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on behalf of herself and all others similarly
situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

DEBRA SILVAS, on behalf of herself and all
others similarly situated,

Plaintiffs,

v.

CATALYST FAMILY, INC., d.b.a.
CATALYST KIDS, a California corporation;
and DOES 1 through 100, inclusive,

Defendant.

CASE NO.: 21CV385134

[Assigned for all purposes to the Hon. Sunil R.
Kulkarni Court in Dept.1]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO INDEMNIFY;
8. UNFAIR COMPETITION;
9. PENALTIES PER LABOR CODE § 210;
10. PENALTIES PER LABOR CODE § 226.3;
11. PENALTIES PER LABOR CODE § 558;
12. PENALTIES PER LABOR CODE § 1174.5;
13. PENALTIES PER LABOR CODE § 1197.1;
14. PENALTIES PER LABOR CODE § 2699.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff DEBRA SILVAS (“Plaintiff”), on behalf of Plaintiff and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against CATALYST FAMILY, INC., d.b.a. CATALYST KIDS, (“Catalyst”), and any of its respective subsidiaries or affiliated companies within the State of California (Catalyst, with DOES 1 through 100, as further defined below, “Defendant”) on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendant (“Class Members”).

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Catalyst and any of its respective subsidiaries or affiliated companies within the State of California, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendant working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendant working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

PARTIES

A. Plaintiff

3. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendant employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, cooking, cleaning, feeding children, and unloading shipments. Plaintiff is informed and believes that Plaintiff worked for Defendant from approximately July of 2006 through the present. Defendant paid and pays (or purportedly paid and pays) Plaintiff an hourly wage for her services.

1 **B. Defendant**

2 4. Plaintiff is informed and believes and based thereon alleges that defendant Catalyst
3 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
4 the laws of the State of California and doing business in the County of Santa Clara, State of
5 California.

6 5. The true names and capacities, whether individual, corporate, associate, or otherwise,
7 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
8 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
9 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
10 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
11 Plaintiff will seek leave of court to amend this First Amended Complaint to reflect the true names
12 and capacities of the defendants designated hereinafter as DOES when such identities become
13 known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in
14 all respects pertinent to this Action, as the agent of the other defendant(s), carried out a joint scheme,
15 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
16 attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to
17 "Defendant," it shall include Catalyst and any of its parent, subsidiary, or affiliated companies
18 within the State of California, as well as DOES 1 through 100 identified herein.

19 **JOINT LIABILITY ALLEGATIONS**

20 6. Plaintiff is informed and believes and based thereon alleges that all the times
21 mentioned herein, each of the defendants was the agent, principal, employee, employer,
22 representative, joint venture or co-conspirator of each of the other defendants, either actually or
23 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
24 employment, joint venture, and conspiracy.

25 7. All of the acts and conduct described herein of each and every corporate defendant
26 was duly authorized, ordered, and directed by the respective and collective defendant corporate
27 employers, and the officers and management-level employees of said corporate employers. In
28 addition thereto, said corporate employers participated in the aforementioned acts and conduct of

1 their said employees, agents, and representatives, and each of them; and upon completion of the
2 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
3 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
4 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
5 aforementioned corporate employees, agents and representatives.

6 **JURISDICTION**

7 8. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
8 of Civil Procedure section 410.10.

9 9. Venue is proper in Santa Clara County, California pursuant to Code of Civil
10 Procedure sections 392, *et seq.* because, among other things, Santa Clara County is where Defendant
11 resides or holds its principal place of business; the county in which the employment relationship
12 began; the county in which performance of the employment contract, or part of it, between Plaintiff
13 and Defendant was due to be performed; and the county in which the employment contract, or part
14 of it, between Plaintiff and Defendant was actually performed. Moreover, the unlawful acts alleged
15 herein have a direct effect on Plaintiff and Class Members in Santa Clara County, and because
16 Defendant employs numerous Class Members in Santa Clara County.

17 10. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
18 Defendant during the applicable statutory period and suffered one or more of the Labor Code
19 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
20 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
21 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
22 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
23 employees of Defendant during the civil penalty period.

24 11. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
25 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
26 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
27 PAGA allegations described herein is not required.

28 / / /

12. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendant violated, *inter alia*, Labor Code sections 96, 98.6, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

13. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

14. On or around July 30, 2021, Plaintiff provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendant's violations of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendant.

15. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendant's alleged violations within sixty-five (65) calendar days of the July 30, 2021 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendant.

16. On April 6, 2020, the Judicial Council of California approved Appendix I – Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of action were tolled from April 6, 2020 until October 1, 2020.

