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

SINDY AVILES, individually, and on behalf of
Aggrieved Employees pursuant to the California
Private Attorneys General Act;

Plaintiff,

vs.

FREEWAY INSURANCE SERVICES
AMERICA, LLC, an Illinois limited liability
company; and DOES 1 through 25, inclusive,

Defendants.

Case No. **21STCV34864**

**COMPLAINT FOR ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 ET
SEQ.**

COMES NOW, Plaintiff SINDY AVILES (“Plaintiff”), individually, and on behalf of other aggrieved employees pursuant to the California Labor Code Private Attorneys General Act, and alleges as follows:

INTRODUCTION

1. This is an enforcement action under the California Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, et seq. (“PAGA”) to recover civil penalties on behalf of Plaintiff, the State of California, and all individuals who worked for Defendants in the State of California as hourly-paid and/or non-exempt employees at any time during the period from September 22, 2020 to final judgment (“Aggrieved Employees”).

2. FREEWAY INSURANCE SERVICES AMERICA, LLC and/or DOES 1 through 25 (collectively “Defendants”), are in the business of providing various insurance products to consumers, including but not limited to, vehicle insurance and home and property insurance.

3. Plaintiff alleges, on behalf of herself and the Aggrieved Employees, that Defendants systematically deprived their hourly-paid and/or non-exempt employees of the overtime wages and minimum wages to which they were entitled by requiring them to perform work duties off-the-clock, including but not limited to, responding to e-mails, phone calls, and text messages, and completing sales.

4. Plaintiff further alleges that Defendants failed to provide Plaintiff and the Aggrieved Employees with all of the meal and rest periods to which they were entitled. Moreover, on occasions when Defendants issued a premium payment pursuant to California Labor Code 226.7(b), Defendants failed to do so at the correct rate by failing to include non-discretionary bonuses, commissions, and incentive pay in the regular rate of compensation.

5. Defendants failed to reimburse Plaintiff and the Aggrieved Employees for all necessary business related expenses, including, but not limited to, the use of personal cell phones for work duties.

6. As a result, Defendants violated California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. Through this action, Plaintiff seeks to recover all available remedies under PAGA, including, but not limited to, civil penalties and attorney’s fees and costs.

1 **JURISDICTION AND VENUE**

2 7. This Court has jurisdiction over this action pursuant to the California Constitution,
3 Article VI, section 10. The statutes under which this action is brought do not specify any other basis
4 for jurisdiction.

5 8. This Court has jurisdiction over all Defendants because, upon information and belief,
6 Defendants are citizens and residents of California, regularly conduct business in California, have
7 sufficient minimum contacts in California, and/or otherwise intentionally avail themselves of the
8 California market so as to render the exercise of jurisdiction over them by California courts consistent
9 with traditional notions of fair play and substantial justice. Further, no federal question is at issue
10 because the claims asserted herein are based solely on California law.

11 9. Venue is proper in the judicial district and the County of Los Angeles, California,
12 because Plaintiff and many of the Aggrieved Employees worked for Defendants in the County of Los
13 Angeles. Upon information and belief, Defendants maintain offices, have agents, employ individuals,
14 and/or transact business in the State of California, County of Los Angeles.

15 **THE PARTIES**

16 10. At all times herein mentioned, Plaintiff was a resident of the County of Los Angeles,
17 State of California.

18 11. At all times herein mentioned, Defendant FREEWAY INSURANCE SERVICES
19 AMERICA, LLC, an Illinois limited liability company, was and is an employer whose employees are
20 engaged in the State of California, including the County of Los Angeles.

21 12. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under
22 the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and
23 serve such fictitiously named Defendants once their names and capacities become known.

24 13. Plaintiff is informed and believes, and based thereon alleges, that each and all of the
25 acts and omissions alleged herein were performed by, or are attributable to Defendant FREEWAY
26 INSURANCE SERVICES AMERICA, LLC and/or DOES 1 through 25, each acting as the agent,
27 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
28 Defendants and within the course and scope of such agency, employment, joint venture, or concerted

1 activity with legal authority to act on the others' behalf. The acts of any and all Defendants represent
2 and were in accordance with Defendants' official policy.

