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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

KL
Case No.: - 18901550

12 DORLEY NEZBETH-ALTIMORE, on
13 behalf of herself and all others similarly
14 situated and on behalf of the general public,
15 and as an "aggrieved employee" under the
California Labor Code Private Attorney
Generals Act,

16 Plaintiffs,

17 vs.

18 TESLA INC., a Delaware Corporation doing
19 business in California as TESLA MOTORS,
20 INC.; STAFFING SOLUTIONS, INC. d/b/a
21 BALANCE STAFFING; and PERSONNEL
22 STAFFING GROUP, LLC, a Florida
Corporation; and DOES 1 through 50,
inclusive,

23 Defendants.

CLASS ACTION
COMPLAINT

1. VIOLATION OF LABOR CODE §§ 510 AND 1194 (UNPAID OVERTIME)- PAGA;
2. VIOLATION OF LABOR CODE §226.7 AND THE APPLICABLE WAGE ORDERS (REST PERIODS) - PAGA;
3. VIOLATION OF LABOR CODE §§ 226.7, 512 (MEAL PERIODS) – PAGA;
4. VIOLATION OF LABOR CODE § 2802 (FAILURE TO REIMBURSE BUSINESS EXPENSES) – PAGA;
5. VIOLATION OF LABOR CODE § 201.3 (FAILURE TO PROVIDE TIMELY WAGES) - PAGA)
6. VIOLATION OF LABOR CODE § 226(a) (FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS – PAGA
7. VIOLATION OF LABOR CODE § 98.6 (RETALIATION FOR COMPLAINING ABOUT LABOR CODE VIOLATIONS)
8. VIOLATION OF LABOR CODE §§ 201, 202, AND 203 (FAILURE TO PAY ALL WAGES DUE UPON TERMINATION) – PAGA; and
9. VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200 ET SEQ.

JURY TRIAL DEMANDED

1
2
3
4 Plaintiff Dorley Nezbeth-Altmore brings this Complaint on behalf of herself and all others
5 similarly situated and on behalf of the general public and as an “aggrieved employee” under the
6 California Labor Code Private Attorney General Act against (1) Tesla Inc., a Delaware Corporation
7 doing business in California as Tesla Motors, Inc.; (2) Staffing Solutions, Inc. d/b/a Balance Staffing;
8 (3) Personnel Staffing Group, LLC; and (4) Does 1 through 50 for violations of the California Labor
9 Code, and California Business and Professions Code.
10

11
12 **PARTIES**

13 1. Plaintiff Dorley Nezbeth-Altmore (“Nezbeth-Altmore” or “Plaintiff”) was at all
14 times relevant herein an “employee” as defined by the Labor Code and applicable Wage Order(s) of
15 the Industrial Welfare Commission (“IWC”).
16

17 2. Tesla Inc. (“Tesla”) is a Delaware corporation doing business in California as Tesla
18 Motors, Inc. and is an “employer” as defined by the Labor Code and applicable IWC Wage Order(s).

19 3. Staffing Solutions, Inc. d/b/a Balance Staffing (“Balance Staffing”) is a California
20 Corporation headquartered in San Jose, California and is an “employer” as defined by the Labor Code
21 and applicable IWC Wage Order(s).
22

23 4. Personnel Staffing Group, LLC (“Personnel Staffing”) is a Florida Corporation and is
24 an “employer” as defined by the Labor Code and the applicable IWC Wage Order(s).

25 5. Plaintiff is not aware of the true names and capacities of the Defendants sued as Does
26 1 through 50, whether individual, corporate, associate or otherwise and therefore sues such
27 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
28

1 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that
2 each of the fictitiously named Defendants is responsible in some manner for the occurrences alleged
3 and that Plaintiff's injuries and damages were legally caused by such Defendants. Unless otherwise
4 indicated, each Defendant was acting within the course and scope of the agency and/or employment,
5 with the knowledge and/or consent of the co-defendant.
6

7 6. Plaintiff is informed and believes and thereupon alleges that each of the Defendants,
8 including each Doe Defendant, acted as the agent, servant, employee, partner, and/or joint venturer of
9 and was acting in concert with each of the remaining Defendants, in doing the things alleged. Each
10 Defendant, in doing the acts alleged, was acting both individually and within the course and scope of
11 such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.
12

13 JURISDICTION & VENUE

14 GENERAL ALLEGATIONS

15 9. From December 8, 2016 through approximately February 17, 2017, Plaintiff was
16 employed by Tesla, Balance Staffing and Personnel Staffing (collectively "Defendants") as an
17 automobile assembler at Tesla in Fremont, California. Plaintiff was employed by Defendants as a
18 non-exempt employee.
19

20 10. Throughout Plaintiff's employment, Defendants maintained and enforced meal break
21 and rest period policies that violated Labor Code §§ 226.7, 512 and the applicable wage orders. In its
22 handbook, Balance Staffing stated the following meal breaks and rest period policies:
23

24 Hourly employees are entitled to a 10-minute break for rest twice each day, spaced
25 approximately evenly throughout the work period. Smokers are expected to utilize
26 only their break periods to smoke during the work day. Employees are also entitled
27 to either a 30 minute or 60-minute unpaid break for meals during each work period.
28 The employee shall be relieved of all duties for a minimum of ½ hour or the meal
period shall be paid.