FACTUAL BACKGROUND

17. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendant has failed to pay overtime wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours

1 worked on the seventh consecutive work day in a work week by, among other things, failing to
2 accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
3 employees to work off the clock, including, without limitation, by requiring employees to complete
4 pre and post shift duties without permitting employees to clock in for all that time, including but not
5 limited to temperature checks; failing to include all forms of remuneration, including non-
6 discretionary bonuses, incentive pay, hazard pay, supplemental pay, and other forms of
7 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
8 additional compensation was earned for the purpose of calculating the overtime rate of pay; editing
9 and/or manipulation of employee time entries to show less hours than actually worked; and for
10 paying straight pay instead of overtime pay to the detriment of Plaintiff and Class Members.

11 18. For at least four (4) years prior to the filing of this Action and continuing to the
12 present, Defendant has failed to pay minimum wages to Plaintiff and Class Members, or some of
13 them, in violation of California state wage and hour laws as a result of, among other things, failing
14 to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
15 employees to work off the clock, including, without limitation, by requiring employees to complete
16 pre and post shift duties without permitting employees to clock in for all that time, including but not
17 limited to temperature checks; editing and/or manipulation of employee time entries to show less
18 hours than actually worked; and failing to pay for reporting time pay, to the detriment of Plaintiff
19 and Class Members.

20 19. For at least four (4) years prior to the filing of this Action and continuing to the
21 present, Defendant has failed to provide Plaintiff and Class Members, or some of them, full, timely
22 thirty (30) minute uninterrupted meal period for days on which they worked more than five (5) hours
23 in a work day and a second thirty (30) minute uninterrupted meal period for days on which they
24 worked in excess of ten (10) hours in a work day, and failing to provide compensation for such
25 unprovided meal periods as required by California wage and hour laws.

26 20. For at least four (4) years prior to the filing of this Action and continuing to the
27 present, Defendant has failed to authorize and permit Plaintiff and Class Members, or some of them,
28 to take rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof

1 and failed to provide compensation for such unprovided rest periods as required by California wage
2 and hour laws.

3 21. For at least three (3) years prior to the filing of this Action and continuing to the
4 present, Defendant has failed to pay Plaintiff and Class Members, or some of them, the full amount
5 of their wages owed to them upon termination and/or resignation, including for, without limitation,
6 failing to pay overtime wages, minimum wages, premium wages, and earned and vested vacation
7 pay pursuant to Labor Code section 227.3.

8 22. For at least one (1) year prior to the filing of this Action and continuing to the present,
9 Defendant has, failed to furnish Plaintiff and Class Members, or some of them, with itemized wage
10 statements that accurately reflect gross wages earned; total hours worked; net wages earned; all
11 applicable hourly rates in effect during the pay period and the corresponding number of hours
12 worked at each hourly rate; the name and address of the entity that is the employer and other such
13 information as required by Labor Code section 226, subdivision (a). As a result thereof, Defendant
14 has further failed to furnish employees with an accurate calculation of gross and gross wages earned,
15 as well as gross and net wages paid.

16 23. For at least one (1) year prior to the filing of this Action and continuing to the present,
17 Defendant has, at times, failed to pay Plaintiff and Class Members, or some of them, the full amount
18 of their wages for labor performed in a timely fashion as required under Labor Code section 204.

19 24. For at least three (3) years prior to the filing of this Action and continuing to the
20 present, Defendant has, at times, failed to indemnify Class Members, or some of them, for the costs
21 incurred in separately laundering their work clothes from their other clothes and for purchase of
22 non-slip resistant shoes.

23 25. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, brings this
24 Action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 226, 226.7,
25 510, 512, 1194, 1194.2, 1197, 2802, and California Code of Regulations, Title 8, section 11050,
26 seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest
27 periods, waiting time penalties, wage statement penalties, failure to indemnify work-related
28 expenses, other such provisions of California law, and reasonable attorneys' fees and costs.

1 26. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
2 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
3 prohibiting Defendant from further violating the Labor Code and requiring the establishment of
4 appropriate and effective means to prevent further violations, as well as all monies owed but
5 withheld and retained by Defendant to which Plaintiff and Class Members are entitled, as well as
6 restitution of amounts owed.

7 27. At all relevant times mentioned herein, Defendant had and has a policy or practice
8 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
9 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
10 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
11 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
12 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other
13 Aggrieved Employees.

14 28. At all relevant times herein, Defendant had and has a policy or practice of failing to
15 pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon separation
16 of employment as wages at their final rate of pay in violation of Labor Code section 227.3 and
17 applicable Wage Orders.

