

ORIGINAL

FILED

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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

MAR 18 2021

BY Nicole Cartwright
 NICOLE CARTWRIGHT, DEPUTY

7 Attorneys for Plaintiff
 8 PEARL VARGAS DENAULT

9 **SUPERIOR COURT OF CALIFORNIA**
 10 **COUNTY OF SAN BERNARDINO**

12 PEARL VARGAS DENAULT, as an
 13 individual and on behalf of all others similarly
 14 aggrieved,

14 Plaintiffs,

16 v.

18 LEWIS MANAGEMENT CORP., a Delaware
 19 corporation; JOHN M. GOODMAN, an
 20 individual; and DOES 1-50, inclusive,

20 Defendants.

CASE NO. **CIV SB 2107487**

**PRIVATE ATTORNEYS GENERAL
 ACT ("PAGA") REPRESENTATIVE
 COMPLAINT**

JURY TRIAL DEMANDED

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1 Plaintiff PEARL VARGAS DENAULT ("Plaintiff"), an individual, on behalf herself and
2 all other similarly aggrieved employees ("Aggrieved Employees"), hereby files this Complaint
3 against Defendant LEWIS MANAGEMENT CORP., Defendant JOHN M. GOODMAN
4 (collectively referred to hereinafter as "Defendant") and DOES 1-50, inclusive, Plaintiff alleges as
5 follows:

6 **THE PARTIES**

7 1. Plaintiff is, and at relevant times was, an individual domiciled in the State of California
8 and a citizen of the State of California who worked as a non-exempt employee for Defendant
9 LEWIS MANAGEMENT CORP., in the State of California, from approximately July 2019 to
10 approximately April 2020.

11 2. Defendant LEWIS MANAGEMENT CORP. is a Delaware corporation that, at all relevant
12 times, was authorized to do business within the State of California and is doing business in the State
13 of California.

14 3. On information and belief, Defendant JOHN M. GOODMAN is a natural person residing
15 in the State of California and is, and at all relevant times has been, the owner, director, officer,
16 employee, and/or managing agent of Defendant LEWIS MANAGEMENT CORP., and had direct
17 control and power over the working conditions and the violations at issue in this Complaint and at
18 all relevant times was acting on behalf of Defendant LEWIS MANAGEMENT CORP.. On
19 information and belief, JOHN M. GOODMAN devised and implemented the policies at issue in
20 this complaint and "caused" these violations to occur and, under Labor code §§ 558.1 and 1197.1,
21 JOHN M. GOODMAN may be held liable as the employer for such violations.

22 4. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
23 50, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendant by said
24 fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the
25 unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect
26 the true names and capacities of the Doe Defendants when such identities become known.

27 5. Plaintiff is further informed and believes that, at all relevant times, each Defendant
28 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling

1 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
2 interest of some or all of the other Defendants, and was engaged with some or all of the other
3 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
4 other Defendants so as to be liable for their conduct with respect to the matters alleged in this
5 complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant acted
6 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
7 each Defendant knew or should have known about, authorized, ratified, adopted, approved,
8 controlled, aided and abetted the conduct of all other Defendants.

9 6. At all relevant times, Defendant was and is legally responsible for all of the unlawful
10 conduct, policies, practices, acts and omissions complained of herein. Further, Defendant is
11 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
12 respondent superior. The conduct of Defendant's managers and supervisors was at all relevant
13 times undertaken as employees of Defendant, acting within the scope of their employment or
14 authority in all of the unlawful activities described herein.

15 7. Whenever and wherever reference is made in this complaint to any act or failure to act by
16 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
17 and/or failures to act by each Defendant acting individually, jointly and severally.

18 **JURISDICTION AND VENUE**

19 8. This court possesses original subject matter jurisdiction over this matter. Venue is proper
20 in San Bernardino County, California, because Defendant LEWIS MANAGEMENT CORP has
21 its principal place of business in San Bernardino County and some of the complained of conduct
22 occurred in this judicial district.

