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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

BIANCA RUIZ an individual, in her
representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

Plaintiffs,

v.

UNITED GUARD SECURITY INC., a
California corporation; and DOES 1-50,
Inclusive ,

DEFENDANT.

Case No: 23STCV08074

FIRST AMENDED COMPLAINT FOR:

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

FILED

Superior Court of California
County of Los Angeles

06/02/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

1 PLAINTIFF BIANCA RUIZ (“PLAINTIFF”), an individual, in her representative capacity
2 on behalf of the State of California and fellow Aggrieved Employees, defined *supra*, against
3 UNITED GUARD SECURITY, INC. (“DEFENDANT”), a California corporation alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys
8 General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current
9 and former aggrieved employees of DEFENDANT for engaging in a pattern and practice of wage
10 and hour violations under the California Labor Code.

11 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
12 decreased their employment-related costs by systematically violating California wage and hour
13 laws.

14 3. DEFENDANT’S systematic pattern of wage and hour and IWC Wage Order
15 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 16 a. Failure to provide compliant meal and rest periods;
- 17 b. Failure to allow employees to take duty-free meal and rest periods;
- 18 c. Failure to pay all minimum, sick pay, regular and overtime wages;
- 19 d. Failure to correctly calculate the regular rate of pay;
- 20 e. Failure to pay within seven (7) days of the close of payroll;
- 21 f. Failure to pay for all hours worked;
- 22 g. Failure to maintain true and accurate records;
- 23 h. Failure to reimburse for required business expenses;
- 24 i. Failure to provide accurate itemized wage statements; and
- 25 j. Failure to timely pay wages due during, and upon termination of employment.
- 26 k. Failure to adhere to labor code §245 et seq.

27 4. PLAINTIFF brings this representative action against DEFENDANT on behalf of
28 herself and all other aggrieved employees of DEFENDANT in California seeking all civil
penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

1 5. PLAINTIFF reserves the right to name additional representatives throughout the
2 State of California.

3 **THE PARTIES**

4 6. Defendant UNITED GUARD SECURITY INC. (“DEFENDANT” and/or
5 “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein
6 conducted and continues to conduct substantial and regular business throughout California.

7 7. DEFENDANT operates a security company throughout state of California,
8 including in the county of Los Angeles, where PLAINTIFF worked.

9 8. PLAINTIFF was employed by DEFENDANTS in California from May of 2022 to
10 August of 2022 as a non-exempt employee, paid on an hourly basis and entitled to the legally
11 required meal and rest periods and payment of minimum and overtime wages due for all time
12 worked.

13 9. PLAINTIFF brings this action in her representative capacity on behalf of the State
14 of California and on behalf of all non-exempt employees who worked for DEFENDANT in
15 California and who suffered one or more Labor Code violations enumerated in Labor Code §§
16 2698, *et. seq.* (hereinafter “AGGRIEVED EMPLOYEES”) between March 29, 2022, and the
17 present (“PAGA Period”).

18 10. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor
19 Code § 2699(c) because she was employed by DEFENDANT and suffered one or more of the
20 alleged Labor Code violations committed by DEFENDANT.

21 11. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times
22 were, employees of DEFENDANT, within the meanings set forth in the California Labor Code
23 and the applicable Industrial Welfare Commission Wage Order.

24 12. Each of the fictitiously named DEFENDANT participated in the acts alleged in
25 this First Amended Complaint. The true names and capacities of the DEFENDANT named as
26 DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will
27 amend this First Amended Complaint, setting forth the true names and capacities of these
28 fictitiously named DEFENDANT when their true names are ascertained. PLAINTIFF is informed

1 and believes, and on that basis alleges, that each of the fictitious DEFENDANT has participated
2 in the acts alleged in this First Amended Complaint.

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

10 14. DEFENDANT was PLAINTIFF’S employer or persons acting on behalf of
11 PLAINTIFF’S employer either individually or as an officer, agent, or employee of another person,
12 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
13 employee a wage less than the minimum fixed by California state law, and as such, are subject to
14 civil penalties for each underpaid employee.

15 **JOINT EMPLOYER**

16 15. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to
17 enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code*
18 § 2699(a).)

19 16. Section 558 of the California Labor Code provides that “any employer *or other*
20 *person* acting on behalf of an employer who violates, or causes to be violated, a section of this
21 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
22 Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).)

23 17. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person*
24 acting either individually or as an officer, agent, or employee of another person, who pays or
25 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
26 local law, or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* §
27 1197.1(a).)

