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MARY STEARN, individually,
and on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARY STEARN, individually, and on behalf of others similarly situated,

Plaintiff,

vs.

GIRL SCOUTS OF GREATER LOS ANGELES, a California Corporation, DOES 1 through 25, inclusive,

Defendants.

Case No. 18STCV05321

CLASS ACTION COMPLAINT

1. **FAILURE TO REIMBURSE FOR EMPLOYMENT RELATED EXPENSES;**
2. **UNFAIR AND UNLAWFUL BUSINESS PRACTICES;**
3. **PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT, AS REPRESENTATIVE ACTION.**

DEMAND FOR JURY TRIAL

BY FAX

Plaintiff MARY STEARN (hereinafter "PLAINTIFF"), an individual, on behalf of herself and all other persons similarly situated, hereby alleges against DEFENDANT GIRL SCOUTS OF GREATER LOS ANGELES (hereinafter "GSGLA" or "DEFENDANT"), and Does 1 through 25, inclusive, as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to California Code of Civil Procedure section 382. The monetary damages, penalties, and restitution sought by PLAINTIFF exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. The Superior Court of the State of California has jurisdiction in this matter because PLAINTIFF is a resident of the State of California. Moreover, upon information and belief, two-thirds or more of the CLASS MEMBERS and DEFENDANTS are citizens in California, the alleged wage and hour violations occurred in California, significant relief is being sought against DEFENDANTS whose violations of California wage and hour laws form a significant basis for PLAINTIFF's claims, and no other class action has been filed within the past three (3) years on behalf of the same proposed class against DEFENDANTS asserting the same or similar factual allegations. Further, no federal question is at issue because the claims are based solely on California law and DEFENDANTS are residents of, and/or regularly conduct business in the State of California, as well as have their principal place of business located within California.

3. Venue is proper in this judicial district and the County of Los Angeles, California because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS in the County of Los Angeles, DEFENDANTS maintain offices and facilities and transact business in the County of Los Angeles, and DEFENDANTS' illegal practices, which are the subject of this action, were applied, at least in part, to PLAINTIFF, and other persons similarly situated, in the County of Los Angeles. Thus, a substantial portion of the transactions and occurrences related to this action occurred in this county. Cal. Civ. Proc. Code § 395.

PLAINTIFF

4. PLAINTIFF brings this action on behalf of herself and all similarly situated current and former employees of DEFENDANTS in the State of California at any time within the period

beginning four (4) years prior to the filing of this action and ending at the time this action settles or proceeds to final judgment (the "CLASS PERIOD") who, at any time during the CLASS PERIOD, used their personal cell phone to conduct business for DEFENDANTS ("CLASS MEMBERS").

5. PLAINTIFF is a former misclassified exempt employee who held a variety of positions during her 9-year employment with DEFENDANTS, including, but not limited to, Risk Manager, and Contract & Insurance Administrator. At the end of her employment with DEFENDANTS, PLAINTIFF was earning $28.42 per hour. PLAINTIFF is an individual who is, and at all times herein mentioned was, a resident of Los Angeles County, California.

6. PLAINTIFF and CLASS MEMBERS were inadequately reimbursed for incurred necessary business-related expenses and costs, including, but not limited to, the cost for cell phone usage, for the personal use of their cell phones to conduct business for DEFENDANTS. California law requires employers to reimburse employees who use their cell phones for work a "reasonable percentage" of their phone bills. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1140 (2014).

7. PLAINTIFF and CLASS MEMBERS were routinely required to use their personal cell phones to receive and respond to e-mail correspondences from their GSGLA issued e-mail account as well as to receive and respond to work related phone calls and text messages. GSGLA did not provide PLAINTIFF or CLASS MEMBERS with a work-issued cell phone.

8. GSGLA provided a 24-hour answering service available to staff and volunteers (including Troop Leaders) in case of emergency. GSGLA listed PLAINTIFF and her personal cellular phone number as the primary contact for this emergency answering service. This meant PLAINTIFF could, and would, receive emergency calls at any time of day or night and any day of the week (particularly when Troops were on overnight and weekend camping excursions) and PLAINTIFF would need to be available to respond to such calls immediately. PLAINTIFF received many such calls during her tenure with GSGLA. Thus, PLAINTIFF was on call for GSGLA 24 hours a day, seven days a week. DEFENDANTS relied on PLAINTIFF to be available at all hours of the night and throughout the weekend to ensure their business needs were met.