23 **FACTUAL ALLEGATIONS**

24 9. During the one-year and sixty-five day period preceding filing of this Complaint, Plaintiff
25 was employed by Defendant as a non-exempt employee in the State of California. Defendant, at
26 all relevant times, exercised control over Plaintiff and the other aggrieved employees (as defined
27 below) and suffered and/or permitted them to work.

28 10. Plaintiff worked for Defendant as a non-exempt leasing consultant from approximately

1 July 2019 to approximately April 2020. Plaintiff was paid an hourly rate for hours counted by
2 employer as time worked. Plaintiff was also compensated with commission pay.

3 11. Plaintiff was not always provided proper meal periods during her employment. Plaintiff
4 was often forced to work through her meal periods or forced to take late, shortened, interrupted
5 and/or on-duty meal periods due to her workload/commentary from supervisors pressuring
6 Plaintiff to take improper meal periods or skip meal periods completely. Plaintiff was required to
7 constantly tend to her cell phone to receive and reply to client communications, rendering any
8 meal periods on duty. Plaintiff did not execute a written on-duty meal period waiver agreement.
9 Also, second meal periods were rarely if ever provided for those shifts that Plaintiff worked more
10 than ten (10) hours. Nevertheless, Defendant had a policy and practice of automatically
11 deducting an hour per shift/requiring Plaintiff to clock out for purported meal periods, despite
12 having actual and/or constructive knowledge that Plaintiff did not receive compliant meal periods.
13 Defendant failed to pay Plaintiff an additional hour of pay at Plaintiff's regular rate of pay for
14 each missed or improper meal period, and if Defendant did pay a meal period premium it was not
15 paid at the proper rate of pay because Defendant failed to include all non-discretionary
16 remunerations, including but not limited to, commission, piece rate, and/or bonus pay, into the
17 regular rate of pay for purposes of calculating the owed meal period premiums.

18 12. Plaintiff did not receive compliant, timely 10 (ten)- minute rest periods for every four
19 (4) worked hours or major fraction thereof. Plaintiff was often required to work through all or
20 part of her rest periods due to her workload/commentary from supervisors pressuring Plaintiff to
21 take improper rest periods or skip her rest periods completely. Plaintiff was required to
22 constantly monitor her cell phone for communications with clients and had to remain on the work
23 premises during any rest periods and thus remained under employer control during any rest
24 periods, thereby rendering said rest periods improper. Plaintiff was not paid rest period premiums
25 for these missed/improper rest periods.

26 13. During Plaintiff's employment, Plaintiff was forced to perform off-the-clock work, *to wit*:
27 Plaintiff was not compensated separately for non-commission/non piece-rate activities, including
28 but not limited to, rest periods, meetings, training, scheduling, among other job activities integral

1 and indispensable to her employment. Defendant automatically deducted an hour per
2 shift/required Plaintiff to clock out for purported meal periods, despite having actual and/or
3 constructive knowledge that Plaintiff did not receive compliant meal periods. This resulted in the
4 underpayment of minimum wages and overtime pay. In addition, Plaintiff alleges on information
5 and belief that Defendant implemented a time-shaving/time-rounding system that as applied
6 systematically deprived Plaintiff of compensable time because the time-rounding system
7 implemented by Defendant would almost always, if not always, understate actual compensable
8 work time by rounding the start and stop times of Plaintiff's shifts. Upon further information and
9 belief, Defendant rounded the start and stop times of employee meal periods resulting in Plaintiff
10 receiving shorter and later meal periods than she was entitled to. Defendant failed to pay any
11 meal period premiums for these unlawfully rounded meal periods. Plaintiff is further informed
12 and believes and thereon alleges that Defendant had actual or constructive knowledge that its
13 time-rounding policy resulted in meal periods being cut short and the underpayment of minimum
14 and overtime wages owed to Plaintiff, in violation of California's minimum and overtime wage
15 and meal period laws.

16 14. Defendant further violated California's overtime wage laws by failing to incorporate all
17 non-discretionary remunerations, including but not limited to, commission, piece rate, and/or
18 bonus pay, into the regular pay rate for purposes of calculating the owed overtime rate of pay and
19 therefore miscalculated and underpaid owed overtime wages.