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1 18. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have
2 held that a corporate employer's owners, officers, and directors, are subject to civil penalties for
3 the employer's failure to pay appropriate wages to its employees, and, since liability under either
4 558 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings
5 are necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez*
6 *v. Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
7 Cal.App.4th 1112, 1145-1146.

8 19. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS,
9 and each of them, are subject to civil penalties for their failure to pay PLAINTIFF and
10 AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately
11 caused the complaints, injuries, and damages alleged herein.

12 20. At all relevant times, each DEFENDANT, whether named or fictitious, was the
13 agent, employee or other person acting on behalf of each other DEFENDANT, and, in
14 participating in the acts alleged in this First Amended Complaint, acted within the scope of such
15 agency or employment and ratified the acts of the other.

16 21. Each DEFENDANT, whether named or fictitious, exercised control over
17 PLAINTIFF'S wages, working hours, and/or working conditions.

18 22. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to
19 this action as the agent of the other DEFENDANT, carried out a joint scheme, business plan or
20 policy, and the acts of each DEFENDANT are legally attributable to the other DEFENDANT.

21 **JURISDICTION AND VENUE**

22 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
23 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
24 Court has jurisdiction over PLAINTIFF'S claims for civil penalties under the Private Attorney
25 General Act of 2004, California Labor Code §2698, *et seq.*

26 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
28 in this County, and DEFENDANT (i) currently maintain and at all relevant times maintained

1 offices and facilities in this County and/or conduct substantial business in this County, and (ii)
2 committed the wrongful conduct herein alleged in this County against PLAINTIFF and
3 AGGRIEVED EMPLOYEES.

4 **THE CONDUCT**

5 25. In violation of the applicable sections of the California Labor Code and the
6 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
7 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
8 failed to provide legally compliant meal and rest periods, failed to accurately compensate
9 PLAINTIFF and the AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay
10 PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, failed compensate
11 PLAINTIFF and AGGRIEVED EMPLOYEES for off-the-clock work, failed to pay PLAINTIFF
12 and the AGGRIEVED EMPLOYEES overtime at the correct regular rate of pay, failed to
13 compensate PLAINTIFF and AGGRIEVED EMPLOYEES meal rest premiums at the regular
14 rate, failed to reimburse PLAINTIFF and AGGRIEVED EMPLOYEES for business expenses,
15 and failed to issue to PLAINTIFF and the AGGRIEVED EMPLOYEES with accurate itemized
16 wage statements showing, among other things, all applicable hourly rates in effect during the pay
17 periods and the corresponding amount of time worked at each hourly rate. DEFENDANT’s
18 uniform policies and practices are intended to purposefully avoid the accurate and full payment
19 for all time worked as required by California law which allows DEFENDANT to illegally profit
20 and gain an unfair advantage over competitors who comply with the law. To the extent equitable
21 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
22 PAGA PERIOD should be adjusted accordingly.

23 **A. Meal Period Violations**

24 26. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES Members for all their time
26 worked, meaning the time during which an employee is subject to the control of an employer,
27 including all the time the employee is suffered or permitted to work. From time to time during
28 the PAGA PERIOD, DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES

1 Members to work without paying them for all the time they were under DEFENDANT's control.
2 Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was
3 supposed to be PLAINTIFF'S off-duty meal break. Indeed, there were many days where
4 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and AGGRIEVED
5 EMPLOYEES forfeited minimum wage and overtime compensation by regularly working
6 without their time being accurately recorded and without compensation at the applicable
7 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
8 PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked is evidenced by
9 DEFENDANT's business records.

10 27. From time to time during the PAGA PERIOD, as a result of their rigorous work
11 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and AGGRIEVED
12 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
13 were not fully relieved of duty for their meal periods. PLAINTIFF and AGGRIEVED
14 EMPLOYEES are required to perform work as ordered by DEFENDANT for more than five (5)
15 hours during some shifts without receiving a meal break. Further, DEFENDANT fails to provide
16 PLAINTIFF and AGGRIEVED EMPLOYEES Members with a second off-duty meal period for
17 some workdays in which these employees are required by DEFENDANT to work ten (10) hours
18 of work. The nature of the work performed by PLAINTIFF and AGGRIEVED EMPLOYEES
19 does not qualify for the limited and narrowly construed "on-duty" meal period exception. Further,
20 from time to time, DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to
21 maintain cordless communication devices in order to receive and/or respond to work-related
22 communications during their off-duty meal periods. When they were provided with meal periods,
23 PLAINTIFF and AGGRIEVED EMPLOYEES were, from time to time, required to remain on
24 premises, on duty and on call. DEFENDANT's failure to provide PLAINTIFF and the
25 AGGRIEVED EMPLOYEES Members with legally required meal breaks is evidenced by
26 DEFENDANT's business records. PLAINTIFF and AGGRIEVED EMPLOYEES therefore
27 forfeit meal breaks without additional compensation and in accordance with DEFENDANT's
28 strict corporate policy and practice.