18 29. At all relevant times mentioned herein, Defendant has had a policy or practice of
19 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
20 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
21 Employees with the rates of pay and overtime rates of pay applicable to their employment;
22 allowances claimed as part of the minimum wage; the regular payday designated by Defendant; the
23 name, address, and telephone number of the workers' compensation insurance carrier; information
24 regarding paid sick leave; and other pertinent information required to be disclosed by Defendant
25 under Labor Code section 2810.5.

26 30. At all relevant times mentioned herein, Defendant failed to provide Plaintiff and
27 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
28 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not

1 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
2 all other Aggrieved Employees.

3 31. At all relevant times mentioned herein, Defendant has had a policy or practice of
4 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
5 Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of
6 any calendar month shall be paid for between the 16th and 26th day of the month during which the
7 labor was performed, and labor performed between the 16th and the last day, inclusive of any
8 calendar month, shall be paid for between the 1st and 10th day of the following month.”

9 32. At all relevant times mentioned herein, Defendant had and has a policy or practice
10 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
11 and experience they obtained at Defendant for purposes of competing with Defendant, including,
12 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
13 a prospective employer, and from disclosing who else works at Defendant and under what
14 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
15 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
16 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
17 Code sections 232, 232.5, and 1197.5, subdivision (k).

18 33. Defendant had and has a policy or practice of preventing Plaintiff and/or other
19 Aggrieved Employees from disclosing violations of state and federal law, either within Defendant
20 to their managers or outside to private attorneys or government officials, among others, in violation
21 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
22 1102.5. In addition, Plaintiff is informed and believes that Defendant’s herein-described policies
23 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
24 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
25 of Labor Code section 232 and 232.5.

26 34. Defendant had and has a policy or practice of preventing Plaintiff and/or other
27 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
28 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,

1 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
2 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
3 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
4 economic liberty.

5 35. Plaintiff is informed and believes, and based thereon alleges that Defendant has a
6 policy or practice of requiring, as a condition of employment, Defendant's applicants or employees
7 to waive their any right, forum, or procedure for a violation of any provision of the California Fair
8 Employment and Housing Act or the Labor Code, including the right to file and pursue a civil action
9 or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement
10 agency, or any court or other governmental entity of any alleged violation, in violation of Labor
11 Code section 432.6.

12 36. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
13 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
14 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
15 Employees pursuant to PAGA.

16 **CLASS ACTION ALLEGATIONS**

17 37. Plaintiff brings this Action on behalf of Plaintiff and Class Members as a class action
18 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current
19 and former non-exempt employees of Defendant within the State of California at any time
20 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice
21 of the class action is provided to the class (collectively referred to as "Class Members").

22 38. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
23 to amend or modify the class description with greater specificity, further divide the defined class
24 into subclasses, and to further specify or limit the issues for which certification is sought.

25 39. This Action has been brought and may properly be maintained as a class action under
26 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
27 of interest in the litigation and the proposed Class is easily ascertainable.

28 / / /

1 **A. Numerosity**

2 40. The potential Class Members as defined are so numerous that joinder of all the
3 members of the Class is impracticable. While the precise number of Class Members has not been
4 determined yet, Plaintiff is informed and believes that there are at least fifty (50) Class Members
5 employed by Defendant within the State of California.

6 41. Accounting for employee turnover during the relevant periods necessarily increases
7 this number. Plaintiff alleges Defendant's employment records would provide information as to the
8 number and location of all Class Members. Joinder of all members of the proposed Class is not
9 practicable.

10 **B. Commonality**

11 42. There are questions of law and fact common to Class Members. These common
12 questions include, but are not limited to:

- 13 A. Did Defendant violate Labor Code sections 510 and 1194 by failing to pay all hours
14 worked at a proper overtime rate of pay?
- 15 B. Did Defendant violate Labor Code sections 510, 1194 and 1197 by failing to pay for
16 all other time worked at the employee's regular rate of pay and a rate of pay that is
17 greater than the applicable minimum wage?
- 18 C. Did Defendant violate Labor Code section 512 by not authorizing or permitting Class
19 Members to take compliant meal periods?
- 20 D. Did Defendant violate Labor Code section 226.7 by not providing Class Members
21 with additional wages for missed or interrupted meal periods?
- 22 E. Did Defendant violate applicable Wage Orders by not authorizing or permitting
23 Class Members to take compliant rest periods?
- 24 F. Did Defendant violate Labor Code section 226.7 by not providing Class Members
25 with additional wages for missed rest periods?
- 26 G. Did Defendant violate Labor Code sections 201 and 202 by failing to pay Class
27 Members upon termination or resignation all wages earned?

