to and did in fact unlawfully, and unilaterally round the time recorded in Defendants' timekeeping system for Plaintiff and the Aggrieved Employees in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, Plaintiff and other Aggrieved Employees, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

Further, the mutability of Defendants' timekeeping system and unlawful rounding policy and practice resulted in Plaintiff's and the Aggrieved Employees' time being inaccurately recorded. As a result, from time to time, Defendants' unlawful rounding policy and practice caused Plaintiff and other Aggrieved Employees to perform work as ordered by Defendants for more than five (5) hours during a shift without receiving an off-duty meal break.

Untimely Payment of Wages: Pursuant to California Labor Code section 204, Plaintiff and the Aggrieved Employees were entitled to timely payment of wages during their employment. Plaintiff

and the Aggrieved Employees, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within permissible time period. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Plaintiff and the Aggrieved Employees were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202. To date, Defendants have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203.

Sick Pay Violations: Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.” Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time, including within the last year, Defendants failed to have a policy or practice in place that provided Plaintiff and other Aggrieved Employees with sick days and/or paid sick leave. As of January 1, 2024, Defendants failed to adhere to the law in that they failed to provide and allow employees to use at least 40 hours or five days of paid sick leave per year. California Labor Code Section 246(i) requires an employer to furnish its employees with written wage statements setting forth the amount of paid sick leave available. From time to time, including within the last year, Defendants violated Cal. Lab. Code § 246 by failing to furnish Plaintiff and other Aggrieved Employees with wage statements setting forth the amount of paid sick leave available.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided in compliance with California Labor Code section 2695, *et seq.*

If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Plaintiff