1 **B. Rest Period Violations**

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

19 **C. Wage Statement Violations**

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

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1 30. From time to time during the PAGA PERIOD, when PLAINTIFF and
2 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
3 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
4 to provide PLAINTIFF and AGGRIEVED EMPLOYEES with complete and accurate wage
5 statements which failed to show, among other things, all deductions, the total hours worked and
6 all applicable hourly rates in effect during the pay period, and the corresponding amount of time
7 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
8 periods. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
9 AGGRIEVED EMPLOYEES with wage statements that provided the correct name and address
10 of the legal entity that is the employer, in violation of Cal. Lab. Code § 226(a)(8).

11 31. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
12 PLAINTIFF and the AGGRIEVED EMPLOYEES Members with wage statements that comply
13 with Cal. Lab. Code § 226.

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

18 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

19 33. During the PAGA PERIOD, from time-to-time DEFENDANT failed and
20 continues to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours
21 worked.

22 34. During the PAGA PERIOD, from time-to-time DEFENDANT required
23 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work, including
24 but not limited to, time spent monitoring phones or working until coverage was available. This
25 resulted in PLAINTIFF and AGGRIEVED EMPLOYEES having to work while off-the-clock.

26 35. DEFENDANT directed and directly benefited from the undercompensated off-the-
27 clock work performed by PLAINTIFF and the AGGRIEVED EMPLOYEES.

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1 36. DEFENDANT controlled the work schedules, duties, and protocols, applications,
2 assignments, and employment conditions of PLAINTIFF and the AGGRIEVED EMPLOYEES.

3 37. DEFENDANT was able to track the amount of time PLAINTIFF and the
4 AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track,
5 or pay PLAINTIFF and the AGGRIEVED EMPLOYEES all wages earned and owed for all the
6 work they performed.

7 38. PLAINTIFF and the AGGRIEVED EMPLOYEES were non-exempt employees,
8 subject to the requirements of the California Labor Code.

9 39. DEFENDANT's policies and practices deprived PLAINTIFF and the
10 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
11 the off-the-clock work activities. Because PLAINTIFF and the AGGRIEVED EMPLOYEES
12 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
13 DEFENDANT's policies and practices also deprived them of overtime pay.

14 40. DEFENDANT knew or should have known that PLAINTIFF and the
15 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

16 41. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited wages due
17 to them for all hours worked at DEFENDANT's direction, control, and benefit for the time spent
18 working while off-the-clock, including but not limited to, time spent cleaning. DEFENDANT's
19 uniform policy and practice to not pay PLAINTIFF and the AGGRIEVED EMPLOYEES wages
20 for all hours worked in accordance with applicable law is evidenced by DEFENDANT's business
21 records.

22 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
23 **and Redeemed Sick Pay**

24 42. From time to time during the PAGA PERIOD, DEFENDANT failed and continues
25 to fail to accurately calculate and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for their
26 overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay.
27 As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited wages due to them for
28 working overtime without compensation at the correct overtime and double time rates, meal and

1 rest period premiums, and redeemed sick pay rates. DEFENDANT's uniform policy and practice
2 not to pay the AGGRIEVED EMPLOYEES Members at the correct rate for all overtime and
3 double time worked, meal and rest period premiums, and redeemed sick pay in accordance with
4 applicable law is evidenced by DEFENDANT's business records.

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

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

overtime and double time compensation, meal and rest period premiums, and sick pay as required by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES members against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

F. Unreimbursed Business Expenses

45. DEFENDANT as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF and AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of DEFENDANT. 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."

46. In the course of their employment, DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and AGGRIEVED EMPLOYEES were required to use their own cell phones in order to perform work related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and AGGRIEVED EMPLOYEES for the personal expenses incurred for the use of their personal cell phones. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF and AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that included, but were not limited to, costs related to the use of their personal cell phones, all on behalf of and for the benefit of DEFENDANT.

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1 **G. Unlawful Rounding Practices**

2 47. During the AGGRIEVED EMPLOYEES PERIOD, DEFENDANTS did not have
3 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and
4 AGGRIEVED EMPLOYEES for the actual time these employees worked each day, including
5 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and
6 practice that resulted in PLAINTIFF and AGGRIEVED EMPLOYEES Members being
7 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
8 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
9 system for PLAINTIFF and the AGGRIEVED EMPLOYEES in order to avoid paying these
10 employees for all their time worked, including the applicable overtime compensation for overtime
11 worked. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time to time, forfeited
12 compensation for their time worked by working without their time being accurately recorded and
13 without compensation at the applicable overtime rates.