20 15. Additionally, Defendant sometimes paid Plaintiff multiple types/rates of pay in one pay
21 period for the same kind of work but failed to average the rates of pay when calculating overtime.
22 Under California law, "[w]here two rates of pay are paid during a workweek, the California
23 method for determining the regular rate of pay for calculating overtime in that workweek mirrors
24 the federal method, based upon the weighted average of all hourly rates paid." DLSE Manual
25 49.2.5 (citing 29 CFR § 778.115). This "weighted average" method provides, "[w]here an
26 employee in a single workweek works at two or more different types of work for which different
27 nonovertime rates of pay (of not less than the applicable minimum wage) have been established,
28 their regular rate for that week is the weighted average of such rates. That is, the total earnings

1 (except statutory exclusions) are computed to include his compensation during the workweek
2 from all such rates, and are then divided by the total number of hours worked at all jobs. . ." 29
3 CFR § 778.115. Defendant's failure to average the rates of pay when calculating overtime resulted
4 in underpaid overtime at times, as well as inaccurate and incomplete wage statements.

5 16. Based on information and belief, Defendant improperly accrued the amount of sick leave
6 pay owed Plaintiff for failure to base the owed sick leave pay on the correct number of hours
7 worked and for failure to incorporate all non-discretionary remunerations, including but not
8 limited to, commission, piece rate, and/or bonus pay into the sick pay calculation. On further
9 information and belief, Defendant failed to provide notice of the correct sick leave amount
10 balance available to Plaintiff.

11 17. Defendant failed to reimburse Plaintiff for all necessary business-related expenditures
12 incurred by Plaintiff in direct discharge of her duties, including but not limited to, mileage and
13 cell phone expenses. Plaintiff was regularly required to drive to training classes, other
14 sites/company events but was never reimbursed mileage for this on-the-job driving. Additionally,
15 Plaintiff was regularly required to use her personal cell phone to perform her job duties, including
16 but not limited to, for meetings, scheduling, and sales calls but was not reimbursed for the
17 expenses associated with this cell phone use.

18 18. Additionally, Defendant failed to provide wage statements that complied with Labor
19 Code section 226. Among other things, Plaintiff's paystubs did not accurately reflect, gross
20 wages earned, total hours worked, net wages earned, sick time pay, all applicable hourly rates in
21 effect during each pay period and all hours worked at each applicable hourly. Accordingly,
22 Defendant has violated Labor Code section 226 as to Plaintiff.

23 19. Upon termination, Defendant failed to furnish Plaintiff with her final paycheck containing
24 all earned and owed wages. Plaintiff's final paycheck did not include all remuneration owed to
25 Plaintiff as it was devoid of, including but not limited to, all owed minimum and overtime wages
26 and all meal and rest period premiums owed.

27 20. Plaintiff brings this complaint under the Private Attorneys General Act of 2004, Labor
28 Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of

1 California, regarding violations of the Labor Code as to all similarly aggrieved individuals
2 employed by Defendant in the State of California as a non-exempt employee. This action is
3 brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

4 21. During the period beginning one-year period preceding the filing of the required PAGA
5 notice with the Labor Workforce and Development Agency, and continuing through the present, as
6 alleged herein, Defendant violated Labor Code sections 201-202, 204, 216, 221-223, 226, 226.2
7 226.7, 245-248.5, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5 and all
8 relevant sections of the applicable Wage Orders, as to Plaintiff and all Aggrieved Employees
9 employed by Defendant who worked as non-exempt employees, whether paid on an hourly,
10 commission, and/or piece-rate basis. These violations subject Defendant to civil penalties as set
11 forth in the foregoing statutes as well as other provisions of the Labor Code, including
12 without limitation Labor Code sections 203, 225.5, 256, 210, 1174.5, 1197.1 and 2699.

13 **THE "AGGRIEVED EMPLOYEES"**

14 22. Plaintiff brings this action on behalf of herself and all similarly situated aggrieved
15 employees. The other Aggrieved Employees shall be defined as follows: "All non-exempt
16 employees, including those paid on an hourly, commission and/or piece-rate basis, who were
17 employed in California directly by Defendant at any time within the one year and sixty-five days
18 prior to the filing of the initial complaint."