9. PLAINTIFF used her personal cell phone to receive and respond to emergency

phone calls, which could come at any time. PLAINTIFF also used her cell phone to communicate with her supervisors and colleagues regarding work. At no point did GSGLA conduct an appropriate analysis of what PLAINTIFF'S or CLASS MEMBERS' monthly phone bills were, or what "reasonable percentage" of it should be allocated as a reasonable and necessary business expense. PLAINTIFF initially received a $15.00 monthly reimbursement for using her cell phone, but after lobbying for a higher amount, in April 2014, PLAINTIFF began receiving a $25.00 cell phone reimbursement, which is still far shy of industry standard. PLAINTIFF raised her concerns to DEFENDANTS that their cell phone stipend policy was not in compliance with California law, but was reprimanded for not making good use of her time. GSGLA's determination that a maximum flat fee of $25.00 for cell phone reimbursement illegally failed to consider what amounts PLAINTIFF and CLASS MEMBERS were actually paying each month for their cellular phone as it related to their work for GSGLA.

10. PLAINTIFF, on behalf of herself and all other similarly situated current and former employees of DEFENDANTS in the State of California at any time during the four (4) years preceding the filing of this action, and continuing while this action is pending, brings this class action to recover for, among other things, failure to indemnify employees for necessary expenditures and/or losses incurred in discharging their duties, and associated penalties, interest, attorneys' fees, costs and expenses.

11. PLAINTIFF reserves the right to redefine the CLASS MEMBER definition as appropriate based on further investigation, discovery, and specific theories of liability.

DEFENDANTS

12. GSGLA, the largest "girl-serving" non-profit agency in Los Angeles, is a leadership development Organization that boasts "Courage, Confidence, and Character" in the name of female empowerment and girl leadership to "make the world a better place." GSGLA is, and at all times mentioned in this Complaint was, a California corporation authorized to conduct and conducting business in Los Angeles County, California. At all times relevant hereto, GSGLA was, and is, a corporation authorized to do business in the State of California and does conduct business in the State of California. Specifically, upon information and belief, GSGLA maintains corporate

headquarters and facilities and conducts business in the City of Los Angeles, in the County of Los Angeles, State of California.

13. The true names and capacities of DOES 1 through 25, inclusive ("DOES"), are unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE DEFENDANTS under fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each DEFENDANT designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and that PLAINTIFF and CLASS MEMBERS' injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE DEFENDANTS. PLAINTIFF will seek leave of the court to amend this complaint to allege the true names and capacities of such DOE DEFENDANTS when ascertained.

14. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control of, each of the other DEFENDANTS, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

15. As a direct and proximate result of the unlawful actions of DEFENDANTS, PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

CLASS ACTION ALLEGATIONS

16. PLAINTIFF brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated and seeks class certification under California Code of Civil Procedure section 382. Cal. Civ. Proc. Code § 382.

17. All claims alleged herein arise under California law for which PLAINTIFF seeks relief authorized by California law.

18. There is a well-defined community of interest in litigation and the CLASS MEMBERS are readily ascertainable:

A. Numerosity: The CLASS MEMBERS are so numerous that joinder of all

members would be unfeasible and impractical. The membership of the entire class is unknown to PLAINTIFF at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of DEFENDANTS' employment records.

B. Typicality: PLAINTIFF is qualified to, and will, fairly and adequately protect the interests of each CLASS MEMBER with whom she has a well-defined community of interest, and PLAINTIFF's claims (or defenses, if any) are typical of all CLASS MEMBERS as demonstrated herein.

C. Adequacy: PLAINTIFF is qualified to, and will, fairly and adequately protect the interest of each CLASS MEMBER with who she has a well-defined community of interest and typicality of claims, as demonstrated herein. PLAINTIFF acknowledges that she has an obligation to make known to the Court any relationship, conflicts, or differences with any CLASS MEMBER. PLAINTIFF's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. PLAINTIFF has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expanded for the prosecution of this action for the substantial benefit of each CLASS MEMBER.

D. Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

E. Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the CLASS MEMBERS who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

GENERAL ALLEGATIONS

19. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

20. DEFENDANTS employed, and continue to employ, employees in California during the last four (4) years.

21. Upon information and belief, DEFENDANTS maintain a single, centralized Human Resources department at its company headquarters in Los Angeles County, California, which is responsible for the hiring of new employees, collecting and processing all new hire paperwork, and communicating and implementing DEFENDANTS' company-wide policies, practices, and guidelines, including DEFENDANTS' cellular phone policies, practices, and guidelines to their employees in California.

22. On information and belief, PLAINTIFF and CLASS MEMBERS received the same standardized documents and/or written policies. Upon information and belief, DEFENDANTS created uniform policies, procedures, and guidelines at the corporate level and implemented them companywide, regardless of the employees' location.

23. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive full reimbursement for all business-related expenses and costs they incurred during the course and scope of their employment, and that they did not receive full reimbursement of applicable business-related expenses and costs in violation of the California Labor Code.

FIRST CAUSE OF ACTION

Failure To Reimburse For Employment Related Expenses

(Cal. Labor Code Section 2802)

(Against DEFENDANT GSGLA and DOES)

24. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

25. At all relevant times herein, California Labor Code section 2802 required an employer to indemnify an employee "for all necessary expenditures or losses incurred by the

employee in direct consequence of the discharge of his or her duties…." Cal. Labor Code § 2802(a). This includes costs associated with the use of personal cell phones for work-related purposes. "If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802." *Cochran v. Schwan's Home Service*, Inc., 228 Cal. App. 4th 1137, 1144 (2014).

