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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

GAIL WILKERSON, on behalf of herself
and all other similarly-situated employees,

Plaintiff,

v.

INTUIT, INC., a Delaware Corporation; and
DOES 1 through 100, Inclusive,

Defendants.

Case No. 37-2020-00030371-CU-OE-CTL

**FIRST AMENDED CLASS ACTION [Cal.
Code Civ. Proc. § 382] AND
REPRESENTATIVE ACTION [Private
Attorneys General Act of 2004, Labor Code
§§ 2698, *et seq.*] COMPLAINT**

1. Failure to Pay Minimum, Regular, and Overtime Wages (Lab. Code §§ 510, 1194; IWC Wage Order 4, §§ 3 & 4);
2. Failure to Provide Meal Periods or Compensation in Lieu Thereof (Lab. Code §§ 226.7 and 512; IWC Wage Order 4, § 11);
3. Failure to Provide Paid Rest Periods or Compensation in Lieu Thereof (Lab. Code § 226.7; IWC Wage Order 4, § 12);
4. Failure to Provide One Day's Rest in Seven (Lab. Code §§ 550, 551, 553, 1198; IWC Wage Order 4, § 3);
5. Unlawful Deduction of Wages (Lab. Code §§ 221, 223, 224);

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/02/2020 at 05:02:00 PM

Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

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6. Failure to Reimburse Necessary Business Expenses (Lab. Code § 2802; IWC Wage Order 4, § 7);
7. Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
8. Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 201-203);
9. Unfair Business Practices (Bus. & Prof. Code §§ 17200-17208);
10. PAGA Civil Penalties for Failure to Pay Minimum, Regular, and Overtime Wages (Lab. Code §§ 2698, *et seq.*);
11. PAGA Civil Penalties for Failure to Provide At Least One Day's Rest in Seven (Lab. Code §§ 2698, *et seq.*);
12. PAGA Civil Penalties for Failure to Provide Meal Periods (Lab. Code §§ 2698, *et seq.*);
13. PAGA Civil Penalties for Failure to Provide Rest Periods (Lab. Code §§ 2698, *et seq.*);
14. PAGA Civil Penalties for Unlawful Deduction of Wages (Lab. Code §§ 2698, *et seq.*);
15. PAGA Civil Penalties for Failure to Reimburse Business-Related Expenses (Lab. Code §§ 2698, *et seq.*);
16. PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements (Lab. Code §§ 2698, *et seq.*);
17. PAGA Civil Penalties for Failure to Maintain Accurate Records (Lab. Code §§ 2698, *et seq.*);
18. PAGA Civil Penalties for Failure to Pay Wages Due During and Upon Termination of Employment (Lab. Code §§ 2698, *et seq.*);

DEMAND FOR JURY TRIAL

1 Plaintiff GAIL WILKERSON, on behalf of herself, the general public, all others
2 similarly situated (“Plaintiff” or “WILKERSON”), complains and alleges as follows:

3 **I.**

4 **INTRODUCTION**

5 1. Plaintiff brings this class action pursuant to California Code of Civil Procedure
6 section 382 and representative action pursuant to the Private Attorneys General Act of 2004
7 (“PAGA”), Labor Code sections 2698, *et seq.*, against Defendants Intuit, Inc. (“Defendant Intuit”)
8 and Does 1 through 100 (hereinafter collectively referred to as “Defendants”), as an individual and
9 on behalf of all other similarly situated and all other aggrieved current and former employees of
10 Defendants for failure to pay all wages due including regular, minimum, and overtime wages;
11 failure to provide compliant meal and rest periods or pay compensation in lieu thereof; failure to
12 provide one day’s rest in seven; unlawful deduction of wages; failure to reimburse for necessarily-
13 incurred business-related expenses; failure to pay all wages due and owed during and upon
14 separation of employment; failure to maintain accurate records; and failure to provide accurate
15 itemized wage statements to certain California employees of Defendants. Specifically, during
16 Plaintiff’s employment and the proposed Class’s employment (during the four years prior to the
17 commencement of this action, hereinafter “Class Period”), Defendants willfully, knowingly, and
18 without any legal or factual basis failed to comply with California law or applicable Industrial
19 Welfare Commission (“IWC”) Wage Orders (specifically IWC Wage Order 4-2001) by improperly
20 denying non-exempt employees the protections afforded under the California Labor Code and
21 applicable Wage Orders.

22 2. By this action, Plaintiff Gail Wilkerson (“WILKERSON” or “Plaintiff”), on behalf
23 of herself, and on behalf of all other similarly-situated and aggrieved current and former employees
24 of Defendants based in California, seeks damages and restitution in the recovery of unpaid wages.
25 WILKERSON also seeks payment of “premium wages” for non-compliant meal periods and rest
26 periods, reimbursement of expenses incurred for necessary and reasonable business use, “waiting
27 time” penalty wages for formerly-employed employees who were not paid all wages due at the
28 time of separation from Defendants, and penalties for Defendants’ failure to provide accurate

1 itemized wage statements. Additionally, WILKERSON seeks civil penalties under the PAGA.

2 3. Pursuant to California Labor Code section 558.1, Defendants are the employers of
3 Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who violated, or caused to be
4 violated, any provision regulating minimum wages or hours and days of work in the applicable
5 order of the Industrial Welfare Commission, as well as California Labor Code sections 201, 202,
6 203, 204(a), 226, 226.7, 510, 512, 551, 552, 553, 558, 1193.6, 1194, and 2802.

7 4. Plaintiff brings this lawsuit seeking injunctive relief, restitution, and monetary
8 relief against Defendants, and each of them, on behalf of Plaintiff individually and on behalf of
9 all similarly-situated employees to recover, among other things, unpaid wages and benefits,
10 interest, penalties, attorney' fees and costs pursuant to California Labor Code sections 201, 202,
11 203, 204(a), 223, 218.5, 218.6, 221, 223, 224, 225.5, 226, 226.3, 226.7, 510, 512, 551, 552, 553,
12 558, 1174, 1174.5, 1194, 1197.1, 1198, and 2802, California Code of Civil Procedure section
13 1021.5, and the provisions of IWC Wage Order 4-2001. Plaintiff reserves the right to name
14 additional representatives throughout the State of California.