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,
21 LABOR CODE SECTIONS 2698, ET SEQ.**

22 23. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

23 24. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
24 Plaintiff and the Aggrieved Employees with one 30-minute meal break free from all duties for all
25 shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts
26 longer than 10 hours. Meal periods can be waived, but only under the following circumstances: (1)
27 if an employee's total work period in a day is over five (5) hours but no more than six (6) hours,
28 the required meal period may be waived by mutual consent of the employer and employee, and (2)

1 if an employee's total work period in a day is over ten (10) hours but no more than twelve (12)
2 hours, the required second meal period may be waived by mutual consent of the employer and
3 employee, but only if the first meal period was not waived. Employers covered by the Wage Orders
4 have an obligation to both (1) relieve their employees for at least one meal period for shifts over
5 five hours (see above), and (2) to record having done so. If the employer fails to properly record a
6 valid meal period, it is presumed no meal period was provided.

7 25. Plaintiff and the Aggrieved Employees regularly worked periods of more than five (5) hours
8 in a workday without being provided a mandatory thirty-minute, duty-free meal period, and
9 regularly worked periods of more than ten and/or twelve hours in a workday without being
10 provided a mandatory second thirty-minute, duty-free meal period. Plaintiff and the Aggrieved
11 Employees were often forced to work through their meal periods or forced to take late, shortened,
12 interrupted and/or on-duty meal periods due to their workload/commentary from supervisors
13 pressuring Plaintiff and the Aggrieved Employees to take improper meal periods or skip meal
14 periods completely. Plaintiff and the Aggrieved Employees were required to constantly tend to
15 their cell phones to receive and reply to client communications, rendering any meal periods on
16 duty. Plaintiff and the Aggrieved Employees did not execute written on-duty meal period waiver
17 agreements. Also, second meal periods were rarely if ever provided for those shifts that Plaintiff
18 and the Aggrieved Employees worked more than ten (10) hours. Nevertheless, Defendant had a
19 policy and practice of automatically deducting an hour per shift/requiring Plaintiff and the
20 Aggrieved Employees to clock out for purported meal periods, despite having actual and/or
21 constructive knowledge that Plaintiff and the Aggrieved Employees did not receive compliant
22 meal periods. Defendant failed to pay Plaintiff and the Aggrieved Employees an additional hour
23 of pay at the regular rate of pay for each missed or improper meal period, and if Defendant did
24 pay a meal period premium it was not paid at the proper rate of pay for failure to include all non-
25 discretionary remunerations, including but not limited to, commission, piece rate, and/or bonus
26 pay, into the regular rate of pay for purposes of calculating the owed meal period premiums.

27 26. Defendant failed to provide Plaintiff and the Aggrieved Employees all required and/or
28 fully compliant rest periods, or compensation in lieu thereof. Defendant employed policies and

1 procedures that ensured Plaintiff and the Aggrieved Employees would not receive all legally
2 required rest periods, as Defendant did not authorize nor permit all required rest periods in
3 compliance with the timing requirements of all applicable Wage Orders. Plaintiff and the
4 Aggrieved Employees did not receive compliant, timely 10 (ten)- minute rest periods for every four
5 (4) hours worked or major fraction thereof. Plaintiff and the Aggrieved Employees were often
6 required to work through all or part of their rest periods due to their workloads/commentary from
7 supervisors pressuring Plaintiff and the Aggrieved Employees to take improper rest periods or skip
8 rest periods completely. Plaintiff and the Aggrieved Employees were required to constantly
9 monitor their mobile phones for communications with clients and had to remain on the work
10 premises during any rest periods and thus remained under employer control during any rest periods,
11 thereby rendering said rest periods improper. Plaintiff and the Aggrieved Employees were not paid
12 rest period premiums for these missed/improper rest periods.