26. At all relevant times herein, PLAINTIFF and CLASS MEMBERS incurred necessary business-related expenses and costs that were not adequately reimbursed by DEFENDANTS, including, but not limited to, the cost for cell phone usage incurred while using personal cell phone to conduct business for DEFENDANTS. PLAINTIFF and CLASS MEMBERS were routinely required to use their personal cell phones to receive and respond to e-mail correspondences from their GSGLA issued e-mail accounts as well as receive and respond to work related phone calls and text messages.

27. At no point did GSGLA conduct an appropriate analysis of what PLAINTIFF'S or CLASS MEMBERS' monthly phone bills were, or what "reasonable percentage" of it should be allocated as a reasonable and necessary business expense. DEFENDANTS failed to consider what amounts PLAINTIFF and CLASS MEMBERS were actually paying each month for their cellular phones as it related to their work for GSGLA

28. DEFENDANTS did not provide PLAINTIFF or CLASS MEMBERS with a work-issued cell phone, nor has it adequately reimbursed PLAINTIFF and CLASS MEMBERS for the necessary expenses they incurred in using their personal cell phones for DEFENDANTS' business.

29. At all relevant times, DEFENDANTS intentionally and willfully failed to adequately reimburse PLAINTIFF and CLASS MEMBERS for necessary business-related expenses and costs. DEFENDANTS' company-wide practice of requiring PLAINTIFF and CLASS MEMBERS to use their own personal cellular phones for work without proper reimbursement violates California Labor Code section 2802.

30. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses, and costs of suit.

SECOND CAUSE OF ACTION

Unfair And Unlawful Business Practices

(Cal. Business & Professions Code Section 17200, *et seq.*)

(Against DEFENDANT GSGLA and DOES)

31. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

32. At all times herein, California Business & Professions Code provides that "person" shall mean and include "natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons." Cal. Bus. & Prof. Code § 17201.

33. At all times herein, DEFENDANTS' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to PLAINTIFF, CLASS MEMBERS, the general public, and DEFENDANTS' competitors. PLAINTIFF and CLASS MEMBERS have suffered injury in fact and have lost money as a result of DEFENDANTS' unlawful business practices.

34. At all times herein, DEFENDANTS' activities, as alleged herein, are violations of California law, and constitute false, unfair, fraudulent and deceptive business acts and practices in violation of California Business & Professions Code sections 17200 *et seq*.

35. Each and every one of the DEFENDANTS' acts and omissions in violation of California Labor Code, as alleged herein, including, but not limited to, DEFENDANTS' failure to adequately reimburse for employment related expenses constitutes an unfair and unlawful business practice under California Business & Professions Code sections 17200 *et seq*.

36. DEFENDANTS' violations of California wage and hour laws constitute a business practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS MEMBERS.

37. As a result of the violations of California law herein described, DEFENDANTS unlawfully gained an unfair advantage over other businesses. PLAINTIFF and CLASS MEMBERS have suffered pecuniary loss by DEFENDANTS' unlawful business acts and practices alleged herein.

38. Pursuant to California Business & Professions Code sections 17200 *et seq*., PLAINTIFF and CLASS MEMBERS are entitled to restitution of the wages withheld and retained by DEFENDANTS during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring DEFENDANTS to pay all outstanding wages due to PLAINTIFF and CLASS MEMBERS; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs. *See Cortez v. Purolater Air Filtration Products Co*., 23 Cal. 4th 163 (2000) (Unlawfully withheld wages, including unpaid expense reimbursements, may be recovered as restitutionary remedy in UCL action); *Gattuso v. Harte-Hanks Shoppers, Inc*., 42 Cal. 4th 554 (2007).

THIRD CAUSE OF ACTION

Representative Action for Civil Penalties

(Cal. Labor Code Sections 2698-2699.5)

(Against DEFENDANT GSGLA and DOES)

39. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

40. PLAINTIFF is an "aggrieved employee" within the meaning of California Labor Code Section 2699(c), and a proper representative to bring a civil action on behalf of herself and other current and former employees of DEFENDANTS pursuant to the procedures specified in California Labor Code Section 2699.3, because PLAINTIFF was employed by DEFENDANTS and the alleged violations of the California Labor Code were committed against PLAINTIFF.

41. Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code Sections 2698-2699.5, PLAINTIFF seeks to recover civil penalties, including but not limited to penalties under California Labor Code Sections 2699 from DEFENDANTS in representative action for the violations set forth above, including but not limited to violations of California Labor Code Sections 2802. PLAINTIFF is also entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code Section 2699(g)(1).