15 5. Plaintiff has given notice of these claims to the LWDA seeking intervention. As
16 there has been no intervention within 65 days of Plaintiff's written notice to the LWDA,
17 Plaintiff asserts claims for civil penalties as a representative for and on behalf of the State of
18 California in a representative capacity, as provided by the PAGA to the extent permitted by law,
19 as an aggrieved employee who suffered one or more of the alleged violations during all or a
20 significant part of the applicable liability period, or proposed "PAGA Period" (which is defined
21 as any time from one year from the date of the filing for civil penalties under the PAGA,
22 excluding the 65 days as provided by Labor Code section 2699.3(d).)

23 6. A true and correct copy of Plaintiff's August 27, 2020 PAGA notice showing
24 compliance with Labor Code section 2699.3 is attached hereto as Exhibit 1 and demonstrates
25 that Plaintiff is an aggrieved employee and has standing to bring a representative action on
26 behalf of the State of California and the LWDA as a private attorney general. Since no notice of
27 cure has been provided by Defendant Intuit, nor has the LWDA indicated that it intends to
28 investigate within the proscribed 65-day period from the date of mailing of the notice, Plaintiff

1 has asserted PAGA claims herein and brings this action as a “Representative Action” as
2 specifically permitted and authorized by Labor Code section 2699.3(a)(2)(C).

3 **II.**

4 **JURISDICTION AND VENUE**

5 7. The California Superior Court has jurisdiction in this matter due to Defendants’
6 violations of Labor Code sections 201, *et seq.*, 500, *et seq.*, 1194, and 2802, Business and
7 Professions Code sections 17200, *et seq.*, the IWC Wage Order(s), and related common law
8 principles.

9 8. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
10 Civil Procedure, section 395. Defendants conduct business in San Diego County, California and
11 each Defendant is within the jurisdiction of this Court for service of process purposes. The
12 unlawful acts alleged have a direct effect on Plaintiff and those similarly situated within the
13 State of California and San Diego County. Defendants employ numerous Class Members in San
14 Diego County. There is no federal question at issue, as the issues are based solely on California
15 statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil Procedure, Civil
16 Code, and Business and Professions Code.

17 9. On information and belief, the California Superior Court has primary and original
18 jurisdiction in this matter because there is no federal question at issue, as the issues herein are
19 based solely on California statutes and law, including the California Labor Code, Industrial
20 Welfare Commission Wage Orders, Code of Civil Procedure, Rules of Court, and Business and
21 Professions Code. No diversity jurisdiction exists sufficient for any removal of action to federal
22 district court, either under 28 U.S.C. sections 1332 or 1332(d) pursuant to the Class Action
23 Fairness Act (“CAFA”). The Plaintiff, the Plaintiff Class, and the Defendants are, by definition,
24 residents of the State of California. The case also falls into the local case or controversy exception
25 to CAFA jurisdiction and contains claims that are not subject to federal jurisdiction. Plaintiff is
26 informed and believes, and based thereupon alleges, removal under the CAFA would be improper
27 and that no federal subject matter jurisdiction exists over the matter.

28 10. Business and Professions Code, section 17203 provides that any person who

engages in unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions Code, section 17204 provides that any person, acting on his own behalf, may bring an action in a court of competent jurisdiction.

11. The PAGA representative claims pled in this matter are not subject to removal. 28 U.S.C. §§ 1332(a)-(d).

III.

THE PARTIES

A. The Plaintiff

12. Plaintiff is a resident of the State of California and was employed by Defendants in San Diego County as a non-exempt employee from approximately January 2020 through March 2020.

B. The Defendants

13. Plaintiff is informed and believes, and based thereon alleges, that Defendant INTUIT, INC. is a Delaware corporation engaged in business throughout California and in San Diego County, and at all relevant times, employed Plaintiff and other non-exempt employees in San Diego County.

14. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based on that alleges, each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated as DOES when those identities become known.

15. Plaintiff is informed, believes, and alleges each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all pertinent respects, and the acts of each Defendant are legally attributable to the other Defendants.

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IV.

GENERAL ALLEGATIONS

16. During all, or portions, of the Class Period, Plaintiff and members of the Plaintiff Class were employed by Defendants in the State of California.

17. California's Labor Code and Industrial Welfare Commission Wage Order 4-2001 require employers, among other things, to pay wages, including minimum, regular and overtime wages for all hours worked, provide compliant meal and rest periods, to maintain accurate records, to furnish each employee with accurate itemized wage statements, reimburse employees for all expenses necessarily incurred in discharge of employment, and to timely pay all wages due during and upon separation of employment.

18. Plaintiff commenced her employment with Defendants in approximately January 2020, working as a non-exempt employee, providing remote customer support to Defendants' clients. During Plaintiff's employment, she was classified as a non-exempt employee and paid at the hourly rate of \$20 per hour. Plaintiff frequently worked more than 8 hours per day and/or 40 hours per week and regularly had to work on the weekends. For example, Plaintiff was paid at her regular hourly rate of \$20 per hour for 111 hours worked in a single pay period. As alleged, Defendants deducted time for meal periods that were not taken and did not pay for all hours worked including time worked during meal periods and off-the-clock. Additionally, Plaintiff had to use her personal cell phone and home computer to complete her duties for Defendants, without reimbursement for these business expenses incurred in the discharge of her duties for Defendants.

19. Defendants failed to pay Plaintiff and similarly-situated and aggrieved employees wages for all hours worked, including regular, minimum, and overtime premium wages, failed to provide legally compliant meal and rest periods, failed to provide one day's rest in seven days, failed to provide accurate itemized wage statements, failed to reimburse all necessarily incurred business expenses, failed to maintain accurate records, and failed to pay all wages due during and upon separation of employment. Additionally, Defendants unlawfully deducted wages earned and owed.