3 14. At all relevant times, Defendants were the employers of Plaintiff within the meaning
4 of all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the
5 working conditions, wages, working hours, and conditions of employment of Plaintiff so as to make
6 each of said Defendants employers and employers liable under the statutory provisions set forth herein.

7 15. Defendants had the authority to hire and terminate Plaintiff and the Aggrieved
8 Employees, to set work rules and conditions governing Plaintiff and the Aggrieved Employees'
9 employment, and to supervise their daily employment activities.

10 16. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's
11 and the Aggrieved Employees' employment for them to be joint employers of Plaintiff and the
12 Aggrieved Employees.

13 17. Defendants directly hired and paid wages and benefits to Plaintiff and the Aggrieved
14 Employees.

15 18. Defendants continue to employ hourly paid and/or non-exempt employees within the
16 State of California.

17 19. At all relevant times, Defendants, and each of them, ratified each and every act or
18 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
19 the acts and omissions of each and all the other Defendants in proximately causing the damages herein
20 alleged.

21 20. Plaintiff is informed and believes, and based thereon alleges, that each of said
22 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
23 omissions, occurrences, and transactions alleged herein.

24 **GENERAL ALLEGATIONS**

25 21. Defendants, jointly and severally, employ Plaintiff as a non-exempt, hourly-paid Sales
26 Agent in the County of Los Angeles. Plaintiff works at Defendant's office located at 6350 Laurel
27 Canyon Blvd, North Hollywood, California 91606. Plaintiff began working for Defendants in or
28 around January 2020.

1 22. Defendants hired Plaintiff and the Aggrieved Employees but failed to properly pay
2 them all overtime wages and minimum wages due, failed to provide them with all meal periods and
3 rest periods to which they were entitled, failed to timely pay them all wages during their employment,
4 failed to provide them with accurate itemized wage statements, failed to maintain accurate payroll
5 records, failed to reimburse them for necessary business expenses, failed to timely pay terminated
6 employees all wages due upon termination of their employment, and failed to provide and adhere to
7 other related protections afforded by the California Labor Code and applicable Industrial Welfare
8 Commission (“IWC”) Wage Order.

9 23. Plaintiff and the Aggrieved Employees worked over eight (8) hours in a day, and/or
10 forty (40) hours in a week during their employment with Defendants.

11 24. In addition to their base hourly rate of pay, Plaintiff and the Aggrieved Employees
12 earned non-discretionary bonuses, commissions, and/or incentive pay.

13 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
14 should have known that pursuant to California Labor Code sections 510 and 1198, and the applicable
15 IWC Wage Order, Plaintiff and the Aggrieved Employees were entitled to receive certain wages for
16 overtime compensation and that Plaintiff and the Aggrieved Employees were not receiving certain
17 wages for overtime compensation. By way of example, Defendants required Plaintiff and the
18 Aggrieved Employees to work off-the-clock. This off-the-clock work includes, but is not limited to,
19 responding to e-mails, phone calls, and text messages, and completing sales.

20 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
21 should have known that pursuant to California Labor Code sections 1194, 1197, 1197.1, and the
22 applicable IWC Wage Order, Plaintiff and the Aggrieved Employees were entitled to receive at least
23 minimum wages for all hours worked and that Plaintiff and the Aggrieved Employees were not
24 receiving minimum wages for all hours worked. Defendants required Plaintiff and the Aggrieved
25 Employees to perform work off-the-clock, including but not limited to, responding to e-mails, phone
26 calls, and text messages, and completing sales.

27 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
28 should have known that pursuant to California Labor Code sections 226.7, 512, and the applicable

1 IWC Wage Order, Plaintiff and the Aggrieved Employees were entitled to receive a meal period or
2 payment of one (1) additional hour of pay at their regular rate of compensation when they were not
3 provided with an uninterrupted meal period of no less than thirty (30) minutes for a work period of
4 more than five hours per day and that Plaintiff and the Aggrieved Employees were entitled to receive
5 a second meal period or payment of one (1) additional hour of pay at their regular rate of compensation
6 when they were not provided with an uninterrupted second meal period of no less than thirty (30)
7 minutes for a work period of more than ten (10) hours per day. However, Plaintiff and the Aggrieved
8 Employees did not receive all meal periods or payment of one (1) additional hour of pay at their regular
9 rate of compensation when a meal period was missed, shortened, taken late, and/or interrupted.