42. Pursuant to California Labor Code Section 2699.3, PLAINTIFF gave written notice by certified mail to the California Labor and Workforce Development Agency ("LWDA") and

DEFENDANTS of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. PLAINTIFF's notice to the LWDA is attached as Exhibit A. Within sixty-five (65) calendar days of the postmark date of PLAINTIFF's notice letter, the LWDA did not provide notice to PLAINTIFF that it intends to investigate the alleged violations.

43. Therefore, PLAINITFF has complied with all of the requirements set forth in California Labor Code Section 2699.3 to commence a representative action under PAGA.

PRAYER FOR RELIEF

WHEREFORE PLAINTIFF MARY STEARNS, individually and on behalf of all other persons similarly situated, respectfully prays for relief against DEFENDANT GIRL SCOUTS OF GREATER LOS ANGELES, and Does 1 through 25, inclusive, and each of them, as follows:

1. For reimbursement of all necessary business expenses incurred by PLAINTIFF and CLASS MEMBERS;

2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well as disgorged profits from the unfair and unlawful business practices of DEFENDANTS;

3. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code Section 2699;

4. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code Section 2802, California Civil Code Sections 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;

5. For reasonable attorneys' fees and costs pursuant to California Labor Code Sections 2699, 2802, California Civil Code Section 1021.5, and any other applicable provisions providing for attorneys' fees and costs;

6. For an order requiring and certifying the Three Causes of Action as a class action;

7. For an order appointing PLAINTIFF as class representative, and PLAINTIFF's counsel as class counsel; and

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8. For such further relief that the Court may deem just and proper.

DATED: November 16, 2018

GUNN COBLE LLP

By: _____
Beth A. Gunn
Catherine J. Coble

Attorneys for Plaintiff
MARY STEARN, individually,
and on behalf of others similarly situated

DEMAND FOR JURY TRIAL

PLAINTIFF, MARY STEARN, demands trial of this matter by jury.

DATED: November 16, 2018

GUNN COBLE LLP

By: _____
Beth A. Gunn
Catherine J. Coble

Attorneys for Plaintiff
MARY STEARN, individually,
and on behalf of others similarly situated

Exhibit A

Gunn Coble
EMPLOYMENT LAWYERS

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May 31, 2018

VIA ONLINE FILING
David M. Lanier, Secretary
California Labor and Workforce Development Agency

RE: Labor Code Private Attorneys General Act of 2004 – Notice on behalf of Mary Stearn

Dear Secretary Lanier:

Please be advised that Gunn Coble LLP has been retained by Mary Stearn ("Ms. Stearn") to represent her in respect to matters arising out of her employment with the Girl Scouts of Greater Los Angeles ("GSGLA") and, as appropriate, any of its parent companies, subsidiaries, or affiliates (collectively, "GSGLA" or the "Company"). All further questions, inquiries, or other communications about this matter should be directed to this firm, not to Ms. Stearn.

This letter provides notice on behalf of Ms. Stearn and similarly situated, aggrieved employees pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2699.3. Ms. Stearn is an "aggrieved employee" as defined by Labor Code section 2698 *et seq.*, due to GSGLA's numerous violations of the Labor Code, including misclassification as an exempt employee, unpaid wages, unpaid minimum wage, unpaid overtime wages, failure to pay meal and rest period premiums, inaccurate wage statements, unreimbursed expenses, interest, penalties, attorneys' fees, costs, and any other relief available under California law, including PAGA. For purposes of this letter, an "aggrieved employee" should be considered to include all non-exempt, or employees misclassified as exempt, employees of GSGLA who have worked for GSGLA during the one year preceding the date of this letter through the present date.

This notice is being provided via electronic submission to the California Labor & Workforce Agency ("LWDA") and to the Company via certified mail at its address for business operations.

Based on the below summary of the facts and legal theories upon which Ms. Stearn will base her claims, she requests that the LWDA regard this notice as written notice pursuant to

California Labor Code section 2699.3 of her intent to seek civil penalties against GSGLA and any parent companies identified as co-defendants prior to and during litigation of this matter.

A. Facts

GSGLA is a nonprofit company that serves girls in grades K-12 in partnership with volunteers throughout Los Angeles County and parts of Kern, San Bernardino, and Ventura counites. Plaintiff Mary Stearn is a former employee of GSGLA who was misclassified as an exempt employee despite no valid exemption under the Industrial Welfare Commission's Wage Orders or under any exemption under the Division of Labor Standards Enforcement being applicable to Ms. Stearn. Ms. Stearn began her employment with GSGLA in February 2009 as a Senior Administrative Assistant. From May 12, 2014 through March 8, 2017, Ms. Stearn held the Risk Manager position until GSCLA changed her title to Contract & Insurance Administrator. Ms. Stearn held the Contract & Insurance Administrator position from March 9, 2017 through January 23, 2018, when her employment was abruptly terminated.