13 27. California law provides employees in California must be paid for all hours worked, up to
14 40 per week or eight (8) per day, at a regular time rate no less than the mandated minimum wage.
15 California law also provides employees in California must be paid overtime, equal to 1.5 times the
16 employee's regular rate of pay, for all hours worked in excess of 40 per week or eight (8) per day.
17 Plaintiff and the Aggrieved Employees regularly worked time for which they were not
18 compensated, *to wit*: Plaintiff and the Aggrieved Employees were not compensated separately for
19 non-commission/non piece-rate activities, including but not limited to, rest periods, meetings,
20 training, scheduling, among other job activities integral and indispensable to their employment.
21 Defendant automatically deducted an hour per shift/required Plaintiff and the Aggrieved
22 Employees to clock out for purported meal periods, despite having actual and/or constructive
23 knowledge that Plaintiff and the Aggrieved Employees did not receive compliant meal periods.
24 This resulted in the underpayment of minimum and overtime wages. In addition, on information
25 and belief, Defendant implemented a time-shaving/time-rounding system that as applied
26 systematically deprived Plaintiff and the Aggrieved Employees of compensable time because the
27 time-rounding system implemented by Defendant would almost always, if not always, understate
28 actual compensable work time. Upon further information and belief, Defendant had actual or

1 constructive knowledge that its time-rounding policy resulted in underpaying Plaintiff and the
2 Aggrieved Employees the wages they were owed. This time-shaving/time-rounding system,
3 implemented by and through Defendant, resulted in violations of California's minimum and
4 overtime wage laws.

5 28. Defendant further violated California's overtime wage laws by failing to incorporate all
6 non-discretionary remunerations, including but not limited to, commission, piece rate, and/or bonus
7 pay, into the regular pay rate for purposes of calculating the owed overtime rate of pay and therefore
8 miscalculated and underpaid owed overtime wages.

9 29. Additionally, Defendant sometimes paid Plaintiff and the Aggrieved Employees multiple
10 types/rates of pay in one pay period for the same kind of work but failed to average the rates of
11 pay when calculating overtime. Under California law, "[w]here two rates of pay are paid during a
12 workweek, the California method for determining the regular rate of pay for calculating overtime
13 in that workweek mirrors the federal method, based upon the weighted average of all hourly rates
14 paid." DLSE Manual 49.2.5 (citing 29 CFR § 778.115). This "weighted average" method
15 provides, "[w]here an employee in a single workweek works at two or more different types of
16 work for which different non-overtime rates of pay (of not less than the applicable minimum
17 wage) have been established, their regular rate for that week is the weighted average of such
18 rates. That is, the total earnings (except statutory exclusions) are computed to include his
19 compensation during the workweek from all such rates, and are then divided by the total number
20 of hours worked at all jobs. . ." 29 CFR § 778.115. Defendant's failure to average the rates of pay
21 when calculating overtime resulted in underpaid overtime at times, as well as inaccurate and
22 incomplete wage statements.

23 30. Labor Code section 226.2 requires an employer to pay employees compensated on a piece-
24 rate basis separately for rest and recovery periods and nonproductive time, separate from any piece-
25 rate commission. This statute further requires an employer to include on the wage statements for
26 these employees the total hours of compensable rest and recovery period, the total hours for other
27 non-productive time, the rates of compensation for these hours, and the gross wages paid for these
28 hours. In addition, the statute requires that employees shall be compensated for rest and recovery

1 periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate
2 determined by dividing the total compensation for the workweek, exclusive of compensation for
3 rest and recovery periods and any premium compensation for overtime, by the total hours worked
4 during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum
5 wage. California courts have held that this statute also applies to employees paid on a commissioned
6 basis.

7 31. During the PAGA period Defendant failed to comply with Labor Code section 226.2.
8 Specifically, Defendant failed to pay Plaintiff and the Aggrieved Employees who were paid on a
9 piece rate or commissioned basis separately for the rest periods and nonproductive time, and/or
10 failed to pay them for this time at the correct rates. Defendant further failed to include the
11 information on these employees' wage statements required by this statute.

12 32. California law provides that, at the time of each payment of wages, the employer must
13 provide each employee with an itemized statement showing, *inter alia*, gross wages earned, total
14 hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee
15 is being paid, the employee's name and last four digits of their social security number, the name
16 and address of the legal entity that it is the employer, and all applicable hourly rates in effect during
17 the pay period and all hours worked at each rate. Defendant knowingly and intentionally failed to
18 provide Plaintiff and the Aggrieved Employees with proper, itemized wage statements as the wage
19 statements provided by Defendant do not accurately reflect, *inter alia*, all gross wages earned, all
20 net wages earned, and all applicable hourly rates in effect during each pay period and all hours
21 worked at each applicable hourly rate.