1 However, employees who are age 18 and under are entitled to breaks of at least 30
2 minutes after they have worked five hours.

3 Breaks may be scheduled at staggered times to provide necessary coverage.

4 Because of this policy, Plaintiff and class members were denied rest periods when they worked over
5 ten hours a day and meal periods when they worked more than ten hours a day.

6 11. Throughout Plaintiff's employment, Defendants maintained and enforced an overtime
7 policy that violated Labor Code §§ 510, 1197 and the applicable wage order. In its handbook,
8 Balance Staffing stated the following overtime policy:
9

10 Because of the nature of work, employees may be asked to work overtime on
11 weekends or holidays or additional hours during the workday and are expected to
12 comply with such requests.

13 Overtime compensation is paid to all non-exempt employees at one and one-half
14 times their straight time rate for all hours worked in excess of 8 hours in a work
15 day and/or 40 hours per week.

16 If you are non-exempt, you must receive authorization from your manager before
17 working overtime. And after you have worked overtime, you must enter it on a
18 timesheet by the day after it is accrued.

19 Overtime pay is based on actual hours worked. Time taken for lunch or dinner is
20 not included as time worked for purposes of computing overtime. Likewise, time
21 off for holidays, illness and emergency leave, vacation leave, or any leave of
22 absence will not be factored in as hours worked when calculating overtime.

23 Because of this policy, Plaintiff and other class members were denied double time pay when they
24 worked over 12 hours a day or more than 8 hours during the seventh day of a work week.

25 12. During Plaintiff's employment with Defendants, Defendants failed to pay her on a
26 weekly basis as required by Labor Code § 201.3. Furthermore, during Plaintiff's employment,
27 Defendants provided her with pay checks that misspelled her name, which had the practical effect of
28 not paying her at all.

1 13. While she was employed by Defendants, Defendant Balance Staffing pressured
2 Plaintiff and other class members to receive wages via debit card rather than a physical check.

3 14. Defendants required Plaintiff and other class members to use their personal cell
4 phone to report their daily work hours and to otherwise communicate with their employers.
5 Defendants failed to reimburse Plaintiff and class members for the cost of using their cell phone for
6 work related purposes.
7

8 15. After Plaintiff complained to Defendant Balance Staffing that 1) Defendants failed to
9 provide her with timely wages; 2) failed to correctly spell her name on her pay checks; and 3)
10 pressure her to use a debit card in lieu of her preference of receiving a paper check; Defendants
11 terminated Plaintiff's employment in violation of Labor Code § 98.6.
12

13 16. When Defendants terminated Plaintiff's employment, they violated Labor Code § 201
14 by failing to pay her immediately upon discharge. Plaintiff is informed and believes that Defendants
15 violated Labor Code §§ 201, 202 by failing to pay Plaintiff and other class members as required by
16 law upon termination or resignation of employment
17

18 17. Because Plaintiff and other class members were not properly reimbursed for their
19 expenditures and they were denied meal breaks, rest periods, and overtime, the wage statements that
20 Plaintiff and class members received from Balance Staffing and Personnel Staffing did not accurately
21 show the corresponding hours worked at each hourly rate, gross wages earned or net wages earned.
22 In addition, Plaintiff's wage statements did not accurately state the name of the employee.
23

24 18. Tesla is a client employer as defined by California Labor Code § 2810.3. Labor Code
25 § 2810.3(a)(1)(A) provides "Client employer" means a business entity, regardless of its form, that
26 obtains or is provided workers to perform labor within its usual course of business from a labor
27 contractor." "Usual course of business" means the regular and customary work of a business,
28

1 performed within or upon the premises or worksite of the client employer.” CAL. LAB. CODE §
2 2810.3(a)(6).

3 19. Under California Labor Code § 2810.3(b)(1), “a client employer shall share with a
4 labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor
5 contractor” for payment of wages. Wages as defined by Labor Code § 2810.3(a)(4) states that,
6 “‘Wages’ has the same meaning provided by Section 200 and all sums payable to an employee or the
7 state based upon any failure to pay wages, as provided by law.” Labor Code Section 200 states:
8 “‘Wages’ includes all amounts for labor performed by employee of every description, whether the
9 amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method
10 of calculation.”
11

12 20. Balance Staffing and Personnel Staffing were labor contractors as defined by
13 California Labor Code § 2810.3. Labor Code § 2810.3(a)(3) states that, a labor contractor “means an
14 individual or entity that supplies, either with or without a contract, a client employer with workers to
15 perform labor within the client employer’s usual course of business.” Plaintiff is informed and
16 believes Balance Staffing and Personnel Staffing supplied Tesla with over 100 workers including, but
17 not limited to, auto assemblers.
18

19 21. Tesla as a client employer is liable for all wages Balance Staffing and Personnel
20 Staffing owes to Plaintiff and Class members.
21

22 22. Under California Labor Code Section 2810.3(d), “At least 30 days prior to filing a
23 civil action against a client employer for violations covered by this section, a worker or his or her
24 representative shall notify the client employer of violations under subdivision (b).” At least 30 days
25 prior to suing, Plaintiff’s representative informed Tesla of Balance Staffing’s and Personnel
26
27
28

1 Staffings' failure to pay Plaintiff and Class Members wages in violations of California Labor Code,
2 California common law conversion, and California Business & Profession Code.