During her employment with GSGLA, Ms. Stearn frequently worked nights, weekends and while on vacation or out sick in order to meet the needs of the organization, earning herself the reputation of an employee who would get things done. Meeting the needs of the organization often caused Ms. Stearn to regularly work in excess of eight hours a day and more than forty hours a week. For years, Ms. Stearn worked at least 10-hour days and on weekends, including coming in to the office while it was closed to ensure work was completed. On average, Ms. Stearn worked 55 hours per week without receiving any overtime compensation. GSGLA expected all employees to work at least eight hours per day and to be physically present in the office during "core hours," which were from 9:00 a.m. to 3:30 p.m.

Additionally, GSGLA provided a 24-hour answering service available to staff and volunteers (including Troop Leaders) in case of emergency. GSGLA listed Ms. Stearn and her personal cellular phone number as the primary contact for this emergency answering service. This meant Ms. Stearn could and would receive emergency calls at any time of day or night and any day of the week (particularly when Troops were on overnight and weekend camping excursions) and Ms. Stearn would need to be available to respond to such calls immediately. She received many such calls during her tenure with GSGLA. Thus, Ms. Stearn was on call for GSGLA 24 hours a day, seven days a week.

In both positions of Risk Manager and Contract & Insurance Administrator, Ms. Stearn was designated as an exempt employee. However, an examination of Ms. Stearn's job duties and expectations reveals that Ms. Stearn was misclassified. Ironically, whenever Ms. Stearn attempted to exercise independent thinking and discretion – the very things necessary to make her position exempt – she was criticized, ridiculed, disciplined and labeled insubordinate. In fact, Ms. Mathew even went as far as to tell Ms. Stearn explicitly "don't exercise your judgment." Furthermore, Ms. Stearn was subject to the close supervision of Ms. Zamzow and Ms. Mathew. Ms. Stearn needed to report to Ms. Mathew her whereabouts at all times, including not just when she was calling in sick or planning to be late, but generally where she was going and what she was doing. Ms. Stearn was also closely directed and micro-managed by Ms. Zamzow and Ms. Mathew. There can be no doubt that GSLGA intentionally misclassified Ms. Stearn, as GSGLA has

a history of casually misclassifying employees in violation of the law, and dismissing legitimate concerns about misclassification of employees when raised by conscientious employees such as Ms. Stearn. The reason for this intentional misclassification is obvious: GSGLA attempted to avoid paying Ms. Stearn overtime wages and providing her with legally mandated meal and rest breaks, despite the unavailability of any valid exemption under the Industrial Welfare Commission's Wage Orders or under any exemption under the Division of Labor Standards Enforcement applicable to Ms. Stearn. As a result of this misclassification, Ms. Stearn is entitled to unpaid overtime and premium pay for missed meal and rest breaks while improperly classified as an exempt employee, as well as other punitive damages specified by the California Labor Code.

Additionally, GSGLA owes wages for Ms. Stearn's improperly accounted vacation days. In a cruel act of punishing Ms. Stearn for her need to take medical leave, when Ms. Stearn finally utilized the full amount of sick pay and vacation days she had earned while working conscientiously for the Council for almost a decade, GSGLA decided to allocate days when the office was closed as sick or vacation time for Ms. Stearn, even though other employees were not charged with sick or vacation time on those days. Further, GSGLA allocated as sick or vacation time for Ms. Stearn days on which the office was closed during the Christmas break and holiday pay was paid to other employees. After trying for months to understand the amount of sick time available to her, Ms. Stearn complained of this inappropriate allocation by email to Ms. Johnson on January 23, 2017. She was terminated five hours later. By deliberately diminishing Ms. Stearn's sick time and vacation time balance in this unwarranted fashion, GSGLA was consciously reducing Ms. Stearn's ability to utilize that time to deal with her highly concerning medical issues precisely when she needed that time the most. GSGLA's goal was obvious: To strip Ms. Stearn of her ability to take much-needed time off so that she would be forced to come back to the office, where she would be tasked with an impossibly demanding work load to be performed without needed accommodation, so that it could pretend to justify its illegal termination of her based on her disability.

As Ms. Stearn had informed Ms. Zamzow in April 2016, California law requires employers to reimburse employees who use their cell phones for work a "reasonable percentage" of their phone bills. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1140 (2014). Ms. Stearn used her personal cell phone to receive and respond to emergency phone calls, which could come at any time. She also used her cell phone to communicate with her supervisors and colleagues regarding work. At no point did GSGLA conduct an appropriate analysis of what Ms. Stearn's monthly phone bill was, or what "reasonable percentage" of it should be allocated as a reasonable and necessary business expense. Ms. Stearn initially received a $15.00 monthly reimbursement for using her cell phone, but after lobbying for a higher amount, in April 2014, Ms. Stearn began receiving a $25.00 cell phone reimbursement, which is still far shy of industry standard. When Ms. Stearn raised her concerns to Ms. Zamzow that GSGLA's cell phone stipend policy was not in compliance with California law, rather than properly address Ms. Stearn's legitimate concerns, Ms. Zamzow questioned Ms. Stearn as to why she was looking at the cell phone guidelines and reprimanded Ms. Stearn for not making good use of her time. GSGLA's determination that a maximum flat fee of $25.00 for cell phone reimbursement illegally failed to consider what amounts Ms. Stearn and other employees were actually paying each month for their cellular phone as it related to their work for GSGLA.