20. During all, or portions, of the Class Period, Defendants failed to pay Plaintiff and other similarly-situated and aggrieved employees all wages due including overtime premium wages for hours worked in excess of 8 hours per day and/or 40 hours per week. Plaintiff, and on information and belief, other similarly-situated and aggrieved non-exempt employees, worked through meal periods and frequently worked more than 8 hours per day and/or 40 hours per week without receiving all wages, including overtime premium wages, for all hours worked. Defendants unlawfully and knowingly deducted wages from Plaintiff for hours worked, including hours worked during meal periods, and failed to pay any compensation for these hours worked off-the-clock.

21. Defendants had a consistent policy which did not provide Plaintiff and members of the Plaintiff Class with duty-free meal periods of at least thirty (30) minutes for shifts of five hours or more, which began before the end of the fifth hour of work, and failed to pay such employees one (1) hour of pay at their regular rate of compensation based on the correct regular rate encompassing commission payments when applicable for each workday the meal period was not provided, as required by California wage and hour laws.

22. During all, or portions, of the Class Period, Defendants had a consistent policy which did not authorize or permit Plaintiff and members of the Plaintiff Class to receive rest periods of at least ten (10) minutes per four (4) hours, or major fraction, worked, and failed to pay such employees one (1) hour of pay at their regular rate of compensation for each workday a rest period was not authorized or permitted, as required by California wage and hour laws.

23. During the Class Period, Defendants failed to provide Plaintiff and other similarly-situated employees with one day's rest in seven days. Defendants caused Plaintiff and on information and belief, other similarly-situated employees, to work more than seven consecutive days in a workweek without receiving one day's rest in seven, as required under California law.

24. During the Class Period, Defendants had a consistent policy of failing to reimburse Plaintiff and members of the Plaintiff Class for all necessary and reasonable business expenses incurred in the discharge of duties, in violation of California state wage and hour laws.

1 Plaintiff, and on information and belief, other similarly-situated employees, were required to
2 use personal cell phones and computers to perform their duties for Defendants without receiving
3 any reimbursement for these necessarily incurred business expenses.

4 25. During all, or portions, of the Class Period, Defendants had a consistent policy of
5 failing to timely pay Plaintiff and members of the Plaintiff Class all wages due during their
6 employment and at termination, in violation of California state wage and hour laws.

7 26. Plaintiff, on behalf of herself and all similarly-situated employees in the State of
8 California, brings this action pursuant to Labor Code sections 201, 202, 203, 204(a), 210, 218.5,
9 218.6, 221, 223, 224, 225.5, 226(a), 226(h), 226.3, 226.7, 223, 510, 512, 551, 552, 553, 558,
10 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, seeking unpaid
11 wages, meal and rest period premiums, expense reimbursement, penalties, equitable relief, and
12 reasonable attorneys' fees and costs.

13 27. Plaintiff, on behalf of herself and all Plaintiff Class Members, brings this action
14 pursuant to Business and Professions Code sections 17200-17208, seeking injunctive relief,
15 restitution, and disgorgement of all benefits obtained by Defendants by failing to pay all wages
16 owed.

17 V.

18 **CLASS ACTION ALLEGATIONS**

19 28. Plaintiff brings this action on behalf of herself, the general public, and all other
20 similarly-situated persons as a class action pursuant to California Code of Civil Procedure section
21 382. The class which Plaintiff seeks to represent is composed of and defined as follows:

22 **Plaintiff Class:**

23 All individuals employed by Defendants as a non-exempt
24 employee within the State of California at any time since the four
years preceding the filing of this Complaint.

25 29. Plaintiff seeks to certify a Subclass of employees defined as:

26 **Unpaid Wages Subclass**

27 All members of the proposed Plaintiff Class who worked over
28 eight (8) hours of work in one day or forty (40) hours in one week,
during the four years preceding the filing of this Complaint.

30. Plaintiff seeks to certify a Subclass of employees defined as:

Meal Period Subclass

All members of the proposed Plaintiff Class who worked one or more work periods in excess of five hours, during the four years preceding the filing of this Complaint.

31. Plaintiff seeks to certify a Subclass of employees defined as:

Rest Period Subclass

All members of the proposed Plaintiff Class who worked one or more work periods in excess of three and a half hours, during the four years preceding the filing of this Complaint.

32. Plaintiff seeks to certify a Subclass for employees defined as:

Seven Consecutive Days Subclass

All members of the proposed Plaintiff Class who worked more than six days in seven without receiving one day's rest therefrom in seven in a workweek, during the four years preceding the filing of this Complaint.

33. Plaintiff seeks to certify a Subclass for employees defined as:

Unpaid Double Time Subclass

All members of the proposed Plaintiff Class who performed work in excess of eight hours on any seventh day of a workweek, during the four years preceding the filing of this Complaint.

34. Plaintiff seeks to certify a Subclass of employees defined as:

Unreimbursed Business Expense Subclass

All members of the proposed Plaintiff Class who were required to use a personal cell phone and/or personal computer for business-related purposes and as a result incurred expenses in the discharge of duties for Defendants.

35. Plaintiff seeks to certify a Subclass of employees defined as:

Wage Statement Subclass

All members of the proposed Plaintiff Class who, within one year of the filing of the Complaint, received one or more itemized wage statements that did not include all wages due and/or the accurate number of hours worked.

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36. Plaintiff seeks to certify a Subclass of former employees defined as:

Waiting Time Penalty Subclass

All members of the proposed Plaintiff Class whose employment ended at any time during the three years preceding the filing of this Complaint.

37. Plaintiff seeks to certify a Subclass of employees defined as:

UCL Subclass

All members of the proposed Plaintiff Class who were subject to Defendants' pay practices relating to failure to pay wages including overtime premium wages, failure to pay meal and rest period premium compensation, and failure to timely pay all wages due at separation from employment.

38. Plaintiff reserves the right under Rule 3.765(b), California Rules of Court, to amend or modify the Plaintiff Class description with greater specificity or further division into subclasses or limitation to particular issues.

39. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

40. **Ascertainable Class**: The proposed Plaintiff Class and Subclasses are ascertainable in that their members can be identified and located using information contained in Defendants' payroll and personnel records.

41. **Numerosity**: The potential quantity of members of the Plaintiff Class and Subclasses as defined is so numerous that joinder of all members would be unfeasible and impractical. The disposition of their claims through this class action will benefit both the parties and this Court. The quantity of members of the Plaintiff Class and Subclasses is unknown to Plaintiff at this time, however, it is estimated that the Plaintiff Class and Subclasses number approximately 100 individuals. The quantity and identity of such membership is readily ascertainable via inspection of Defendants' records.

42. **Typicality**: The claims of Plaintiff for unpaid wages, overtime premium compensation, meal and rest period premiums, wage statement penalties, waiting time penalties, expense reimbursement, interest, and attorneys' fees are typical of the claims of all members of the

1 Plaintiff Class and Subclasses mentioned herein because all members of the Plaintiff Class and
2 Subclasses sustained similar injuries and damages arising out of Defendants' common course of
3 conduct in violation of law, and the injuries and damages of all members of the Plaintiff Class and
4 Subclasses were caused by Defendants' wrongful conduct in violation of law, as alleged herein.

5 43. **Adequacy**: Plaintiff is an adequate representative of the Plaintiff Class and
6 Subclasses herein, will fairly protect the interests of the members of the Plaintiff Class and
7 Subclasses, has no interests antagonistic to the members of the Plaintiff Class and Subclasses, and
8 will vigorously pursue this suit via attorneys who are competent, skilled, and experienced in
9 litigating matters of this type. Class Counsel is competent and experienced in litigating large
10 employment law class actions.

11 44. **Superiority**: A class action is superior to other available means for fair and
12 efficient adjudication of the claims of the Plaintiff Class and would be beneficial for the parties
13 and the Court. Class action treatment will allow a large number of similarly-situated persons to
14 prosecute their common claims in a single forum, simultaneously, efficiently, and without the
15 unnecessary duplication of effort and expense numerous individual actions would require. The
16 damages suffered by each Plaintiff Class Member are relatively small in the sense pertinent to
17 class action analysis, and the expense and burden of individual litigation would make it
18 extremely difficult or impossible for individual Plaintiff Class Members to seek and obtain
19 individual relief. A class action will serve an important public interest by permitting such
20 individuals to effectively pursue recovery of sums owed to them. Class litigation also prevents
21 the potential for inconsistent or contradictory judgments raised by individual litigation.

22 45. The predominating common questions of law and fact include, without
23 limitation:

- 24 a. Whether Defendants compensated Plaintiff and members of the Plaintiff Class
25 for all hours worked, including overtime wages for all hours worked in excess of
26 8 hours per day and/or 40 hours per week and hours worked during meal periods;
27 b. Whether Defendants provided legally compliant off-duty meal periods on eligible
28 workdays;

- c. Whether Defendants provided legally compliant, duty-free rest periods on eligible workdays;
- d. Whether Defendants paid twice the regular of pay for hours worked in excess of eight hours on any seventh day in the workweek;
- e. Whether Defendants provided one day's rest in seven days during each workweek;
- f. Whether Defendants unlawfully deducted wages in violation of Labor Code sections 221-224;
- g. Whether Defendants reimbursed Plaintiff Class Members for all business-related expenses incurred in the discharge of duties;
- h. Whether Defendants maintained accurate records for Plaintiff Class Members pursuant to Labor Code section 1174(d) and Section 7 of the applicable IWC Wage order;
- i. Whether Defendants provided Plaintiff Class Members with accurate itemized wage statements pursuant to Labor Code section 226;
- j. Whether Defendants timely paid wages due during and upon separation of employment pursuant to Labor Code sections 201, 202, 203, and 204(a);
- k. Whether Defendants violated sections 17200, *et seq.* of the Business and Professions Code; Labor Code sections 226 and 1194, IWC Wage Order 4-2001, and other applicable IWC Wage Orders which constitutes a violation of fundamental public policy;
- h. Whether Plaintiff Class and Subclass Members are entitled to equitable relief pursuant to Business and Professions Code, sections 17200, *et seq.*

VI.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES [Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order 4-2001, §§ 3, 4]

46. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

1 47. Labor Code section 510 provides in pertinent part: “Eight hours of labor
2 constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess
3 of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in
4 any one workweek shall be compensated at the rate of no less than one and one-half times the
5 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
6 compensated at the rate of no less than twice the regular rate of pay for an employee. In
7 addition, any work in excess of eight hours on any seventh day of a workweek shall be
8 compensated at the rate of no less than twice the regular rate of pay of an employee.”

9 48. Labor Code section 1194(a) states: “Notwithstanding any agreement to work for
10 a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
11 compensation applicable to the employee is entitled to recover in a civil action the unpaid
12 balance of the full amount of this minimum wage or overtime compensation, including interest
13 thereon, reasonable attorney’s fees, and costs of suit.”

14 49. Labor Code section 1194.2 states: “In any action under Section 98, 1193.6, 1194,
15 or 1197.1 to recover wages because of the payment of a wage less than the minimum wage
16 fixed by an order of the commission or by statute, an employee shall be entitled to recover
17 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

18 50. Labor Code section 1194.2 provides for liquidated damages equal to unlawfully
19 unpaid minimum wages, with interest.

20 51. Labor Code section 1197 states: “The minimum wage for employees fixed by the
21 commission is the minimum wage to be paid to employees, and the payment of a less wage than
22 minimum wage so fixed is unlawful.”

23 52. Labor Code section 1197.1 states: “Any employer or other person acting either
24 individually or as an officer, agent, or employee of another person, who pays or causes to be
25 paid to any employee a wage less than the minimum fixed by an order of the commission shall
26 be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee,
27 and any applicable penalties imposed pursuant to Section 203 as follows: 1) For any initial
28 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid

1 employee for each pay period for which the employee is underpaid...2) For each subsequent
2 violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid
3 employee for each pay period for which the employee is underpaid regardless of whether the
4 initial violation is intentionally committed.”