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

20 **H. Timekeeping Manipulation**

21 49. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
22 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
23 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each
24 day, including regular time, overtime hours, sick pay, meal and rest breaks.

25 50. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally
26 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
27 AGGRIEVED EMPLOYEES in order to avoid paying these employees for all hours worked,
28 applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest break.

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

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

11 53. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited wages due
12 to them for all hours worked at DEFENDANTS' direction, control, and benefit for the time the
13 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
14 PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
15 applicable law is evidenced by DEFENDANTS' business records.

16 **I. Violations for Untimely Payment of Wages**

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

22 **J. Unlawful Deductions**

23 55. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
24 and AGGRIEVED EMPLOYEES Members' pay without explanations and without authorization
25 to do so or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES Members. As a result,
26 DEFENDANTS violated Labor Code § 221.

27 56. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
28 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.

1 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
2 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
3 provide PLAINTIFF with a second off-duty meal period each workday in which DEFENDANT
4 required her to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF with a
5 rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
6 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
7 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
8 without additional compensation and in accordance with DEFENDANT'S strict corporate policy
9 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
10 comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse PLAINTIFF for
11 required business expenses related to the use of her personal cell phone, in violation of Cal. Lab.
12 Code § 2802. To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and
13 double time compensation still owed to her, or any penalty wages owed to her under Cal. Lab.
14 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or
15 value of \$75,000.

16 **FIRST CAUSE OF ACTION**

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

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

19 **(Alleged by PLAINTIFF against all DEFENDANT)**

20 57. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
21 reference, as though fully set forth herein, the prior paragraphs of this First Amended Complaint.

22 58. PAGA is a mechanism by which the State of California itself can enforce state
23 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
24 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
25 fundamentally a law enforcement action designed to protect the public and not to benefit private
26 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
27 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
28 PAGA, the California Legislature specified that "it was ... in the public interest to allow
aggrieved employees, acting as private attorneys general to recover civil penalties for Labor

1 Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to
2 arbitration.

3 59. PLAINTIFF brings this Representative Action on behalf of the State of California
4 with respect to herself and all other current and former AGGRIEVED EMPLOYEES employed
5 by DEFENDANT during the PAGA PERIOD.

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

9 61. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
10 like PLAINTIFF, on behalf of herself and other current or former employees, to bring a civil
11 action to recover civil penalties pursuant to the procedures specified in Labor Code Section
12 2699.3.

13 62. PLAINTIFF complied with the procedures for bringing suit specified in Labor
14 Code Section 2699.3. By certified letter, return receipt requested, dated March 29, 2022,
15 PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA")
16 and to DEENDANTS of the specific provisions of the Labor Code alleged to have been violated,
17 including the facts and theories to support the alleged violations.

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

24 64. PLAINTIFF, and such persons that may be added from time to time who satisfy
25 the requirements and exhaust the administrative procedures under the Private Attorney General
26 Act, bring this Representative Action on behalf of the State of California with respect to herself
27 and all current and former non-exempt employees who worked for Defendant in California
28 during the time period of March 29, 2022, until the present (the "AGGRIEVED EMPLOYEES").

65. The policies, acts and practices heretofore described were and are an unlawful
business act or practice because DEFENDANT (a) failed to pay AGGRIEVED EMPLOYEES

1 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
2 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct
3 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e)
4 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor
5 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
6 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
7 1197.14, 1198, 1198.5, 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and
8 thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks
9 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
10 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
11 and the other AGGRIEVED EMPLOYEES.

12 66. For all provisions of the Labor Code for which civil penalty is not specifically
13 provided, Labor Code § 2699(f) imposes upon DEFENDANT a penalty of one hundred dollars
14 (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two
15 hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent
16 violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of
17 reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant
18 to Labor Code Section 2699(g)(1).

19 67. To the extent that any of the conduct and violations alleged herein did not affect
20 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
21 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
22 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
23 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor
24 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
25 committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).)

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

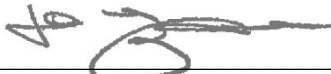
3 1. For reasonable attorney's fees and costs of suit to the extent permitted by law,
4 including pursuant to Labor Code § 2699, *et seq.*;

5 2. For civil penalties to the extent permitted by law pursuant to the Labor Code under
6 the Private Attorneys General Act; and

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

8
9 DATED: June 2, 2023

10 **JCL LAW FIRM, APC**

11 By: 

12 Jean-Claude Lapuyade
13 Attorney for PLAINTIFF
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