B. Labor Code Violations

1. GSGLA Willfully Misclassified Ms. Stearn As An Exempt Employee

GSGLA misclassified Ms. Stearns and other employees as exempt from certain provision of the labor law and, as a result, failed to pay overtime wages and premium wages to employees for missed meal and rest periods.

The California Legislature, authorized the Industrial Welfare Commission to establish exemptions from the overtime pay requirements for "'executive, administrative, and professional employees " when certain conditions are met. *Kizer v. Trister Risk Management*, 13 Cal. App. 5th 830, 838 (2017). For the exemption to apply, "[t]he employee must (1) perform 'office or non-manual work directly related to management policies or general business operations' of the employer or its customers, (2) 'customarily and regularly exercise discretion and independent judgment,' (3) 'perform under only general supervision work along specialized or technical lines requiring special training' or 'execute under only general supervision special assignments and tasks,' (4) be engaged in activities meeting the test for the exemption at least 50 percent of the time, and (5) earn twice the state minimum wage." *Id.* quoting *Eicher v. Advanced Business Integrators, Inc.*, 151 Cal. App. 4th 1363, 1371 (2007). These exemptions are narrowly construed, and the burden lies with the employer to prove the employee's exemption as an affirmative defense.

Whether an employee is exempt depends not only upon factors related to the job, itself (e.g. "employer's realistic job expectations" and "realistic requirements of the job"), but also "first and foremost" upon what and employee actually does on the job (e.g., "work actually performed"). *Duran v. U.S. National Assn.*, 59 Cal.4th 1, 27 (2014). Here, there is no feasible argument that the executive or the professional exemptions were applicable to Ms. Stearn at any time during her employment with GSLGA. Ms. Stearn did not supervise any employees, which means she could not qualify for the executive exemption. Additionally, Ms. Stearn did not qualify for the professional exemption because she was not primarily engaged in an occupation commonly recognized as a learned or artistic profession nor was she licensed by the State of California to practice law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting.

As the facts above demonstrate, Ms. Stearn's job duties and job performance did not qualify her for the administrative exemption because she sis not customarily and regularly exercise the requisite discretion and independent judgment nor was she executing under only general supervision special assignments and tasks at least 50 percent of the time. To the contrary, as illustrated above, when Ms. Stearn tried to exercise discretion and independent judgment for tasks as outlined in her job purported descriptions, she was criticized, ridiculed, disciplined, and labeled "insubordinate." Ms. Mathew repeatedly emphasized to Ms. Stearn that she was to follow instructions and not exercise independent judgment and when she failed to heed Ms. Mathew's instruction, Ms. Stearn was written up for insubordination and ultimately terminated. Additionally, Ms. Stearn was closely directed and micro-managed by Ms. Zamzow and Ms. Mathew on a daily basis. It is abundantly clear Ms. Stearn was improperly classified as

an exempt employee by GSGLA. From her tenure working for GSGLA, Ms. Stearn observed other employees whom she believes were similarly misclassified as exempt by GSLGA.

2. GSGLA Violated Labor Code Section 204 by Failing to Pay Employees for All Hours Worked

Labor Code section 204, provides in relevant part: "All wages, other than those mentioned in Section[s] [not applicable here] earned by any person in any employment are due and payable twice during each calendar month." California Labor Code section 204. In short, this means an employee must be paid for *all* hours worked. Here, Ms. Stearn, and other aggrieved employees, were not compensated for all hours worked because they were improperly classified as exempt employees when they did not meet the requirements of an exemption. On average, Ms. Stearn worked 55 hours per week but never received any overtime compensation. Based on information and belief, other aggrieved employees frequently worked overtime and never received compensation for the same. Because GSGLA improperly misclassified Ms. Stearn, and other aggrieved employees, as exempt, GSGLA failed to pay her overtime for the time spent working more than eight (8) hours in a workday and forty (40) hours in a workweek and failed to issue premium pay for missed meal and rest periods.

Additionally, Ms. Stearn was expected to be on call 24 hours/7 days a week in case of an emergency. Ms. Stearn never received compensation for this on call time nor did GSGLA compensate Ms. Stearn for time actually spent responding to emergency calls. As such, Ms. Stearn and other employees were never compensated for all time worked. Therefore, GSGLA has violated Labor Code sections 204, 1194, 1194.2, and 1197.

2. GSGLA Violated Labor Code Section 246.5

Per Labor Code section 246.5 (c)(1) "[a]n employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days. . . ." In blatant violation of the Labor Code, GSGLA retaliated against Ms. Stearn when she took sick leave by terminating her employment mere days after returning from a brief leave of absence. Based on information and belief, GSGLA also retaliated against other workers who exercised the right to use accrued sick days.