5 53. Labor Code section 1198 states: “The maximum hours of work and the standard
6 conditions of labor fixed by the commission shall be the maximum hours of work and the
7 standard conditions of labor for employees. The employment of any employee for longer hours
8 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

9 54. Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the
10 applicable Wage Order, an employer may not pay employees less than the applicable minimum
11 wage for all hours worked and provides that an employer may not pay non-exempt employees
12 less than the applicable overtime rate for all overtime hours worked.

13 55. By their failure to pay all wages, including minimum and/or overtime wages, for
14 hours worked over eight (8) hours in one day or forty (40) hours in one week, Defendants failed
15 to pay overtime wages and violated provisions of Labor Code section 1194 and IWC Wage
16 Order 4-2001.

17 56. Plaintiff and on information and belief, other similarly-situated employees
18 regularly worked overtime hours over eight (8) hours in one day or forty (40) hours in one
19 week, including hours worked during meal periods, and were not paid wages, including
20 overtime premium wages, for all hours worked. Defendants failed to pay Plaintiff and other
21 similarly-situated employees all wages for all hours worked, including minimum wages and
22 overtime premium compensation, as in accordance with California law. For example, Plaintiff
23 was paid at her regular hourly rate of \$20 per hour for 111 hours worked in a single pay period.
24 As alleged, Defendants deducted time for meal periods that were not taken and did not pay for
25 all hours worked including time worked during meal periods and off-the-clock. On information
26 and belief, Defendants did not pay all wages, including overtime and double time wages, for
27 hours worked in excess of eight hours on the seventh consecutive day in a workweek.

28 57. As a direct result, Plaintiff and members of the Unpaid Wages Subclass have

1 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such
2 wages, including lost interest on such monies and expenses and attorney's fees in seeking to
3 compel Defendants to fully perform their obligation under state law, all to their respective
4 damage in amounts according to proof at trial and within the jurisdictional limitations of this
5 Court.

6 58. Defendants' unlawful acts deprived Plaintiff and members of the Unpaid Wages
7 Subclass Plaintiff seeks to represent of minimum, regular, and/or overtime wages in amounts to
8 be determined at trial, and they are entitled to recover these amounts, along with liquidated
9 damages for unpaid regular or minimum wages, interest, attorneys' fees, and costs.

10 59. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
11 of the unpaid wages resulting from Defendants' minimum wage violations including interest
12 thereon, reasonable attorney's fees and costs of suit, penalties, and liquidated damages to the
13 fullest extent permissible including those permitted pursuant to Labor Code sections 218.6,
14 1194, 1194.2, 1197.1, and Code of Civil Procedure section 1021.5.

15 60. Plaintiff, on behalf of herself and the members of the Unpaid Wages Subclass,
16 requests relief as described below.

17 **SECOND CAUSE OF ACTION**
18 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**
19 **[Labor Code §§ 226.7, 512, 1198; IWC Wage Order 4-2001, § 11]**

20 61. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

21 62. Labor Code section 226.7(b) provides: "An employer shall not require an
22 employee to work during any meal...period mandated pursuant to an applicable statute, or
23 applicable regulation, standard, or order of the Industrial Welfare Commission..."

24 63. Labor Code section 512(a) provides: "An employer may not employ an employee
25 for a work period of more than five hours per day without providing the employee with a meal
26 period of not less than 30 minutes, except that if the total work period per day of the employee
27 is no more than six hours, the meal period may be waived by mutual consent of both the
28 employer and employee. An employer may not employ an employee for a work period of more
than 10 hours per day without providing the employee with a second meal period of not less

1 than 30 minutes...”

2 64. Labor Code section 1198 states: “The maximum hours of work and the standard
3 conditions of labor fixed by the commission shall be the maximum hours of work and the
4 standard conditions of labor for employees. The employment of any employee for longer hours
5 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

6 65. IWC Wage Order 4-2001, section 11 provides, in part, “that no employer shall
7 employ any person for a work period of more than five (5) hours without a meal period of not
8 less than 30 minutes, except that when a work period of not more than six (6) hours will
9 complete the day’s work the meal period may be waived by mutual consent of the employer and
10 the employee.” Subsection D of IWC Wage Order 4-2001, section 11 further provides that
11 employees in the health care industry who work shifts in excess of 8 total hours in a workday
12 may voluntarily waive their right to one of their two meal periods if a valid waiver is signed by
13 the employee and the employer. Subsection B of IWC Wage Order 4-2001, section 11 further
14 provides that if an employer fails to provide an employee a meal period in accordance with the
15 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at
16 the employee’s regular rate of compensation for each workday that the meal period is not
17 provided.

18 66. Plaintiff and, on information and belief, members of the Meal Period Subclass
19 were not provided with off-duty 30-minute meal periods for each work period of more than five
20 hours. Defendants automatically deducted 30 minutes from each workday for a meal period,
21 which was unpaid, despite the fact that Plaintiff had to continue to work during meal periods to
22 complete all of her duties for Defendants.

23 67. Defendants failed to pay for hours worked during meal periods and failed to pay
24 meal premium compensation on work periods in which a legally compliant meal period was not
25 provided, as required under California law.

26 68. Defendants failed to provide Plaintiff and other similarly-situated employees
27 with lawful meal periods and failed to pay premium compensation equal to one hour of pay at
28 the employee’s regular rate of pay for each workday that a duty-free meal period was not

1 provided in accordance with California law. Furthermore, Defendants failed to inform Plaintiff
2 and other similarly-situated non-exempt employees of their right to meal periods and failed to
3 record meal periods.

4 69. Because Defendants failed to provide meal periods, they are liable to Plaintiff
5 and members of the Meal Period Subclass for one hour of additional premium pay at the regular
6 rate of compensation for each workday that the meal periods were not provided, pursuant to
7 Labor Code section 226.7 and IWC Wage Order 4-2001, section 11(B).