22 33. California law requires employers to keep "accurate and complete" payroll records
23 showing, among other things, the hours worked daily by all non-exempt employees. Section 7 of
24 all applicable IWC Wage Orders similarly requires employers to keep time records showing, *inter-*
25 *alia*, when the employees begin and end each work period and reflecting the times during which
26 all owed meal periods are provided each day. At all relevant times, Defendant has failed, and
27 continues to fail, to keep the required time records, as Defendant did not record the true start and
28 stop times of Plaintiff and the Aggrieved Employees' workdays and failed to record employee meal

1 periods. Defendant's failure to keep "accurate and complete" payroll records for Plaintiff and the
2 Aggrieved Employees violates Labor Code sections 1174, 1198-99, and Section 7 of all applicable
3 IWC Wage Orders. These violations subject Defendant to civil penalties under the Labor Code,
4 including without limitation sections 1174.5 and 2699. Each violation of each Labor Code section
5 and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

6 34. California Labor Code section 204 requires an employer to pay employees all wages due
7 and payable at least twice each calendar month. Defendant failed to comply with Labor Code
8 section 204 by failing to timely pay twice during each calendar month all wages due and payable
9 to Plaintiff and the Aggrieved Employees. Defendant's violations of Labor Code section 204
10 subject Defendant to civil penalties, including but not limited to the penalties set forth in California
11 Labor Code sections 210 and 2699. Each violation results in a separate civil penalty, for each
12 Aggrieved Employee for each pay period during which the statutory provisions were violated.

13 35. Labor Code section 201 requires employers to pay all wages earned and unpaid at the time
14 of discharge, immediately upon discharge. Labor Code section 202 states similar provisions with
15 respect to employees who resign. For all Aggrieved Employees no longer employed by Defendant,
16 Defendant still has not paid such aggrieved employees all wages earned and unpaid at the time of
17 discharge, in that Defendant has not paid for, *inter alia*, all owed minimum and overtime wages.
18 These violations subject Defendant to civil penalties under the Labor Code, including without
19 limitation Labor Code sections 203, 256 and 2699. Each violation results in a separate civil penalty,
20 for each Aggrieved Employee for each pay period during which the statutory provisions were
21 violated.

22 36. Labor Code section 216 declares unlawful an employer's refusal to pay wages due and
23 payable and/or denial of the validity of any claim to wages due. Defendant violated/violates this
24 section by failing to pay Plaintiff and the Aggrieved Employees for all hours worked at the proper
25 wage rate and by failing to pay Plaintiff and the Aggrieved Employees an additional hour of pay
26 for each meal/rest period not provided/that was invalid. These violations subject Defendant to
27 civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty,
28 for each aggrieved employee, for each pay period during which the statute provisions were

1 violated.

2 37. California Labor Code section 223 makes it unlawful for an employer to secretly pay
3 wages lower than required by statute while purporting to pay legal wages. As described above,
4 Defendant willfully and systematically denied Plaintiff and the Aggrieved Employees minimum
5 and overtime wage compensation for all hours worked which resulted in the payment of less than
6 statutorily required wages to them. Defendant acted with the intent to deprive them of statutory
7 wages, including, but not limited to, overtime wages and minimum wages, to which they were
8 entitled to under California law.