10 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
11 should have known that pursuant to California Labor Code section 226.7 and the applicable IWC
12 Wage Order, Plaintiff and the Aggrieved Employees were entitled to receive all rest periods or
13 payment of one (1) additional hour of pay at their regular rate of compensation when they were not
14 provided with an uninterrupted rest period of no less than ten (10) minutes for every four hours, or
15 major fraction thereof, worked. However, Plaintiff and the Aggrieved Employees did not receive all
16 rest periods or payment of one (1) additional hour of pay at their regular rate of compensation when a
17 rest period was missed, shortened, taken late, and/or interrupted.

18 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
19 should have known that pursuant to California Labor Code section 204, Plaintiff and the Aggrieved
20 Employees were entitled to timely payment of wages during their employment. Plaintiff and the
21 Aggrieved Employees did not receive payment of all wages, including, but not limited to, overtime
22 wages, minimum wages, meal period premium wages, and rest period premium wages within
23 permissible time periods.

24 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
25 should have known that the Aggrieved Employees were entitled to receive all wages upon termination
26 of employment, including, without limitation, overtime wages, minimum wages, meal period premium
27 wages, and rest period premium wages, and that the Aggrieved Employees did not receive payment of
28 all wages upon termination of employment in violation of California Labor Code sections 201 and

1 202.

2 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
3 or should have known that they were required to provide Plaintiff and the Aggrieved Employees
4 with complete and accurate itemized wage statements pursuant to California Labor Code section
5 226, but failed to do so.

6 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
7 or should have known that pursuant to California Labor Code section 1174, Defendants had to keep
8 complete and accurate payroll records for Plaintiff and the Aggrieved Employees in accordance with
9 California law, but, in fact, did not keep complete and accurate payroll records.

10 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
11 or should have known pursuant to California Labor Code sections 2800 and 2802 that Plaintiff and
12 the Aggrieved Employees were entitled to reimbursement for necessary business-related expenses,
13 but, in fact, did not reimburse Plaintiff and the Aggrieved Employees for necessary business-related
14 expenses, including, but not limited to, the use of personal cell phones for work duties.

15 34. In response to the COVID-19 pandemic, the Judicial Council of California enacted
16 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any other
17 law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled
18 from April 6, 2020, until October 1, 2020.

19 **PAGA ALLEGATIONS**

20 35. At all times set forth herein, PAGA was applicable to Plaintiff's employment by
21 Defendants.

22 36. At all times set forth herein, PAGA provides that any provision of law under the
23 California Labor Code that provides for a civil penalty, including unpaid wages and premium wages,
24 to be assessed and collected by the California Labor & Workforce Development Agency ("LWDA")
25 for violations of the California Labor Code may, as an alternative, be recovered through a civil action
26 brought by an aggrieved employee on behalf of herself and other current or former employees pursuant
27 to procedures outlined in California Labor Code section 2699.3.

28 37. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who is

any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

38. Plaintiff was employed by Defendants and the alleged violations were committed against her during her time of employment and she is, therefore, an aggrieved employee. Plaintiff and the other employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are current or former employees of Defendants and one of more of the alleged violations were committed against them.

39. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

(a) The aggrieved employee shall give written notice by certified mail (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

(b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

40. On September 22, 2021, Plaintiff provided notice by electronic submission to the LWDA and by certified mail to Defendants regarding the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, pursuant to Labor Code section 2699.3.

41. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations of

California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802 will have been satisfied upon expiration of the sixty-five day notice period.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 2698, Et Seq.