8 70. As a direct result of Defendants' violations alleged herein, Plaintiff and members
9 of the Meal Period Subclass have suffered and continue to suffer substantial losses related to the
10 use and enjoyment of such wages, including lost interest on such monies and expenses and
11 attorney's fees in seeking to compel Defendants to fully perform their obligation under state
12 law, all to their respective damage in amounts according to proof at trial and within the
13 jurisdictional limitations of this Court.

14 71. Pursuant to Labor Code sections 226.7 and 512, the Plaintiff and members of the
15 Meal Period Subclass seek the payment of all meal period compensation which they are owed,
16 according to proof.

17 72. By failing to provide off-duty and uninterrupted meal periods of at least thirty
18 (30) minutes during work periods of more than five (5) hours, which began before the end of the
19 fifth hour of work, and failing to pay such employees premium wages of one (1) hour of pay at
20 their regular rate of compensation for each workday the meal period was not provided,
21 Defendants willfully violated the provisions of Labor Code sections 226.7 and 512, and section
22 11 of IWC Wage Order No. 4-2001.

23 73. As a direct result of Defendants' violations alleged herein, Plaintiff and members
24 of the Meal Period Subclass have suffered and continue to suffer substantial losses related to the
25 use and enjoyment of such wages, including lost interest on such monies and expenses and
26 attorney's fees in seeking to compel Defendants to fully perform their obligation under state
27 law, all to their respective damage in amounts according to proof at trial and within the
28 jurisdictional limitations of this Court.

74. Defendants' unlawful acts deprived Plaintiff and members of the Meal Period Subclass Plaintiff seeks to represent of premium wages and/or other compensation in amounts to be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys' fees, and costs.

75. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted pursuant to Labor Code sections 226.7 and 512, and Code of Civil Procedure section 1021.5.

76. Plaintiff, on behalf of herself and members of the Meal Period Subclass, requests relief as described below.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE PAID REST PERIODS OR COMPENSATION IN LIEU
THEREOF
[Labor Code § 226.7, 512; IWC Wage Orders 4-2001, § 12]

77. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

78. Labor Code section 226.7(b) provides: "An employer shall not require an employee to work during any...rest...period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..."

79. IWC Wage Order 4-2001, section 12(A) states that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages.

80. IWC Wage Order 4-2001, section 12(B) states that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of

1 compensation for each work day that the rest period is not provided.

2 81. Defendants failed to provide Plaintiff and, on information and belief, members of
3 the Rest Period Subclass with lawful rest periods and failed to pay premium compensation equal
4 to one hour of pay at the employee's regular rate of pay for each workday that a rest period was
5 not provided in accordance with California law. Due to the demands of the job, Plaintiff and
6 other similarly-situated employees were incentivized to forego taking duty-free rest periods in
7 order to timely complete all work tasks as required by Defendants.

8 82. As a direct result of Defendants' violations alleged herein, Plaintiff and members
9 of the Rest Period Subclass have suffered, and continue to suffer, substantial losses related to
10 the use and enjoyment of such wages, including lost interest on such monies and expenses and
11 attorney's fees in seeking to compel Defendants to fully perform their obligation under state
12 law, all to their respective damage in amounts according to proof at trial and within the
13 jurisdictional limitations of this Court.

14 83. Defendants' unlawful acts deprived Plaintiff and members of the Rest Period
15 Subclass Plaintiff seeks to represent of premium wages and/or other compensation in amounts
16 to be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys'
17 fees, and costs.

18 84. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
19 of the unpaid wages resulting from Defendants' rest period violations including interest thereon,
20 reasonable attorney's fees and costs of suit, and penalties to the fullest extent permissible
21 including those permitted pursuant to Labor Code section 226.7 and Code of Civil Procedure
22 section 1021.5.

23 85. Plaintiff, on behalf of herself and members of the Rest Period Subclass, requests
24 relief as described below.

25 **FOURTH CAUSE OF ACTION**
26 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN**
27 **[Labor Code §§ 550, 551, 552, 553, 558; and IWC Wage Order 4-2001, § 3]**

27 86. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

28 87. Labor Code section 551 states: "Every person employed in any occupation of

labor is entitled to one day's rest therefrom in seven."

88. Labor Code section 552 states: "No employer of labor shall cause his employees to work more than six days in seven."

89. Labor Code section 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

90. IWC Wage Order 4-2001, section 3(H) states, "[t]he provisions of Labor Code Sections 551 and 552 regarding one (1) day's rest in seven (7) shall not be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires the employee to work seven (7) or more consecutive days; provided, however, that in each calendar month, the employee shall receive the equivalent of one (1) day's rest in seven (7)."

91. Defendants failed to provide Plaintiff and other similarly-situated employees with one day's rest in seven as required by California law. On information and belief, the Defendants required Plaintiff and similarly-situated employees to work every day for several weeks straight without a day of rest in a workweek.

92. Defendants failed to notify Plaintiff and other similarly-situated employees of their statutory right to a day of rest.

93. Plaintiff and members of the Seven Consecutive Days Subclass are entitled to civil penalties for days in which they worked more than six days in seven pursuant to Labor Code section 558, as well as interest upon unpaid wages or compensation, reasonable attorney's fees, and costs of suit pursuant to Labor Code sections 218.5 and 218.6.

94. Plaintiff, on behalf of herself and members of the Seven Consecutive Days Subclass, requests relief as described below.

FIFTH CAUSE OF ACTION
UNLAWFUL DEDUCTION OF WAGES
[Labor Code §§ 221-224]

95. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

1 96. California Labor Code sections 221 and 224 provide that an employer may only
2 lawfully withhold amounts from an employee's wages when (1) required or empowered to do so
3 by state or federal law; (2) when a deduction is expressly authorized in writing by the employee to
4 cover insurance premiums, benefit plan contributions, or other deductions not amounting to a
5 rebate on the employee's wages; or (3) when a deduction to cover health, welfare or pension
6 contributions is expressly authorized by a wage or collective bargaining agreement.

7 97. California Labor Code section 223 provides that it is unlawful for an employer to
8 pay a lower wage while purporting to pay the wage designated by statute or contract.