3 **CLASS ACTION ALLEGATIONS**

4 23. Plaintiff sues, on behalf of herself and all others similarly situated, as a class action
5 under section 382 of the Code of Civil Procedure. The class which Plaintiff seeks to represent is:

6 All individuals who purportedly worked for Balance Staffing as non-exempt
7 employees in the State of California within four years preceding filing the complaint
8 to the time of final judgment.
9

10 24. Within the foregoing class, Plaintiff seeks to ascertain and represent six distinct
11 subclasses:

12 a. All individuals who purportedly worked for Balance Staffing as non-exempt
13 employees at Tesla in the State of California within four years preceding
14 filing the complaint to the time of final judgment.
15

16 b. Unpaid Overtime Wages Subclass/Labor Code §§ 510 and 1194 Subclass:
17 All individuals who worked for Balance Staffing as non-exempt employees at
18 Tesla in the State of California who worked more than twelve hours a day or
19 more than 8 hours on the seventh work day in a week within four years
20 preceding filing the complaint to the time of final judgment.
21

22 c. California Restbreak Subclass:
23 All individuals who worked for Balance Staffing as non-exempt employees in
24 the State of California who worked more ten and ½ hours a within four years
25 preceding filing the complaint to the time of final judgment.
26
27
28

1 d. California Mealbreak Subclass:

2 All individuals who worked for Balance Staffing as non-exempt employees in
3 the State of California who worked more than ten hours a day within four years
4 preceding filing the complaint to the time of final judgment.

5
6 25. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
7 modify the class description with greater specificity or further division into subclasses or limitation to
8 particular issues.

9
10 26. The class of persons within the State of California is so numerous that joinder of all
11 members is impracticable, and the disposition of their claims in a class action is a benefit to the
12 parties and to the Court. Plaintiff is informed and believes, and based thereon alleges, that
13 Defendants employ and employed in California no less than 100 persons who satisfy the class
14 definition. Although the exact number and identity of these putative class members is not known,
15 they can be identified in Defendants' records through coordinated discovery under this class action.

16
17 27. This action may be maintained as a class under Code of Civil Procedure section 382
18 because the questions of law and fact which are common to class members predominate over
19 questions affecting only individual members and because a class action is superior to other available
20 methods for adjudicating the controversy.

21
22 28. There are numerous common questions of law and fact arising out of Defendants'
23 conduct.

24
25 29. Common questions of law and fact predominate over questions affecting only
26 individual members of the class. The predominating common or class-wide questions of law and fact
27 include:

28 Whether Defendants are joint employers of Plaintiff and Class Members;

- 1 a. Whether Tesla is a client employer and Balance Staffing and Personnel Staffing
2 are labor contractors under Labor Code Section 2810.3;
- 3 b. Whether Tesla should share with Balance Staffing and Personnel Staffing all civil
4 legal responsibility and civil liability for all workers supplied by Balance Staffing
5 and Personnel Staffing to Tesla for the payment of wages owed to Plaintiff and
6 Class Members under California Labor Code Section 2810.3;
- 7
8 c. Whether Balance Staffing failed to pay Plaintiff and other Class Members at twice
9 their regular hourly rate when they worked over twelve hours a day or more than 8
10 hours on the seventh day of a work week;
- 11
12 d. Whether Defendants' failure to pay wages, without abatement or reduction, under
13 the California Labor Code, was willful;
- 14
15 e. Whether Defendants failed to pay all wages earned by Plaintiff and Class
16 Members owed upon their discharge or resignation in violation of California Labor
17 Code Sections 201-203.
- 18
19 f. Whether Defendants failed to reimburse Plaintiff and Class Members for necessary
20 business expenses incurred to perform their work duties in violation of California
21 Labor Code Section 2802;
- 22
23 g. Whether Plaintiff and Class Members were denied rest periods in violation of
24 California Labor Code § 226.7 and the applicable wage order;
- 25
26 h. Whether Plaintiff and Class Members were denied meal periods in violation of
27 California Labor §§ 226.7, 512;
- 28

- 1 i. Whether Defendant Balance Staffing issued wage statements to Plaintiff and Class
2 Members that violated Labor Code § 226(a); and
3
4 j. Whether Defendants engaged in unfair business practices in violation of California
5 Business & Professions Code Sections 17200 *et seq* for uncompensated wages and
6 unreimbursed business expenses.

7 30. Plaintiff's claims are typical of the claims of the members of the class all of whom
8 have sustained and/or will sustain damage and injury as a proximate and/or legal result of
9 Defendants' violations of Labor Code sections 201-203, 226, 510, 512, 1194, 2802, and 2810.3, the
10 applicable wage order, and Business and Profession Code Section 17200 *et seq*. Plaintiff's claims are
11 typical of those of the class because Defendants subjected Plaintiff and each member of the class to
12 the same Labor Code and Business and Profession Code violations alleged.

14 31. The defenses of Defendants, if such defenses apply, are applicable to the whole class
15 and are not distinguishable as to the proposed class members.