(Against FREEWAY INSURANCE SERVICES AMERICA, LLC and DOES 1-25)

42. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

43. PAGA expressly establishes that any provision of the California labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

44. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

45. Plaintiff and the other hourly-paid, non-exempt employees are “Aggrieved Employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

46. Defendants’ conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of California Labor Code sections 510 and 1198 for failure to pay overtime wages, as set forth more fully below;
- (b) Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to pay minimum wages, as set forth more fully below;
- (c) Violation of California Labor Code sections 226.7 and 512(a) for failure to provide legally required meal periods, as set forth more fully below;
- (d) Violation of California Labor Code section 226.7 for failure to provide legally

required rest periods, as set forth more fully below;

- (e) Violation of California Labor Code section 204 for failure to timely pay wages to Plaintiff and Aggrieved Employees during employment, as set forth more fully before;
- (f) Violation of California Labor Code sections 201, 202, and 203 for failure to pay all wages at time of discharge from employment, as set forth more fully below;
- (g) Violation of California Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and Aggrieved Employees, as set forth more fully below;
- (h) Violation of California Labor Code section 1174(d) for failure to keep complete and accurate payroll records relating to Plaintiff and Aggrieved Employees, as set forth more fully below; and
- (i) Violation of California Labor Code sections 2800 and 2802 for failure to reimburse Plaintiff and Aggrieved Employees for necessary business-related expenses, as set forth more fully below.

47. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for Plaintiff, all Aggrieved Employees, and the State of California against Defendants, in addition to other remedies, for violations of Labor Code sections set forth herein. Pursuant to California Labor Code section 2699(i), civil penalties recovered by Aggrieved Employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five (25%) to the Aggrieved Employees. Further, and as authorized by the California Labor Code sections 210, 218.5, and 2699, Plaintiff seeks recovery of her attorneys' fees and costs.

Failure to Pay Overtime Wages

48. California Labor Code section 1198 and the applicable IWC Wage Order have provided that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the

1 person on a daily or weekly basis.

2 49. Specifically, the applicable IWC Wage Order provides that Defendants are and were
3 required to pay Plaintiff and Aggrieved Employees employed by Defendants, and working more than
4 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half
5 for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

6 50. The applicable IWC Wage Order further provides that Defendants are and were
7 required to pay Plaintiff and Aggrieved Employees employed by Defendants, and working more than
8 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.

9 51. California Labor Code section 510 codifies the right to overtime compensation at one-
10 and-one half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
11 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to
12 overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours
13 in a day or in excess of eight (8) hours in a day on the seventh day of work.

14 52. During the relevant time period, Plaintiff and Aggrieved Employees regularly worked
15 in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty
16 (40) hours in a week performing work duties “off-the-clock,” including, but not limited to responding
17 to e-mails, phone calls, and text messages, and completing sales.

18 53. Defendants’ failure to pay Plaintiff and Aggrieved Employees the unpaid balance of
19 overtime compensation, as required by California law, violates the provisions of California Labor
20 Code sections 510 and 1198, and is therefore unlawful.

21 **Failure to Pay Minimum Wages**

22 54. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 have
23 provided that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to
24 employees, and the payment of a wage less than the minimum so fixed is unlawful. Defendants’ failure
25 to pay minimum wages included, *inter alia*, Defendants’ failure to pay Plaintiff and the Aggrieved
26 Employees any wages for time spent working “off-the-clock” performing duties, including, but not
27 limited to, responding to e-mails, phone calls, and text messages, and completing sales. Accordingly,
28 Defendants regularly failed to pay at least minimum wages to Plaintiff and Aggrieved Employees for

1 all of the hours they worked in violation of California Labor Code sections 1194, 1197 and 1197.1.

2 55. Defendants' failure to pay Plaintiff and Aggrieved Employees the minimum wage as
3 required violates California Labor Code sections 1194, 1197 and 1197.1.

4 **Failure to Provide Meal Periods**

5 56. At all relevant times herein set forth, California Labor Code section 226.7 has provided
6 that no employer shall require an employee to work during any meal period mandated by an applicable
7 IWC Order.

8 57. At all relevant times herein set forth, California Labor Code section 512(a) has
9 provided that an employer may not require, cause, or permit an employee to work for a period of more
10 than five (5) hours per day without providing the employee with a meal period of not less than thirty
11 (30) minutes, except that if the total work period per day of the employee is not more than six (6)
12 hours, the meal period may be waived by mutual consent of both the employer and the employee.