9 98. Defendants' conduct as alleged herein has violated Cal. Labor Code sections 221-
10 224 insofar as Defendant has deducted wages for hours worked during meal periods.

11 99. Pursuant to Cal. Labor Code sections 218, 218.5, and 218.6, Plaintiff and other
12 similarly-situated employees are entitled to payment of unpaid wages or compensation, including
13 interest thereon, as well as reasonable attorney's fees, and costs of suit.

14 100. Plaintiff, on behalf of herself and members of the Plaintiff Class, requests relief as
15 described below.

16 **SIXTH CAUSE OF ACTION**
17 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**
18 **[Labor Code § 2802]**

19 101. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

20 102. California Labor Code section 2802 provides: "(a) An employer shall indemnify his
21 or her employee for all necessary expenditures or losses incurred by the employee in direct
22 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
23 employer, even though unlawful, unless the employee, at the time of obeying the directions,
24 believed them to be unlawful. (b) All awards made by a court or by the Division of Labor
25 Standards Enforcement for reimbursement of necessary expenditures under this section shall carry
26 interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which
27 the employee incurred the necessary expenditure or loss. (c) For purposes of this section, the term
28 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to,
attorney's fees incurred by the employee enforcing the rights granted by this section."

1 103. California Labor Code section 2804 mandates that this statutory right cannot be
2 waived.

3 104. Because an employer's liability under California Labor Code section 2802 is "a
4 liability created by statute," in general, claims for unreimbursed necessary expenditures under
5 California Labor Code section 2802 must be filed within three years of the date the employee
6 accrues the expense. Cal. Code Civ. Proc. § 338(a). However, a cause of action under California's
7 Unfair Competition Law (Cal. Bus. & Prof. Code sections 17200, *et seq.*), as alleged herein,
8 extends the statute of limitations by an additional year, effectively giving employees up to four
9 years to file a claim in court for restoration of money or property acquired by means of unfair
10 competition. *See* Cal. Bus. & Prof. Code §§ 17203 and 17208.

11 105. As alleged in more detail above, Defendants violated the above statutes throughout
12 the Class Period by uniformly denying Plaintiff and members of the Unreimbursed Business
13 Expense Subclass reimbursement for all necessary expenditures incurred in direct consequence of
14 discharging their duties and/or obeying the directions of Defendants, including, *inter alia*, failing to
15 provide reimbursement for necessary business expenses, including the use of personal cell phones
16 and personal home computers.

17 106. At all times during the proposed Class Period, since Defendants failed to provide
18 Plaintiff and members of the Unreimbursed Business Expense Subclass reimbursement for all
19 necessary expenditures incurred, including for the use of personal cell phones and computers for
20 business purposes, Defendants derived, and continue to derive, an unjust and inequitable economic
21 benefit at the expense of Plaintiff and Plaintiff Class Members.

22 107. Accordingly, Plaintiff and Plaintiff Class Members are entitled to recover, and
23 hereby seek, an amount equal to incurred necessary expenditures, pre- and post-judgment interest,
24 applicable penalties, attorneys' fees and costs, and any further equitable relief this Court may deem
25 just and proper. *See* Cal. Lab. Code § 2802, *see also*, Cal. Civ. Proc. Code § 1021.5.

26 108. Plaintiff, on behalf of herself and members of the Unreimbursed Business Expense
27 Subclass, requests relief as described below.

28 ///

SEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
[Labor Code § 226]

109. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

110. Labor Code section 226(a) states in pertinent part: “An employer 1, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing”: (1) gross wages earned; (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. “The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

111. IWC Wage Order 4-2001, section 7(A) states in relevant part that the employer shall keep accurate information regarding, “(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee; (5) Total hours worked in the payroll period and applicable rates of pay.”

112. During the applicable statutory period, including, but not limited to, on information and belief, Defendants failed to provide accurate itemized wage statements to

1 Plaintiff and other similarly situated employees. Wage statements provided did not include,
2 among other things, all wages due, all applicable hourly rates in effect during the pay period and
3 the corresponding number of hours worked at each hourly rate by the employee.

4 113. As a consequence of Defendants' knowing and willful failure to comply with
5 Labor Code section 226(a), Plaintiff and members of the Wage Statement Subclass are entitled
6 to actual damages or penalties not to exceed \$4,000 for each employee pursuant to Labor Code
7 section 226(b), together with interest and attorneys' fees and costs.

8 114. Labor Code section 226(e)(1) states: "An employee suffering injury as a result of
9 a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
10 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
11 a violation occurs and one hundred dollars (\$100) per employee for each violation in a
12 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000),
13 and is entitled to an award of costs and reasonable attorneys' fees." Labor Code section
14 226(e)(2)(B) states: "An employee is deemed to suffer injury for purposes of this subdivision if
15 the employer fails to provide accurate and complete information as required by any one or more
16 of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily
17 determine from the wage statement alone one or more of the following: (i) The amount of gross
18 wages or net wages paid to the employee during the pay period or any other information
19 required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive,
20 (6), and (9) of subdivision (a)..." Because Plaintiff's wage statements did not include, among
21 other things, an accurate accounting of gross wages earned or the accurate total hours worked,
22 she is deemed to have suffered injury.

23 115. Labor Code section 226(h) states: "An employee may also bring an action for
24 injunctive relief to ensure compliance with this section, and is entitled to an award of costs and
25 reasonable attorney's fees."

26 116. As a direct result of Defendants' violations alleged herein, Plaintiff and members
27 of the Wage Statement Subclass have suffered, and continue to suffer, injury including
28 substantial losses related to the use and enjoyment of such wages, lost interest on such monies

1 and expenses and attorney's fees in seeking to compel Defendants to fully perform their
2 obligations under state law, all to their respective damage in amounts according to proof at trial
3 and within the jurisdictional limitations of this Court.

4 117. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid
5 wages, penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible
6 including those permitted pursuant to Labor Code sections 226(e), 226(h), and Code of Civil
7 Procedure section 1021.5.

8 118. Plaintiff, on behalf of herself and the members of the members of the Wage
9 Statement Subclass, request relief as described below.