28 / / /

1 H. Are Defendant liable to Class Members for waiting time penalties under Labor Code
2 section 203?

3 I. Did Defendant violate Labor Code section 226, subdivision (a) by not furnishing
4 Class Members with accurate wage statements?

5 J. Did Defendant fail to indemnify Class Members for all necessary expenditures or
6 losses incurred in direct consequence of the discharge of their duties or by obedience
7 to the directions of Defendant as required under Labor Code section 2802?

8 K. Did Defendant violate the Unfair Competition Law, Business and Professions Code
9 section 17200, *et seq.*, by their unlawful practices as alleged herein?

10 L. Are Class Members entitled to restitution of wages under Business and Professions
11 Code section 17203?

12 M. Are Class Members entitled to costs and attorneys' fees?

13 N. Are Class Members entitled to interest?

14 C. **Typicality**

15 43. The claims of Plaintiff herein alleged are typical of those claims which could be
16 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
17 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
18 damages arising out of and caused by Defendant's common course of conduct in violation of laws
19 and regulations that have the force and effect of law and statutes as alleged herein.

20 D. **Adequacy of Representation**

21 44. Plaintiff will fairly and adequately represent and protect the interest of Class
22 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
23 hour class actions.

24 E. **Superiority of Class Action**

25 45. A class action is superior to other available means for the fair and efficient
26 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
27 questions of law and fact common to Class Members predominate over any questions affecting only
28 individual Class Members. Class Members, as further described therein, have been damaged and

1 are entitled to recovery by reason of Defendant's policies and/or practices that have resulted in the
2 violation of the Labor Code at times, as set out herein.

3 46. Class action treatment will allow Class Members to litigate their claims in a manner
4 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
5 any difficulties that are likely to be encountered in the management of this Action that would
6 preclude its maintenance as a class action.

7 **FIRST CAUSE OF ACTION**

8 **(Failure to Pay Overtime Wages – Against All Defendants)**

9 47. Plaintiff realleges and incorporates by reference all of the allegations contained in
10 the preceding paragraphs as though fully set forth hereat.

11 48. At all relevant times, Plaintiff and Class Members were employees or former
12 employees of Defendant covered by Labor Code sections 510, 1194 and 1199, as well as applicable
13 Wage Orders.

14 49. At all times relevant herein, Labor Code section 510 was in effect and provided: "(a)
15 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday
16 and any work in excess of forty hours in any one workweek . . . shall be compensated at the rate of
17 no less than one and one-half times the regular rate of pay for an employee."

18 50. At all times relevant herein, Labor Code section 510 further provided that "[a]ny
19 work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
20 regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh
21 day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay."

22 51. Four (4) years prior to the filing of this Action through the present, Plaintiff and Class
23 Members worked for Defendant during shifts that consisted of more than eight (8) hours in a
24 workday and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a
25 workweek, without being paid overtime wages for all hours worked as a result of, including but not
26 limited to, Defendant failing to accurately track and/or pay for all hours actually worked; engaging,
27 suffering, or permitting employees to work off the clock, including, without limitation, by requiring
28 employees: requiring employees to complete pre and post shift duties without permitting employees

1 to clock in for all that time, including but not limited to temperature checks; failing to include all
2 forms of remuneration, including non-discretionary bonuses, incentive pay, hazard pay,
3 supplemental pay, and other forms of remuneration into the regular rate of pay for the pay periods
4 where overtime was worked and the additional compensation was earned for the purpose of
5 calculating the overtime rate of pay; editing and/or manipulation of employee time entries to show
6 less hours than actually worked; and for paying straight pay instead of overtime pay to the detriment
7 of Plaintiff and Class Members.

8 52. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
9 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
10 without properly compensating overtime wages at the proper overtime rate of pay, Defendant, on
11 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
12 applicable IWC Wage Orders, and California law.

13 53. As a result of the unlawful acts of Defendant, Plaintiff and Class Members have been
14 deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery, plus
15 interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194 and
16 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

17 **SECOND CAUSE OF ACTION**

18 **(Failure to Pay Minimum Wages – Against All Defendants)**

19 54. Plaintiff realleges and incorporates by reference all of the allegations contained in
20 the preceding paragraphs as though fully set forth hereat.

21 55. At all relevant times, Plaintiff and Class Members were employees or former
22 employees of Defendant covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

23 56. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
24 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
25 Defendant's control.