13 58. During the relevant time period, Plaintiff and Aggrieved Employees who were
14 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally
15 mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours
16 without a meal period of not less than thirty (30) minutes.

17 59. During the relevant time period, Plaintiff and the Aggrieved Employees,
18 who were scheduled to work for a period of time in excess of six (6) hours, were required to work for
19 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
20 minutes.

21 60. During the relevant time period, Plaintiff and the Aggrieved Employees,
22 who were scheduled to work for a period of time in excess of ten (10) hours but no longer than twelve
23 (12) hours, and who did not waive their legally-mandated meal periods by mutual consent, were
24 required to work in excess of ten (10) hours without receiving a second uninterrupted meal period of
25 not less than thirty (30) minutes.

26 61. During the relevant time period, Plaintiff and the Aggrieved Employees,
27 who were scheduled to work for a period of time in excess of twelve (12) hours, were required to work
28 for periods longer than ten (10) hours without a second uninterrupted meal period of not less than

thirty (30) minutes.

62. During the relevant time period, Defendants willfully required Plaintiff and the Aggrieved Employees to work during meal periods and failed to compensate Plaintiff and Aggrieved Employees for work performed during meal periods. By way of example, Defendants failed to relieve Plaintiff of all duties such that Plaintiff could take compliant meal periods. Moreover, Defendants created incentives for Plaintiff and the Aggrieved Employees to forgo legally protected meal periods. As a result, Plaintiff and the Aggrieved Employees worked through mandated meal periods.

63. Defendants failed to pay Plaintiff and the Aggrieved Employees the full meal period premium due in violation of California Labor Code sections 226.7 and 512 on each occasion when a timely, uninterrupted meal period of at least thirty (30) minutes was not provided. Defendants failed to incorporate all nondiscretionary payments for work performed by Plaintiff and the Aggrieved Employees in the regular rate of compensation.

64. Defendants' conduct violates applicable IWC Wage Order(s), and California Labor Code sections 226.7 and 512(a).

Failure to Provide Rest Periods

65. At all relevant times, California Labor Code section 226.7 has provided that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

66. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

67. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at the employee's regular hourly rate of compensation for each work day that the rest period was not provided.

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1 68. During the relevant time period, Defendants required Plaintiff and the Aggrieved
2 Employees to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
3 period per each four (4) hour period, or major fraction thereof worked. During the relevant time
4 period, Defendants willfully required Plaintiff and the Aggrieved Employees to work during rest
5 periods. By way of example, Defendants failed to relieve Plaintiff of all duties such that Plaintiff
6 could take compliant rest periods. Moreover, Defendants created incentives for Plaintiff and the
7 Aggrieved Employees to forgo legally protected rest periods. As a result, Plaintiff and the Aggrieved
8 Employees worked through mandated rest periods.

9 69. Defendants failed to pay Plaintiff and Aggrieved Employees the full rest period
10 premium due in violation of California Labor Code sections 226.7 and 512 on each occasion when a
11 timely, uninterrupted rest period of at least ten (10) minutes was not provided. Defendants failed to
12 incorporate all nondiscretionary payments for work performed by Plaintiff and the Aggrieved
13 Employees in the regular rate of compensation.

14 70. Defendants' conduct violates the applicable IWC Wage Orders and California Labor
15 Code section 226.7.

16 **Failure to Timely Pay Wages During Employment**

17 71. At all relevant times herein set forth, California Labor Code section 204 has provided
18 that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of
19 any calendar month, other than those wages due upon termination of an employee, are due and payable
20 between the 16th and the 26th day of the month during which the labor was performed.

21 72. At all times herein set forth, California Labor Code section 204 has provided that all
22 wages earned by any person in any employment between the 16th and the last day, inclusive, of any
23 calendar month, other than those wages due upon termination of an employee, are due and payable
24 between the 1st and the 10th day of the following month.

25 73. At all times herein set forth, California Labor Code section 204 has provided that all
26 wages earned for labor in excess of the normal work period shall be paid no later than the payday for
27 the next regular payroll period.