16 32. Plaintiff will fairly and adequately protect the interests of all members of the class, and
17 has retained attorneys with extensive experience in employment litigation, including class and other
18 representative actions. Plaintiff has no interests that conflict with those of the class. Plaintiff can
19 fairly and adequately protect the interests of all members of the class because it is in her best interest
20 to prosecute the claims alleged to obtain the full compensation due to them.

22 33. A class action is superior to any other method available for fairly and efficiently
23 adjudicating the controversy because:

- 24
25 a. Joinder of individual class members is not practical;
26
27 b. Litigating the claims of individual class members is unnecessarily costly and
28 burdensome and deters individual claims;

- 1 c. Litigating the claims of individual class member creates a risk of inconsistent or
2 varying adjudications that will establish incompatible standards of conduct for
3 Defendants;
4
5 d. Class members still working for Defendants may fear retaliation if they bring
6 individual claims;
7
8 e. Class members will be discouraged from pursuing individual claims because the
9 damages available to them are relatively small; and
10
11 f. California public policy encourages the use of class actions to enforce California
12 employment laws and protect individuals who, by their subordinate position, are
13 vulnerable.

14 34. Judicial economy will be served by maintenance of this lawsuit as a class action. To
15 process numerous, virtually identical, individual cases will significantly increase the expense on the
16 Court, the class members and Defendants, all while unnecessarily delaying the resolution of this
17 matter. There are no obstacles to effective and efficient management by this Court of this lawsuit as
18 a class action, and doing so will provide multiple benefits to the litigating parties including, but not
19 limited to, efficiency, economy, and uniform adjudication with consistent results.

20 35. Notice of a certified class action and any result or resolution of the litigation can be
21 provided to class members by mail, e-mail, publication, or such other methods of notice as deemed
22 appropriate by the Court.

23 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

24
25 36. The Labor Code Private Attorneys General Act of 2004 ("PAGA"), as set forth at
26 Labor Code section 2698 et seq., is and at all times relevant, was applicable to Plaintiff's employment
27 with Defendants.
28

1 37. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which
2 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
3 Agency ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a
4 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
5 former employees pursuant to the procedures outlined in Labor Code section 2699.3.
6

7 38. Plaintiff was employed by Defendants, and the alleged violations were committed
8 against her in relation to her employment with Defendants. Plaintiff is, therefore, an aggrieved
9 employee as defined by Labor Code section 2699(c). Other employees, current and former, are also
10 aggrieved employees in that one or more of the alleged violations were also committed against them
11 in relation to their employment with Defendants.
12

13 39. Pursuant to Labor Code section 2699(g), an aggrieved employee may recover the civil
14 penalty on behalf of himself or herself and other current or former employees against whom one or
15 more of the alleged violations was committed. Furthermore, any employee who prevails in any such
16 action shall be entitled to an award of reasonable attorney's fees and costs.
17

18 40. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil
19 action under the PAGA after the following requirements have been met:

- 20 a. The aggrieved employee has provided written notice by online filing to the
21 LWDA and by certified mail to the employer (hereinafter "Employee's Notice")
22 of the specific provisions of the Labor Code alleged to have been violated,
23 including the facts and theories to support the alleged violations; and
24
- 25 b. The LWDA has provided notice (hereinafter "LWDA's Notice") to the employer
26 and the aggrieved employee by certified mail that it does not intend to postmark
27 date of the Employee's Notice. Upon receipt of the LWDA's Notice, or if the
28

1 LWDA does not provide such Notice within 65 calendar days of the postmark
2 date of the Employee's Notice, the aggrieved employee may commence a civil
3 action pursuant to Labor Code section 2699 to recover civil penalties in addition
4 to any other penalties to which the employee may be entitled.

5
6 41. On May 24, 2017, Plaintiff provided written notice by online filing to the LWDA and
7 by certified mail to Tesla, Balance Staffing and Personnel Staffing of specific provisions of the Labor
8 Code alleged to have been violated by Defendants, including the facts and theories to support the
9 alleged violations.

10
11 42. As of December 24, 2017, the LWDA has not provided Plaintiff with written notice
12 that it intends to investigate the alleged violations of the Labor Code. Accordingly, Plaintiff has
13 satisfied the administrative prerequisites under Labor Code section 2699.3 to bring a civil action to
14 recover civil penalties under the PAGA, in addition to other remedies.

15
16 43. Pursuant to Labor Code section 2699.3(d), the aforementioned 65-day "exhaustion
17 period" is not counted as part of the time limited for the commencement of a civil action to recover
18 civil penalties under the PAGA.

19 **FIRST CAUSE OF ACTION**
20 **(Violation of California Labor Code §§ 510, 1194)**
21 **(Against Defendants)**

22 44. Plaintiff realleges and incorporates by reference Paragraphs 1 through 43 above as
23 though fully set forth.

24 45. California Labor Code §§ 1194, 1197 and the applicable Industrial Welfare
25 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
26 compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of
27 pay, depending on the number of hours worked by the person on a daily or weekly basis.

1 46. Specifically, the applicable IWC Wage Order provides that Defendants are and had to
2 pay Plaintiff and class members employed by Defendants, and working over eight (8) hours in a day
3 or over forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked over
4 eight (8) hours in a day or over forty (40) hours in a workweek.

5
6 47. The applicable IWC Wage Order further provides that Defendants are and had to pay
7 Plaintiff and class members employed by Defendants, and working over twelve (12) hours in a day,
8 overtime compensation at two times their regular rate of pay.