26 57. For four (4) years prior to the filing of this Action through the present, Defendant
27 failed to accurately track and/or pay for all hours actually worked; engaged, suffered, or permitted
28 employees to work off the clock, including, without limitation, by requiring employees to complete

1 pre and post shift duties without permitting employees to clock in for all that time, including but not
2 limited to conducting temperature checks; editing and/or manipulation of employee time entries to
3 show less hours than actually worked; and failing to pay for reporting time pay, to the detriment of
4 Plaintiff and Class Members.

5 58. As a result of Defendant's unlawful conduct, Plaintiff and Class Members have
6 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
7 for all hours worked or otherwise due.

8 59. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
9 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
10 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
11 damages, reasonable attorneys' fees and costs of suit.

12 **THIRD CAUSE OF ACTION**

13 **(Failure to Provide Meal Periods – Against All Defendants)**

14 60. Plaintiff realleges and incorporates by reference all of the allegations contained in
15 the preceding paragraphs as though fully set forth hereat.

16 61. At all relevant times, Plaintiff and Class Members were employees or former
17 employees of Defendant covered by Labor Code section 512 and applicable Wage Orders.

18 62. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
19 employ an employee for a work period of more than five (5) hours without a timely meal break of
20 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
21 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
22 per day without providing the employee with a second timely meal period of not less than thirty (30)
23 minutes in which the employee is relieved of all of his or her duties.

24 63. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
25 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
26 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
27 of compensation for each workday that the meal period is not provided.

28 / / /

64. For four (4) years prior to the filing of this Action through the present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-free uninterrupted meal periods every five hours of work without waiving the right to take them, as permitted. Moreover, at times, Defendant failed to provide one (1) additional hour of pay at the Class Member's regular rate of compensation on the occasions that Class Members were not provided compliant meal periods.

65. By their failure to provide Plaintiff and Class Members compliant meal periods as contemplated by Labor Code section 512, among other California authorities, and failing, at times, to provide compensation for such unprovided meal periods, as alleged above, Defendant willfully violated the provisions of Labor Code section 512 and applicable Wage Orders.

66. As a result of Defendant's unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

67. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

68. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

69. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendant covered by applicable Wage Orders.

70. California law and applicable Wage Orders require that employers "authorize and permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes

1 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
2 thirty (30) minutes of paid rest period.

3 71. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
4 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
5 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's
6 regular rate of compensation for each work day that the rest period is not provided.

7 72. For four (4) years prior to the filing of this Action through the present, Plaintiff and
8 Class Members were, at times, not authorized or permitted to take complete, timely 10-minute, duty-
9 free uninterrupted rest periods every four (4) hours of work or major fraction thereof. Moreover,
10 at times, Defendant failed to provide one (1) additional hour of pay at the Class Member's regular
11 rate of compensation on the occasions that Class Members were not authorized or permitted to take
12 compliant rest periods.

13 73. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
14 rest periods contemplated by California law, and one (1) additional hour of pay at the employee's
15 regular rate of compensation for such unprovided rest periods, as alleged above, Defendant willfully
16 violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

17 74. As a result of Defendant's unlawful conduct, Plaintiff and Class Members have
18 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
19 owed for rest periods that they were not authorized or permitted to take.

20 75. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
21 additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus
22 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
23 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

24 **FIFTH CAUSE OF ACTION**

25 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

26 76. Plaintiff realleges and incorporates by reference all of the allegations contained in
27 the preceding paragraphs as though fully set forth hereat.

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1 77. At all relevant times, Plaintiff and Class Members were employees or former
2 employees of Defendant covered by Labor Code sections 201, 202 and 203, as well as applicable
3 Wage Orders.

4 78. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
5 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
6 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
7 discharge immediately upon termination. Class Members who resigned were entitled to payment
8 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
9 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
10 unpaid at the time of resignation.

11 79. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)
12 years before the filing of this Action through the present, Defendant, due to the failure, at times, to
13 provide wages as mentioned above, failed to pay Plaintiff and Class Members all wages earned prior
14 to resignation or termination in accordance with Labor Code sections 201 or 202.

15 80. Plaintiff is informed and believes Defendant's failure, at times, to pay all wages
16 earned prior to termination or resignation in accordance with Labor Code sections 201, 202, and
17 227.3 was willful. Defendant had the ability to pay all wages earned by Plaintiff and Class Members
18 at the time of termination in accordance with Labor Code sections 201, 202. And 227.3, but
19 intentionally adopted policies or practices incompatible with the requirements of Labor Code
20 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
21 or resignation.

22 81. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
23 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
24 resignation, until paid, up to a maximum of thirty (30) days.

25 82. As a result of Defendant's unlawful conduct, Plaintiff and Class Members have
26 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
27 prior to termination or resignation.