In addition, GSGLA has a policy of not awarding employees on a leave of absence the benefit of paid holidays or office closure days and instead penalizes employees on a leave of absence by forcing them to use a sick and/or vacation day for days the office is closed and no other employees are expected to work. Employees who were not on a leave of absence received the benefit of a day off and were not charged sick/vacation time to enjoy the same. GSGLA's policy is, on its face, discriminatory and retaliatory towards employees who were exercising their statutorily protected right to take leave. Based on the above, GSGLA has violated Labor Code section 246.5.

3. Failure to Overtime Wages and Therefore Failure to Pay Minimum Wage

Employers operating under California law must pay at least minimum wage to their employees for all hours worked. An employee not paid at least minimum wage is entitled to recover the unpaid balance of such wages. California Labor Code sections 1182.12 and 1194. In addition, an employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well as interest. California Labor Code section 1194.2. Furthermore, an employer failing to pay minimum wages must pay a civil penalty of $100 for the initial pay period and $250 for each subsequent pay period during which such violations occurred. California Labor Code section 1197.1.

Section 510 of the Labor Code mandates that any time worked beyond eight hours in one workday or beyond 40 hours in any workweek must be compensated at no less than one and one-half times the regular wage. *See* California Labor Code § 510(a). Section 1194 creates a cause of action to recover such unpaid overtime wages. *See* California Labor Code section 1194. IWC Order No. 4-2001(3)(A) further provides that employees such as Ms. Stearn "shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek." IWC Order No. 4-2001(3)(A).

Ms. Stearn, and other aggrieved employees were expected to work at least eight (8) hours per day with the core hours for GSGLA from 9:00 a.m. to 3:30 p.m. However, Ms. Stearn routinely worked in excess of eight hours in a workday and/or more than 40 hours in a workweek, but did not receive pay at a rate of 1 ½ times her regular rate of pay for the overtime hours worked because GSGLA had intentionally misclassified her as an exempt employee in order to avoid its obligation to pay overtime under the law. Ms. Stearn and other similarly situated employees have worked in excess of eight (8) hours in a workday and/or more than 40 hours in a workweek and were not compensated for the time. GSGLA has violated section 510 for its failure to pay overtime wages.

As a result of these actions, GSGLA's violated Labor Code sections 223, 510, 1182.12, 1194, 1194.2, 1197.1, and 1198.

4. GSGLA Violated Labor Code Sections 512 and 226.7 and IWC 4-2001 (11 & 12) by Failing to Provide Lawful Meal or Rest Breaks

Labor Code section 512 provides that "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes." California Labor Code section 512. Section 226.7 further provides in relevant part that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute." California Labor Code section 226.7. IWC Order 4-2001 (12) states that "[e]very employer shall authorize and permit all employees to take rest periods … at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

GSGLA has violated sections 512 and 226.7 by failing to provide Ms. Stearn and similarly situated employees with at least 30 uninterrupted minutes of meal break time during their workday. Ms. Stearn and similarly situated GSGLA employees routinely worked through their meal and rest breaks in order to meet the needs of the business and, because they were improperly classified as exempt employees, they did not receive premium pay for these missed meal and rests periods. Thus, Ms. Stearn and similarly situated employees are entitled to an additional hour of pay at the regular rate of compensation for each workday that the 30-minute uninterrupted meal period was not provided. California Labor Code section 226.7. In addition, Ms. Stearn and similarly situated employees are entitled to an additional hour of pay at the regular rate of compensation for each workday that the ten-minute rest break was not provided. California Labor Code § 226.7; IWC 4-2001(12).

5. Failure to Provide Accurate Itemized Wage Statements in Violation of California Labor Code Section 226 (a)

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. GSGLA did not provide Ms. Stearn, and other aggrieved employees, with properly itemized wage statements. The violations include, without limitation, the failure to accurately list the total regular and overtime wages earned or meal and rest break premiums entitled to Ms. Stearn and other similarly situated employees. GSGLA's failure to provide accurate itemized wage statements was an intentional act based on their willful misclassification of employees as exempt when they failed to meet the requirements to qualify for any exemption.