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

14
15 49. During the relevant time period, Plaintiff and class members worked over eight (8)
16 hours in a day, over twelve (12) hours in a day, and/or over forty (40) hours in a week.

17
18 50. During the relevant time period, Defendants willfully failed to pay all overtime wages
19 owed to Plaintiff and class members.

20 51. Defendants' failure to pay Plaintiff and class members the unpaid balance of overtime
21 compensation, as required by California laws, violates the provisions of California Labor Code.

22 52. Under California Labor Code, any agreement between an employer and an employee
23 to work for less than the legal overtime wage is invalid.

24
25 53. Labor Code § 558 provides as follows:

26 (a) Any employer or other persons acting on behalf of an employer who violates or
27 causes to be violated, a section of this chapter or any provision regulating hours and
28 days of work in this chapter or any provision regulating hours and days of work in

1 any order of the Industrial Welfare Commission shall be subject to a civil penalty as
2 follows:

- 3 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
4 which the employee was underpaid in addition to an amount sufficient to
5 recover underpaid wages.
6 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
7 employee for each pay period for which the employee was underpaid in
8 addition to an amount sufficient to recover underpaid wages.
9 (3) Wages recovered pursuant to this section shall be paid to the affected
10 employee.

11 54. Plaintiff, Class Members and other aggrieved employees have been injured and
12 request relief. Plaintiff also requests the civil penalties, attorneys' fees, and costs recoverable in a
13 civil action brought by an aggrieved employee on behalf of herself and, as a proxy for the LWDA, on
14 behalf of Defendants' other current and former employees.

15 55. Under California Labor Code § 1194, Plaintiff and class members may recover their
16 unpaid overtime compensation, and interest, costs, and attorneys' fees.

17 **SECOND CAUSE OF ACTION**
18 **(California Labor Code § 226.7, 8 CCR § 11090(12))**
19 **(Against All Defendants)**

20 56. Plaintiff realleges and incorporates by reference Paragraphs 1 through 43 as though
21 fully set forth.

22 57. At all relevant times, the applicable IWC Wage Order and California Labor Code §
23 226.7 were applicable to Plaintiff's and class members' employment by Defendants.

24 58. At all relevant times, California Labor Code § 226.7 provides that no employer shall
25 require an employee to work during any rest period mandated by an applicable order of the California
26 IWC.

27 59. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
28 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in

1 the middle of each work period” and that the rest period time shall be based on the total hours worked
2 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless
3 the total daily work time is less than three and one-half (3 ½) hours.

4 60. During the relevant time period, Defendants required Plaintiff and class members to
5 work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each
6 four (4) hour period worked.

7 61. During the relevant time period, Defendants willfully required Plaintiff and class
8 members to work during rest periods and failed to compensate Plaintiff and class members for work
9 performed during rest periods.

10 62. During the relevant time period, Defendants failed to pay Plaintiff and class members
11 the full rest period premium due pursuant to California Labor Code § 226.7.

12 63. Defendants’ conduct violates the applicable IWC Wage Orders and California Labor
13 Code § 226.7.

14 64. Pursuant to the applicable IWC Wage Order and California Labor Code § 226.7(b),
15 Plaintiff and class members are entitled to recover from Defendants one additional hour of pay at the
16 employee’s regular hourly rate of compensation for each day worked that the rest period was not
17 provided.

18 65. By their actions alleged, Defendants failed to provide their California employees with
19 rest periods as required by California Labor Code § 226.7 and 8 CCR § 11090(12).

20 66. Plaintiff brings this action on behalf of herself and all current and former employees
21 within the State of California who, within the applicable statutory period preceding the filing of the
22 Complaint, and continuing forward from that date, did not receive rest periods as required pursuant to
23 California Labor Code § 226.7 and 8 CCR § 11050(12).

1 67. Under California Labor Code Sections 1194 and 1194.2, and California Code of Civil
2 Procedure Section 1021.5, Plaintiff, on behalf of herself and the Class Members, seeks to recover
3 unpaid wages, interest thereon, liquidated damages, and costs and attorneys' fees.

4 68. Labor Code § 558 provides as follows:

5
6 (a) Any employer or other persons acting on behalf of an employer who violates or
7 causes to be violated, a section of this chapter or any provision regulating hours and
8 days of work in this chapter or any provision regulating hours and days of work in
9 any order of the Industrial Welfare Commission shall be subject to a civil penalty as
10 follows:

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

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

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

19 69. Plaintiff requests the civil penalties, attorney's fees, and costs recoverable in a civil
20 action brought by an aggrieved employee on behalf of herself and, as a proxy for the LWDA, on
21 behalf of Defendants' other current and former employees.

22 **THIRD CAUSE OF ACTION**
23 **(California Labor Code §§ 226.7, 512)**
24 **(Against All Defendants)**

25 70. Plaintiff realleges and incorporates by reference Paragraphs 1 through 43 above as
26 though fully set forth.

27 71. At all relevant times, the applicable IWC Wage Order and California Labor Code §§
28 226.7 and 512(a) were applicable to Plaintiff's and class members' employment by Defendants.

1 72. At all relevant times, California Labor Code § 226.7 provides that no employer shall
2 require an employee to work during any meal period mandated by an applicable order of the
3 California IWC.