28 / / /

83. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover waiting time penalties, interest, and their costs of suit, as well.

SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements – Against All Defendants)

84. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

85. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendant covered by Labor Code section 226, as well as applicable Wage Orders.

86. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement that accurately reflects, among other things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, among other things.

87. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year before the filing of this Action through the present, Defendant failed to comply with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that accurately reflect, among other things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, among other things.

88. Defendant's failure to provide Plaintiff and Class Members with accurate wage statements was knowing, intentional, and willful. Defendant had the ability to provide Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully provided wage statements that Defendant knew were not accurate.

89. As a result of Defendant's unlawful conduct, Plaintiff and Class Members have suffered injury. The absence of accurate information on Class Members' wage statements at times has delayed timely challenge to Defendant's unlawful pay practices; requires discovery and

1 mathematical computations to determine the amount of wages owed; causes difficulty and expense
2 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
3 about wages and amounts deducted from wages to state and federal governmental agencies, among
4 other things.

5 90. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
6 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
7 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
8 pay period, not to exceed an aggregate \$4,000.00 per employee.

9 91. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
10 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
11 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
12 attorneys' fees, and costs of suit.

13 **SEVENTH CAUSE OF ACTION**

14 **(Violation of Labor Code § 2802 – Against All Defendants)**

15 92. Plaintiff realleges and incorporates by reference all of the allegations contained in
16 the preceding paragraphs as though fully set forth hereat.

17 93. At all relevant times, Plaintiff and Class Members were employees or former
18 employees of Defendant covered by Labor Code section 2802 and applicable Wage Orders.

19 94. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
20 his or her employee for all necessary expenditures or losses incurred by the employee in direct
21 consequence of the discharge of his or her duties . . .”

22 95. For three (3) years prior to the filing of this Action through the present, Defendant
23 required Plaintiff and Class Members, or some of them, to incur, at times, necessary expenditures
24 or losses in direct consequence of the discharge of their duties or at the obedience to the directions
25 of Defendant that included, without limitation: separately laundering their work clothes from their
26 other clothes and for purchase of non-slip resistant shoes for work-related purposes.

27 96. During that time period, Plaintiff is informed and believes, and based thereon alleges
28 that Defendant failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and Class

1 Members for those losses and/or expenditures.

2 97. As a result of Defendant's unlawful conduct, Plaintiff and Class Members have
3 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
4 herein-described losses and/or expenditures.

5 98. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
6 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
7 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
8 costs of suit.

9 **EIGHTH CAUSE OF ACTION**

10 **(Unfair Competition – Against All Defendants)**

11 99. Plaintiff realleges and incorporates by reference all of the allegations contained in
12 the preceding paragraphs as though fully set forth hereat.

13 100. Plaintiff is informed and believes and based thereon alleges that the unlawful conduct
14 of Defendant alleged herein constitutes unfair competition within the meaning of Business and
15 Professions Code section 17200. Due to their unlawful business practices in violation of the Labor
16 Code, Defendant have gained a competitive advantage over other comparable companies doing
17 business in the State of California that comply with their obligations to compensate employees in
18 accordance with the Labor Code.

19 101. As a result of Defendant's unfair competition as alleged herein, Plaintiff and Class
20 Members have suffered injury in fact and lost money or property.

21 102. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
22 Members are entitled to (an) injunction(s) prohibiting Defendant from further violating the Labor
23 Code and requiring the establishment of appropriate and effective means to prevent further
24 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
25 including interest thereon, in which they had a property interest and which Defendant nevertheless
26 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
27 to Plaintiff and Class Members is necessary to prevent Defendant from becoming unjustly enriched
28 by their failure to comply with the Labor Code.

1 103. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
2 Procedure section 1032 and interest under Civil Code section 3287.

3 **NINTH CAUSE OF ACTION**

4 **(Civil Penalties Under Labor Code § 210 – Against All Defendants)**

5 104. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
6 and incorporates each by reference as though fully set forth hereat.

7 105. At all relevant times herein, Labor Code section 204, requires and required that:
8 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
9 between the 16th and 26th day of the month during which the labor was performed, and labor
10 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
11 between the 1st and 10th day of the following month.”

12 106. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
13 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
14 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
15 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
16 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
17 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
18 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

19 107. At all relevant times herein, Defendant has had a consistent policy or practice of
20 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
21 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
22 Aggrieved Employees are entitled to recover civil penalties for Defendant’s violations of Labor
23 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
24 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
25 for each subsequent violation in connection with each payment that was made in violation of Labor
26 Code section 204.