6. GSGLA Violated Labor Code Section 2802 by Failing to Reimburse Employees for Costs Incurred Related to the Use of Personal Cell Phones for Necessary Work-Related Purposes

California Labor Code section 2802 requires an employer to indemnify an employee "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." California Labor Code section 2802. This includes costs associated with the use of personal cell phones for work-related purposes. "If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802." *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). Under *Cochran*, the employee is entitled to reimbursement of a "reasonable percentage" of his/her personal cell phone bill. *Id.*

GSGLA has violated section 2802 by failing to reimburse employees for costs incurred relating to the necessary use of personal cell phones for work-related purposes. Ms. Stearn, and other GSGLA employees, were routinely required to use their personal cell phones to receive and respond to e-mail correspondences from his/her GSGLA issued e-mail account as well as receive and respond to work related phone calls and text messages. GSGLA did not provide Ms. Stearn or the other GSGLA employees with a work-issued cell phone. Instead, GSGLA issued a $15.00-$25.00 stipend to certain employees for the use of their personal cell phone for GSGLA's business. GSGLA's determination that a flat fee of $15.00 to $25.00 for cell phone reimbursement failed to consider what Ms. Stearn and other employees were actually

paying each month for their cell phone as it related to work for GSGLA. Even the maximum flat fee stipend of $25.00 was not a reasonable percentage of employee's personal cell phone bill. As such, Ms. Stearn, and other aggrieved employees, are entitled to additional reimbursement for their use of their personal cell phones for necessary work-related purposes.

7. GSGLA Violated Labor Code Section 227.3

Pursuant to California Labor Code section 227.3, employers must pay employees vested vacation pay upon termination. In *Suastez v. Plastic Dress-Up Co.*, 31 Cal.3d 774 (1982), the court held that because vacation pay is a "form of deferred compensation," a proportionate right to paid vacation pay vests *as it is earned*. *Id.* at 779. "Once vested, the right is protected from forfeiture by section 227.3." *Id.* at 784. "On termination of employment, therefore, the statute requires that an employee be paid in wages for a pro rata share of his vacation pay." *Id.*

Ms. Stearn accrued vacation while at GSGLA, but was not properly paid for her accrued vacation time upon termination. As detailed above, GSGLA improperly depleted Ms. Stearn's accrued sick leave by charging Ms. Stearn with a sick day for days when the office was closed due to a regularly scheduled bi-monthly closure or due to holiday while she was on a company approved leave of absence. Employees who were not on a leave of absence, were not forced to use vacation days for these office closures and holidays. GSGLA's theft of Ms. Stearn's sick days required her to unnecessarily use her vacation time while on a leave of absence. Because Ms. Stearn was improperly classified as an exempt employee, she received no additional compensation when her vacation days were used during office closures. Had GSGLA not improperly required Ms. Stearn to use vacation days after it depleted her sick leave, Ms. Stearn would have been entitled to payment of additional vacation wages upon termination. GSGLA's actions amount to an unlawful forfeiture of vested vacation. GSGLA failed to pay Ms. Stearn upon termination of her employment for this accrued, but unlawfully forfeited, vacation time.

8. GSGLA Violated Labor Code Section 1102.5

"[California] Labor Code section 1102.5 is a whistleblower statute, the purpose of which is to 'encourage workplace whistleblowers to report unlawful acts without fearing retaliation.'" *Soukup v. Law Offices of Herbert Hafif*, 39 Cal.4th 260, 287 (2006) (*quoting Green v. Ralee Engineering Co.*, 19 Cal.4th 66, 77 (1998)). The statute enjoins employers from retaliating against employees who report or refuse to engage in illegal activity. *See* California Labor Code section 1102.5(b), (c).

Here, Ms. Stearn reported and/or refused to engage in illegal activity several times during her employment and her actions resulted in GSGLA's decision to terminate her employment. For example, Ms. Stearn was instrumental in exposing Mr. Smack's embezzlement of GSGLA funds. Following discovery of Mr. Smack's wrongdoing, GSGLA began a systematic campaign to retaliate against Ms. Stearn and ultimately terminate her employment. Additionally, Ms. Stearn informed Ms. Zamzow that GSGLA's cell phone stipend policy was not compliant with California law. Based on information and belief, Ms. Stearn's complaints above, along with other protected complaints, were the basis for GSGLA's decision to terminate Ms. Stearn.

9. GSGLA Violated Labor Code Sections 201-203 by Failing to Pay All Wages Due Upon Termination

Employers must pay all wages due upon termination. Labor Code sections 201-202. The Company violated these sections by failing to pay Ms. Stearn and other aggrieved employees their unpaid wages and premium penalties as discussed above at the time of termination. These violations subject the Company to civil penalties under Labor Code sections 203 and 2699.

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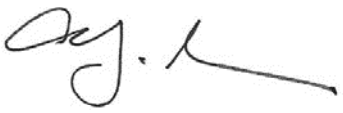
This notice is provided pursuant to Labor Code section 2699.3 and hereby provides the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate. We respectfully request a timely response as to the LWDA's decision(s), as required by Labor Code section 2699.3. If the LWDA elects not to take any action, Ms. Stearn intends to file a complaint on behalf of herself and all similarly situated aggrieved employees in the California Superior Court seeking unpaid wages, including unpaid overtime wages and tips, meal and rest period premiums, unreimbursed expenses, unpaid vacation, interest, penalties, attorneys' fees, costs, and any other relief available under California law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Thank you for your attention to this matter.

Sincerely,



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