4 73. At all relevant times, the applicable IWC Wage Order and California Labor Code §
5 512(a) provide that an employer may not require, cause or permit an employee to work for a period of
6 more than five (5) hours per day without providing the employee with an uninterrupted meal period
7 of no less than thirty (30) minutes, except that if the total work period per day of the employee is not
8 more than six (6) hours, the meal period may be waived by mutual consent of both the employer and
9 the employee.
10

11 74. At all relevant times, the applicable IWC Wage Order and California Labor Code §
12 512(a) further provide that an employer may not require, cause or permit an employee to work for a
13 period of more than ten (10) hours per day without providing the employee with a second
14 uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is
15 not more than twelve (12) hours, the second meal period may be waived by mutual consent of the
16 employer and the employee only if the first meal period was not waived.
17

18 75. During the relevant time period, Plaintiff and class members who did not waive their
19 legally-mandated meal periods by mutual consent, were required to work for periods longer than five
20 (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.
21

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

4 78. During the relevant time period, Defendants willfully required Plaintiff and class
5 members to work during meal periods and failed to compensate Plaintiff and class members for work
6 performed during meal periods.

7 79. During the relevant time period, Defendants failed to pay Plaintiff and class members
8 the full meal premium due pursuant to California Labor Code § 226.7.

9 80. Defendants' conduct violates the applicable IWC Wage Orders and California Labor
10 Code §§ 226.7 and 512(a).

11 81. Pursuant to the applicable IWC Wage Order and California Labor Code § 226.7(b),
12 Plaintiff and class members are entitled to recover from Defendants one additional hour of pay at the
13 employees' regular hourly rate of compensation for each work day that the meal period was not
14 provided.

15 82. By their actions alleged herein, Defendants failed to provide their California
16 employees with meal breaks as required by California Labor Code §§ 226.7, 512.

17 83. Plaintiff brings this action on behalf of himself and all current and former employees
18 within the State of California who, within the applicable statutory period preceding the filing of the
19 Complaint, and continuing forward from that date, did not receive meal breaks as required pursuant
20 to California Labor Code §§ 226.7, 512.

21 84. Under California Labor Code Sections 1194 and 1194.2, and California Code of Civil
22 Procedure Section 1021.5, Plaintiff, on behalf of herself and the Class Members, seeks to recover
23 unpaid wages, interest thereon, liquidated damages, and costs and attorneys' fees.

1 85. Labor Code § 558 provides as follows:

2 (a) Any employer or other persons acting on behalf of an employer who violates or
3 causes to be violated, a section of this chapter or any provision regulating hours and
4 days of work in this chapter or any provision regulating hours and days of work in any
5 order of the Industrial Welfare Commission shall be subject to a civil penalty as
6 follows:

7 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
8 which the employee was underpaid in addition to an amount sufficient to
9 recover underpaid wages.

10 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
11 employee for each pay period for which the employee was underpaid in
12 addition to an amount sufficient to recover underpaid wages.

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

15 86. Plaintiff requests the civil penalties, attorney's fees, and costs recoverable in a civil
16 action brought by an aggrieved employee on behalf of herself and, as a proxy for the LWDA, on
17 behalf of Defendants' other current and former employees.

18 ///

19 **FOURTH CAUSE OF ACTION**
20 **(Violation of Labor Code § 2802)**
21 **(Against All Defendants)**

22 87. Plaintiff realleges and incorporates by reference Paragraphs 1 through 43 above as
23 though fully set forth.

24 88. California Labor Code § 2802 provides that "[a]n employer shall indemnify his or her
25 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
26 the discharge of his or her duties."

27 89. At all times, Plaintiff and Class Members had to incur necessary expenditures and
28 losses including, but not limited to reasonable cell phone expenses to discharge their regular duties.

1 Defendants failed to reimburse and/or indemnify Plaintiff and Class Members for reasonable
2 expenditures and losses incurred in the discharge of their duties.

3 90. As set forth above and during the relevant time period, Defendants failed to indemnify
4 and reimburse Plaintiff and class members for all necessary expenditures or losses recovered in direct
5 consequence of discharge of their duties, or in obedience to the directions of Defendants.
6

7 91. Under the California Labor Code, Plaintiff and Class Members may recover such
8 expenditures and losses, plus interest thereon, attorneys' fees, and costs.

9 92. Plaintiff also request the civil penalties, attorneys' fees, and costs recoverable in a civil
10 action brought by an aggrieved employee on behalf of herself and, as a proxy for the LWDA, on
11 behalf of Defendants' other current and former employees.
12

13 **FIFTH CAUSE OF ACTION**
14 **(California Labor Code § 201.3)**
15 **(Against All Defendants)**

16 93. Plaintiff realleges and incorporates by reference Paragraphs 1 through 43 above as
17 though fully set forth.

18 94. Labor Code § 201.3(b)(1) provides that employees of a temporary services employer
19 must be paid weekly and wages for work performed during any calendar week shall be due and
20 payable not later than the regular pay day of the following week.

21 95. Defendants failed to pay Plaintiff and other Class Members weekly in a timely basis as
22 required by Labor Code § 201.3(b)(1).