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1 **TENTH CAUSE OF ACTION**

2 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

3 108. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
4 and incorporates each by reference as though fully set forth hereat.

5 109. Defendant had and has a policy or practice of failing to comply with Labor Code
6 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
7 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
8 wages earned; the name and address of each employer with whom they have been placed to work;
9 all applicable hourly rates in effect during the pay period and the corresponding number of hours
10 worked at each hourly rate; and other such information as required by Labor Code section 226,
11 subdivision (a).

12 110. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
13 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
14 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
15 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
16 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

17 111. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
18 this section are in addition to any other penalty provided by law.”

19 112. At all relevant times herein, Plaintiff is informed and believes, and based thereon
20 alleges, that Defendant had and has a policy or practice of failing to furnish non-exempt employees,
21 including, without limitation, Plaintiff, with itemized wage statements that accurately reflect gross
22 wages earned; total hours worked; net wages earned; all deductions; all applicable hourly rates in
23 effect and the corresponding number of hours worked at each hourly rate in effect during the pay
24 period; and other such information as required by Labor Code section 226, subdivision (a).

25 113. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
26 entitled to recover civil penalties for Defendant’s violation of Labor Code section 226, subdivision
27 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
28 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay

1 period for each subsequent violation.

2 **ELEVENTH CAUSE OF ACTION**

3 **(Violation of Labor Code § 558 – Against All Defendants)**

4 114. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
5 and incorporates each by reference as though fully set forth hereat.

6 115. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
7 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
8 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
9 penalty as follows:

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

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

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

17 116. Plaintiff is informed and believes, and based thereon allege, that Defendant violated,
18 or caused to be violated, the Labor Code sections described herein, including causing Plaintiff and
19 other Aggrieved Employees not to: be paid overtime wages and minimum wages; receive meal and
20 rest periods or compensation in lieu thereof; be paid timely wages during their employment and
21 after their employment separation; receive accurate, itemized wage statements; be provided with the
22 opportunity to inspect employment records; be provided with notice as required under Labor Code
23 section 2810.5; be provided with the proper accrual and use of paid sick leave; and/or be paid out
24 all paid time off and/or vacation wages owed at the proper rate of pay.

25 117. As a direct and proximate result of the herein-described Labor Code violations,
26 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
27 civil penalties for Defendant’s herein-described Labor Code violations in the amount fifty dollars
28 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars

1 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

2 **TWELFTH CAUSE OF ACTION**

3 **(Violation of Labor Code § 1174.5 – Against All Defendants)**

4 118. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
5 and incorporates each by reference as though fully set forth hereat.

6 119. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
7 every person employing labor in California to “[a]llow any member of the commission or the
8 employees of the Division of Labor Standards Enforcement free access to the place of business or
9 employment of the person to secure any information or make any investigation that they are
10 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
11 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
12 or papers of the person.”

13 120. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
14 every person employing labor in California to “[k]eep a record showing the names and addresses of
15 all employees employed and the ages of all minors.”

16 121. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
17 every person employing labor in California to “[k]eep, at a central location in the state or at the
18 plants or establishments at which employees are employed, payroll records showing the hours
19 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
20 piece rate paid to, employees employed at the respective plants or establishments. These records
21 shall be kept in accordance with rules established for this purpose by the commission, but in any
22 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
23 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
24 earned.”

25 122. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
26 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
27 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
28 member of the commission or employees of the division to inspect records pursuant to subdivision

1 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

2 123. At all relevant times herein, Plaintiff is informed and believes, and based thereon
3 alleges, that Defendant has willfully failed to maintain the records required by Labor Code
4 subdivision (c), failed to maintain accurate and complete records required by Labor Code
5 subdivision (d), and/or failed to allow inspection of records as required by Labor Code subdivision
6 (b).

7 124. As a direct and proximate result of the herein-described Labor Code violations,
8 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
9 recover civil penalties for Defendant's herein-described Labor Code violations in the amount of five
10 hundred dollars (\$500) per violation per Aggrieved Employee.

11 **THIRTEENTH CAUSE OF ACTION**

12 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

13 125. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
14 and incorporates each by reference as though fully set forth hereat.

15 126. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other
16 person acting either individually or as an officer, agent, or employee of another person, who pays
17 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
18 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
19 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
20 Section 203 as follows:

21 (1) For any initial violation that is intentionally committed, one hundred dollars
22 (\$100) for each underpaid employee for each pay period for which the
23 employee is underpaid. This amount shall be in addition to an amount
24 sufficient to recover underpaid wages, liquidated damages pursuant to Section
25 1194.2, and any applicable penalties imposed pursuant to Section 203.