28 74. During the relevant time period, Defendants intentionally and willfully failed to pay

1 Plaintiff and the Aggrieved Employees all wages due to them, within any time period permissible
2 under California Labor Code section 204, including wages for overtime compensation, minimum wage
3 compensation, meal period premiums, and rest period premiums.

4 **Failure to Timely Pay Wages Upon Termination**

5 75. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required
6 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code section
7 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
8 at the time of discharge are due and payable immediately. California Labor Code section 202
9 mandates that if an employee quits, his or her wages shall become due and payable not later than
10 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of
11 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
12 quitting.

13 76. California Labor Code section 203 provides that if an employer willfully fails to pay,
14 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
15 discharged or who quits, the wages of the employee shall continue as a penalty from the due date
16 thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not
17 continue for more than thirty (30) days.

18 77. At the time that the employment of the terminated Aggrieved Employees ended,
19 Defendants knowingly and willfully failed to pay those Aggrieved Employees all wages owed to them
20 pursuant to California Labor Code sections 201 and 202, including, without limitation, overtime
21 wages, minimum wages, meal period premium wages, and rest period premium wages.

22 **Failure to Provide Compliant Wage Statements**

23 78. At all relevant times set forth herein, California Labor Code section 226(a) provides
24 that every employer shall furnish each of its employees an accurate itemized statement in writing
25 showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
26 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
27 deductions, provided that all deductions made on written orders of the employee may be aggregated
28 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the

1 employee is paid, (7) the name of the employee and his or her social security number, (8) the name
2 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
3 the pay period and the corresponding number of hours worked at each hourly rate by the employee.
4 The deductions made from payments of wages shall be recorded in ink or other indelible form,
5 properly dated, showing the month, day, and year, and a copy of the statement or a record of the
6 deductions shall be kept on file by the employer for at least three years at the place of employment or
7 at a central location within the State of California.

8 79. Defendants have intentionally and willfully failed to provide employees with complete
9 and accurate wage statements. The deficiencies include, among other things, the failure to state all
10 correct rates of pay, all hours worked, all meal period premium wages earned, and all rest period
11 premium wages earned.

12 **Failure to Keep Requisite Payroll Records**

13 80. At all relevant times set forth herein, California Labor Code section 1174(d) has
14 required an employer to keep, at a central location in the state or at the plants or establishments at
15 which employees are employed, payroll records showing the hours worked daily by and the wages
16 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
17 employed at the respective plants or establishments. These records shall be kept in accordance with
18 rules established for this purpose by the commission, but in any case shall be kept on file for not less
19 than two years.

20 81. Defendants have intentionally and willfully failed to keep accurate and complete
21 payroll records showing the hours worked daily and the wages paid, to Plaintiff and the Aggrieved
22 Employees.

23 82. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiff
24 and the Aggrieved Employees have suffered injury and damage to their statutorily-protected rights.

25 83. More specifically, Plaintiff and the Aggrieved Employees have been injured by
26 Defendants' intentional and willful violation of California Labor Code section 1174(d) because they
27 were denied both their legal right and protected interest, in having available, accurate and complete
28 payroll records pursuant to California Labor Code section 1174(d).

1 **Failure to Reimburse Necessary Business Expenses**

2 84. Pursuant to California Labor Code sections 2800 and 2802, an employer must
3 reimburse its employees for all necessary expenditures incurred by the employee in direct consequence
4 of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct
5 consequence of his or her obedience to the directions of the employer.

6 85. Plaintiff and the Aggrieved Employees incurred necessary business-related expenses
7 and costs that were not fully reimbursed by Defendants, including, but not limited to, the use of
8 personal cell phones for work duties.

9 86. Defendants intentionally and willfully failed to reimburse Plaintiff and the Aggrieved
10 Employees for all necessary business-related expenses and costs.

11 **PRAYER FOR RELIEF**

12 Plaintiff prays for relief and judgment against Defendants, jointly and severally, as follows:

13 1. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g), plus
14 costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226(a),
15 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802; and

16 2. For such other and further relief as the Court may deem proper.

17 Respectfully Submitted,

18 Dated: September 22, 2021

BLACKSTONE LAW, APC

19
20 By:


 Jonathan M. Genish
 Attorneys for Plaintiff Sindy Aviles