23 96. Labor Code § 201.3(c) provides that a temporary services employer who violates this
24 section shall be subject to the civil penalties provided for in Labor Code § 203 and any other civil
25 penalties available by law.
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1 97. Plaintiff also request the civil penalties, attorneys' fees, and costs recoverable in a civil
2 action brought by an aggrieved employee on behalf of herself and, as a proxy for the LWDA, on
3 behalf of Defendants' other current and former employees.

4 **SIXTH CAUSE OF ACTION**
5 **(Violation of Labor Code § 226(a))**
6 **(Against Defendants Balance Staffing and Personnel Staffing)**

7 98. Plaintiff realleges and incorporates by reference Paragraphs 1 through 43 above as
8 though fully set forth.

9 99. Labor Code section 226(a) provides "every employer shall, semimonthly or at the time
10 of each payment of wages, furnish each of his or her employees, either as a detachable part of the
11 check, draft, or voucher paying the employee's wages, or separately when the wages are paid by
12 personal check or cash, an accurate itemized statement in writing showing [. . .] (1) gross wages
13 earned, (2) total hours worked by the employee, except for any employee whose compensation is
14 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of
15 Section 515 or any applicable order of the Industrial Welfare Commission, [. . .] (4) all deductions,
16 provided that all deductions make on written orders of the employee may be aggregated and shown
17 on one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
18 paid, (7) the name of the employee and only the last four digits of his or her social security number or
19 an employee identification number other than a social security number, (8) the name and address of
20 the legal entity that is the employer [. . .] and (9) all applicable hourly rates in effect during the pay
21 period and the corresponding number of hours worked at each hourly rate by the employee[.]"
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25 100. An employee suffering injury as the result of a knowing and intentional failure by an
26 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
27 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
28

1 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the
2 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
3 reasonable attorney's fees. Labor Code § 226(e)(1).

4
5 101. An employee is deemed to suffer injury if the employer fails to provide a wage
6 statement or if the employer fails to provide accurate and complete information as required by any
7 one or more of the items (1) through (9), inclusive, of subdivision (a) of Labor Code section 226 and
8 the employee cannot promptly and easily determine from the wage statement alone: (i) the amount of
9 the gross wages or net wages paid to the employee during the pay period or any of the other
10 information required to be provided on the itemized wage statement pursuant to items (2) to (4),
11 inclusive, (6), and (9) of subdivision (a); (ii) which deductions the employer made from gross wages
12 to determine the net wages paid to the employee during the pay period; (iii) the name and address of
13 the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section
14 1682, the name and address of the legal entity that secured the services of the employee during the
15 pay period; and (iv) the name of the employee and only the last four digits of his or her social
16 security number or an employee identification number other than a social security number. Labor
17 Code § 226(e)(2)(A), (e)(2)(B)(i)-(iv). "Promptly and easily determine" means a reasonable person
18 would be able to readily ascertain the information without reference to other documents or
19 information. Labor Code § 226(e)(2)(C).

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23 102. During the relevant time period(s) and as set forth above, Defendants Balance Staffing
24 and Personnel Staffing failed to provide accurate and complete itemized wage statements to Plaintiff,
25 in violation of Labor Code section 226(a).

26
27 103. Labor Code section 226.3 provides the following in pertinent part: "[a]ny employer
28 who violates subdivision (a) Section 226 shall be subject to a civil penalty in the amount of two

1 hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars
2 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
3 provide the employee a wage deduction statement or fails to keep the records required in subdivision
4 (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty
5 provided by law.
6

7 104. Wherefore, Plaintiff and Class Members have been injured as set forth above and
8 requests relief as hereafter provided. Plaintiff also hereby requests the civil penalties, attorney's fees,
9 and costs recoverable in a civil action brought by an aggrieved employee on behalf of herself and, as
10 a proxy for the LWDA, on behalf of Defendants' other current and former employees.
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12 **SEVENTH CAUSE OF ACTION**
13 **(Violation of Labor Code § 98.6)**
14 **(Against Defendants)**

15 105. Plaintiff realleges and incorporates by reference Paragraphs 1 through 43 above as
16 though fully set forth.

17 106. Under Labor Code Section 98.6(a), "[a] person shall not discharge an employee or in
18 any manner discriminate, retaliate, or take any adverse action against any employee or applicant for
19 employment because the employee or applicant engaged in any conduct delineated in this chapter,
20 including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with
21 Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed
22 a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or
23 relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written
24 or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any
25 action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding
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1 pursuant to that section, or because of the exercise by the employee or applicant for employment on
2 behalf of himself, herself, or others of any rights afforded him or her.

3 107. Under Labor Code Section 98.6(b)(1), "Any employee who is discharged, threatened
4 with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other
5 manner discriminated against in the terms and conditions of his or her employment because the
6 employee engaged in any conduct delineated in this chapter, including the conduct described in
7 subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2,
8 or because the employee has made a bona fide complaint or claim to the division pursuant to this part,
9 or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled
10 to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the
11 employer."
12

13
14 108. During the relevant time period, Defendants retaliated against Plaintiff because she
15 made a complaint that she was owed unpaid wages and she protested against receiving payment via
16 debit card.
17

18 109. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered
19 damages and requests relief.