26 (2) For each subsequent violation for the same specific offense, two hundred fifty
27 dollars (\$250) for each underpaid employee for each pay period for which the
28 employee is underpaid regardless of whether the initial violation is

1 intentionally committed. This amount shall be in addition to an amount
2 sufficient to recover underpaid wages, liquidated damages pursuant to Section
3 1194.2, and any applicable penalties imposed pursuant to Section 203.

4 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
5 Section 203, recovered pursuant to this section shall be paid to the affected
6 employee.”

7 127. Plaintiff is informed and believes, and based thereon alleges, that Defendant caused
8 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendant, without
9 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ wages for all minutes
10 worked or otherwise under Defendant’s control due to, without limitation, routinely failing to
11 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
12 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
13 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock.

14 128. As a direct and proximate result of the herein-described Labor Code violations,
15 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
16 recover civil penalties for Defendant’s herein-described Labor Code violations in the amount one
17 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
18 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
19 subsequent violation.

20 **FOURTEENTH CAUSE OF ACTION**

21 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

22 129. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
23 and incorporates each by reference as though fully set forth hereat.

24 130. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
25 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
26 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
27 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
28 action brought by an aggrieved employee on behalf of himself or herself and other current or former

employees pursuant to the procedures specified in Labor Code section 2699.3.

131. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the established civil penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

132. Plaintiff is informed and believes and based thereon alleges that Defendant violated the Labor Code sections described herein, including, without limitation, for the failure to: pay overtime wages and minimum wages; provide meal and rest periods or compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during employment and after employment separation; provide employees the opportunity to inspect employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual and use of paid sick leave; paying employees all owed paid time off and vacation time owed by separation at the proper rate of pay; and placing restraints on competition, whistleblowing and freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil penalties for each of these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

133. As a direct and proximate result of the herein-described Labor Code violations, and pursuant to Labor Code section 2699, subdivision (g), among other authorities, Plaintiff and similarly Aggrieved Employees are entitled to recover civil penalties for Defendant's violations of the herein and therein described Labor Code violations during the Civil Penalty Period in the amount of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation.

134. Moreover, Plaintiff and other Aggrieved Employees within the State of California whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in connection with their herein-described claims for civil penalties.

1 **DEMAND FOR JURY TRIAL**

2 135. Plaintiff demands a trial by jury on all causes of action contained herein.

3 **PRAYER**

4 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment
5 against Defendant as follows:

- 6 A. An Order certifying this case as a Class Action;
- 7 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
8 counsel as class counsel;
- 9 C. An Order appointing counsel for Plaintiff as Class-PAGA Counsel;
- 10 D. Damages for all wages earned and owed, including minimum and overtime wages
11 under Labor Code sections 510, 1194, 1197 and 1199;
- 12 E. Liquidated damages pursuant to Labor Code section 1194.2;
- 13 G. Damages for unpaid premium wages from missed meal and rest periods under,
14 among other Labor Code sections, 512 and 226.7;
- 15 G. Penalties for inaccurate wage statements under Labor Code sections 226,
16 subdivision (e) and 558.1;
- 17 H. Waiting time penalties under Labor Code sections 203, 227.3, and 558.1;
- 18 I. Damages under Labor Code sections 2802 and 558.1;
- 19 J. Penalties to timely pay wages under Labor Code section 210 and 558.1;
- 20 K. Preliminary and permanent injunctions prohibiting Defendant from further
21 violating the California Labor Code and requiring the establishment of appropriate
22 and effective means to prevent future violations;
- 23 L. Restitution of wages and benefits due which were acquired by means of any unfair
24 business practice, according to proof;
- 25 M. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
26 1174.5, 1197.1, 2699.
- 27 N. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 28 O. For attorneys' fees in prosecuting this action;

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- P. For costs of suit incurred herein;
- Q. For such other and further relief as the Court deems just and proper.

Dated: March 10, 2022 BIBIYAN LAW GROUP, P.C.

BY: /s/ Diego Aviles
DIEGO AVILES
Attorneys for Plaintiff DEBRA SILVAS on behalf of
herself and all others similarly situated and aggrieved

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211.

On March 10, 2022, and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED CLASS ACTION COMPLAINT** to be served by electronic transmission to the below referenced electronic e-mail addresses as follows:

Rona P. Layton
LAYTON LAW FIRM
111 N. Market Street, #300
San Jose, CA 95113
rlayton@laytonlawfirm.com

Counsel for Defendant Catalyst Family, Inc.

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

Executed on March 10, 2022 at Beverly Hills, California.

/s/ Emanuel Munguia
Emanuel Munguia