9 38. Defendant failed to provide Plaintiff and the Aggrieved Employees paid sick days in
10 accordance with Labor Code sections 245 through 248.5, further failing to put them on notice of
11 their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code
12 section 2810.5 notice. Defendant failed to maintain accurate records documenting the hours
13 worked and paid sick days accrued and used by employees in violation of Labor Code section
14 247.5, permitting the presumption that Plaintiff and the Aggrieved Employees were entitled to the
15 maximum number of hours accruable under this article at the time of their respective separations
16 of employment. Furthermore, Defendant failed to incorporate all forms of non-discretionary
17 remuneration, including but not limited to, commission, piece-rate, and/or bonus pay into the sick
18 pay calculation. By failing to correctly account for the true hours Plaintiff and the Aggrieved
19 Employees worked and by failing to incorporate the non-discretionary remuneration into the sick
20 pay calculation, Defendant unlawfully retained and continue to retain paid sick leave that should
21 have been paid and was not. Accordingly, Defendant has violated Labor Code sections 233 and
22 234 as to Plaintiff and the Aggrieved Employees. These violations subject Defendant to civil
23 penalties under the Labor Code, including without limitation Labor Code sections 233 and 234
24 and 2699. Each violation of each Labor Code section and Wage Order provision, for each
25 aggrieved employee, results in a separate civil penalty.

26 39. California Labor Code section 2802 requires employers to indemnify employees for all
27 necessary expenditures incurred by employees in the direct discharge of their duties. Defendant
28 failed to reimburse Plaintiff and the Aggrieved Employees for all necessary business-related

1 expenditures incurred by Plaintiff and the Aggrieved Employees in direct discharge of their
2 duties, including but not limited to, mileage and cell phone expenses. Plaintiff and the Aggrieved
3 Employees were regularly required to drive to training classes, other sites/company events but
4 were never reimbursed mileage for this on-the-job driving. Additionally, Plaintiff and the
5 Aggrieved Employees were regularly required to use their personal cell phones to perform their
6 job duties, including but not limited to, for meetings, scheduling, and sales calls but were not
7 reimbursed for the expenses associated with this cell phone use. In failing indemnify all business-
8 related expenses incurred by Plaintiff and the Aggrieved Employees, Defendant has violated
9 Labor Code section 2802. This violation subjects Defendant to civil penalties under Labor Code
10 sections 2802, 558, 558.1 and 2699. Each violation of each Labor Code section and Wage Order
11 provision, for each aggrieved employee, results in a separate civil penalty.

12 40. Under the provisions of PAGA and Labor Code sections 201-202, 204, 216, 221-223, 226,
13 226.2, 226.7, 245-248.5, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5 and
14 all relevant sections of the applicable Wage Orders, as well as all interpretations of these laws by
15 California Courts and administrative bodies, as well as any other law that is enforceable through
16 PAGA, Defendant is liable for all statutorily-specified penalties recoverable under PAGA as
17 enumerated in the relevant California Labor Code provisions listed herein, or for default PAGA
18 penalties under Labor Code Section 2699(f) for any violation of a Labor Code section without a
19 specified civil penalty.

20 41. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections
21 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and Workforce
22 Development Agency ("LWDA") via electronic mail at PAGAfilings@dir.ca.gov and to
23 Defendant via certified mail 65 days prior to this Complaint of the specific provisions of the
24 Labor Code and Wage Orders allegedly violated, including the facts and theories to support the
25 alleged violations.

26 42. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail
27 to the parties it intends to investigate the alleged violations within 65 days of the date of
28 Plaintiff's written notice. As of the expiration of the statutory exhaustion period, the LWDA has

1 not provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of the
2 State of California and the Aggrieved Employees. As of the filing of this Complaint, Defendant
3 has not responded to Plaintiff's PAGA notice in an attempt to cure. Accordingly, Plaintiff has
4 exhausted all administrative remedies required by law.

5 43. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
6 Plaintiff is entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs, all
7 in an amount to be proved.

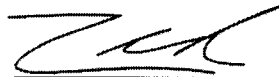
8 **PRAYER**

9 WHEREFORE, Plaintiff, prays for judgment against each Defendant, jointly and severally,
10 as follows:

- 11 1. For civil penalties according to proof;
- 12 2. For reasonable attorney's fees and costs of suit; and
- 13 3. For such other and further relief as the Court deems just and proper.

14 Dated: March 18, 2021

CROSNER LEGAL, P.C.

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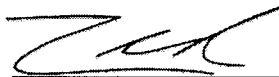
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21 **DEMAND FOR JURY TRIAL**

22 Plaintiff PEARL VARGAS DENAULT demands a trial by jury on all claims so triable.

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24 Dated: March 18, 2021

CROSNER LEGAL, P.C.

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26 

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