20 110. Wherefore, Plaintiff has been injured and requests relief. Plaintiff also requests the
21 civil penalties, attorney's fees, and costs recoverable in a civil action brought by an aggrieved
22 employee on behalf of herself and, as a proxy for the LWDA, on behalf of Defendants' other current
23 and former employees.
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EIGHTH CAUSE OF ACTION
(California Labor Code §§ 201, 202)
(Against All Defendants)

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4 111. Plaintiff hereby realleges and incorporates by reference Paragraphs 1 through 43
5 above as though fully set forth.

6 112. At all times set forth, California Labor Code §§ 201 and 202 provide that if an
7 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
8 payable immediately, and if an employee voluntarily leaves his or her employment, his or her wages,
9 will become due by seventy-two (72) hours thereafter, unless the employee has given seventy-two
10 (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his
11 or her wages at the time of quitting.
12

13 113. During the relevant time period, Defendants willfully failed to pay Plaintiff and Class
14 Members who are no longer employed by Defendants their wages, earned and unpaid, either at the
15 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.
16

17 114. Defendants' failure to pay Plaintiff and those class members who are no longer
18 employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-
19 two (72) hours of their leaving Defendants' employ, violates California Labor Code §§ 201 and 202.
20

21 115. California Labor Code § 203 provides that if an employer willfully fails to pay wages
22 owed, under §§ 201 and 202, then the wages of the employee will continue as a penalty from the due
23 date, at the same rate until paid or until an action is commenced, but wages will not continue for over
24 thirty (30) days.

25 116. Plaintiff and class members may recover from Defendants the statutory penalty wages
26 for each day they were not paid, up to a thirty (30) day maximum under California Labor Code.
27
28

1 **NINTH CAUSE OF ACTION**
2 **(Violation of California Business & Professions Code §§ 17200, et seq.)**
3 **(Against All Defendants)**

4 117. Plaintiff realleges and incorporates by reference Paragraphs 1 through 43 above as
5 though fully set forth.

6 118. Defendants' conduct, as alleged, has been, and continues to be, unfair, unlawful, and
7 harmful to Plaintiff, other class members, and to the general public, Plaintiff seeks to enforce
8 important rights affecting the public interest within the meaning of Code of Civil Procedure §1021.5.
9

10 119. Defendants' activities, as alleged here, are violations of California law, and constitute
11 unlawful business acts and practices in violation of California Business & Professions Code §§
12 17200, et seq.

13 120. A violation of California Business & Professions Code §§ 17200 et seq. may be
14 predicated on violating state or federal law. Defendants' policies and practices of requiring hourly
15 paid employees, including Plaintiff and Class Members, to work overtime without paying them
16 proper compensation violate California Labor Code §§ 510 and 1194. Defendants' policies of failing
17 to provide Plaintiff and Class Members with rest periods and meal breaks violate Labor Code §§
18 226.7, 512 and the applicable wage orders. Further, Defendants' policies of paying Plaintiff and
19 Class Members less than the minimum wage and failing to compensate them for necessary
20 expenditures and losses incurred by them in direct consequence of the discharge of their duties
21 violate California Labor Laws.
22

24 121. Plaintiff and Class Members have been injured by Defendants' unlawful business acts
25 and practices as alleged, including but not limited to the loss of money or property.
26

27 122. Under California Business & Professions Code §§ 17200 et seq., Plaintiff and putative
28 Class Members are entitled to restitution of the wages withheld and retained by Defendants during a

1 period that commences four years prior to filing this complaint; a permanent injunction requiring
2 Defendants to pay all outstanding wages due to Plaintiff and Class Members; an award of attorneys'
3 fees under California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of
4 costs.

5
6 **REQUEST FOR JURY TRIAL**

7 Plaintiff requests a trial by jury.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays judgment against Defendants and each of them as follows:

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11 1. This Court certify the class identified in Paragraph 23, and the subclasses identified in
12 Paragraph 24;
- 13 2. This Court certify Plaintiff as the representative of the class identified in Paragraph 23,
14 and of the subclasses identified in Paragraph 24;
- 15 3. This Court appoint counsel for as Class Counsel;
- 16 4. Damages for unpaid overtime wages under Labor Code §§ 510, 1194 against
17 Defendants.
- 18 5. Damages for unpaid rest periods under Labor Code §226.7;
- 19 6. Damages for unpaid meal periods under Labor Code §§ 226.7, 512
- 20 7. Damages for unpaid penalty wages under Labor Code §§ 201-203;
- 21 8. Damages for unreimbursed expenses under Labor Code § 2802;
- 22 9. For penalties under Labor Code §§ 98.6(b)(3), 226.3, 558, 2699(a), (f);
- 23 10. Restitution under Business & Professions Code §§ 17203;
- 24 11. Pre-judgment interest;
- 25 12. Costs under Labor Code § 1194;
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13. Attorneys' fees under Labor Code § 1194;

14. A declaratory judgment that Defendants violated Labor Code § 2810.3 and should be jointly and severally liable for all unpaid wages;

15. Reimbursement for lost wages and benefits under Labor Code § 98.6(b)(1) and

16. This Court award such other and further relief as the Court deems just and proper.

Dated: April 18, 2018

BURTON EMPLOYMENT LAW

By: 

JOCelyn BURTON

Attorney for Plaintiff

DORLEY NEZBETH-ALTIMORE