10 **EIGHTH CAUSE OF ACTION**
11 **FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT**
12 **[Labor Code §§ 201, 202, 203]**

13 119. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

14 120. Labor Code section 201(a) states: "If an employer discharges an employee, the
15 wages earned and unpaid at the time of discharge are due and payable immediately."

16 121. Labor Code section 202(a) states: "If an employee not having a written contract
17 for a definite period quits his or her employment, his or her wages shall become due and
18 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous
19 notice of his or her intention to quit, in which case the employee is entitled to his or her wages
20 at the time of quitting. Notwithstanding any other provision of law, an employee who quits
21 without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so
22 requests and designates a mailing address. The date of the mailing shall constitute the date of
23 payment for purposes of the requirement to provide payment within 72 hours of the notice of
24 quitting."

25 122. Through Defendants' conduct during the applicable statutory period including,
26 but not limited to, the conduct alleged herein, including that alleged on information and belief,
27 Defendants willfully failed to provide Plaintiff and members of the Waiting Time Penalty
28 Subclass with all wages due and owing, including minimum wages, overtime wages, and
regular wages, by the time specified by Labor Code sections 201(a) and 202(a), as applicable.

123. Labor Code section 203(a) states, in relevant part: “If an employer willfully fails to pay, without abatement or reduction, in accordance with sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.”

124. As a direct result of Defendants’ violations alleged herein, Plaintiff and members of the Waiting Time Penalty Subclass have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorneys’ fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

125. Plaintiff seeks to recover in a civil action all remedies to the fullest extent permissible including those permitted pursuant to Labor Code section 203 and Code of Civil Procedure section 1021.5.

126. Plaintiff, on behalf of herself and the members of the Waiting Time Penalty Subclass, request relief as described below.

NINTH CAUSE OF ACTION
VIOLATION OF THE UNFAIR COMPETITION LAW
[Business and Professions Code §§ 17200, *et seq.*]

127. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

128. The failure to pay overtime premium compensation, rest and meal period premiums, provide a day of rest, reimburse for all business-related expenses, and timely pay all pay due upon termination of employment to Plaintiff, and each Plaintiff Class Member and UCL Subclass Member, is an unlawful and unfair business practice within the meaning of Business and Professions Code sections 17200, *et seq.*, including but not limited to a violation of the applicable State of California Industrial Welfare Commission Wage Orders, regulations, and statutes, or is otherwise a practice which is otherwise unfair and unlawful, including that the Defendants did not pay tax contributions on the accrued compensation in the form of FICA,

1 Social Security, Medicare, and Unemployment Insurance.

2 129. This cause of action is brought under Business and Professions Code sections
3 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action and
4 pursuant to Business and Professions Code section 17208, Plaintiff and all Plaintiff Class
5 Members seek restitution of wages owed and, where applicable, penalties under Labor Code
6 section 203, where such wages were due each of the Class Members during the Class Period,
7 commencing four (4) years prior to filing of this complaint, according to proof.

8 130. This cause of action is brought as a cumulative remedy as provided in Business
9 and Professions Code section 17205, and is intended as an alternative remedy for restitution for
10 Plaintiff, each Plaintiff Class Member, and each UCL Subclass Member, for the time period, or
11 any portion thereof, commencing within four (4) years prior to the filing of this complaint, and
12 as the primary remedy for Plaintiff, each Plaintiff Class Member, and each UCL Subclass
13 Member for the time period of the fourth year prior to the filing of this complaint, as such one-
14 year time period exceeds the statute of limitations on statutory wage claims.

15 131. As a result of the Defendants' unlawful and unfair business practice of failing to
16 pay minimum and overtime wages, meal and rest period premiums, provide a day of rest,
17 reimburse business expenses, and promptly pay wages in violation of Labor Code sections 201
18 and 202, each Plaintiff Class Member and UCL Subclass Member has suffered damages and is
19 entitled to restitution in an amount according to proof. The wages and restitution sought are
20 based on the alleged failure to pay all wages due, provide legally compliant meal and rest
21 periods, as these claims relate only to wages or premiums that were required to be paid, but for
22 which, due to Defendants' unfair competition, were not paid as required by law. Further, the
23 unpaid expense reimbursements sought are based on the "Unreimbursed Expense Subclass" as
24 these claims relate to the expenses which were incurred but not reimbursed as required by law.

25 132. Further, Plaintiff requests that violations of Defendants alleged herein be
26 enjoined, that other equitable relief as this court deems proper be granted, and that Defendants
27 be required to pay tax contributions on the accrued compensation in the form of FICA, Social
28 Security, Medicare, Unemployment Insurance, or other appropriate payments.

133. Plaintiff, on behalf of herself and other proposed members of the Plaintiff Class, will seek restitution of wages, including premium wages for non-compliant break periods, and expense reimbursements in an amount according to proof within the UCL's applicable limitations period.

134. Plaintiff, on behalf of herself and the members of the UCL Subclass, request relief as described below.

TENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO PAY MINIMUM, REGULAR, AND
OVERTIME WAGES
[Lab. Code §§ 2698, *et seq.*]

135. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

136. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3."

137. Labor Code section 2699(f): "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation."

138. Pursuant to California Labor Code section 558(a), "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was

1 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
2 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
3 period for which the employee was underpaid in addition to an amount sufficient to recover
4 underpaid wages.” Plaintiff seeks only to recover the civil penalty provided for in section 558(a)
5 for the violations alleged herein and does not seek to recover any underpaid wages.

6 139. As alleged herein, during the PAGA period, Defendants failed to pay Plaintiff
7 and other aggrieved employees all minimum, regular, and overtime wages for all hours worked,
8 including time worked during meal periods and off-the-clock.

9 140. Defendants’ conduct violated, and continues to violate, Labor Code sections 510,
10 1194, 1197, and 1198 as well as the “Hours and Days of Work” and “Minimum Wages”
11 sections of the applicable Wage Order.

12 141. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
13 other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2),
14 1197.1, and 2699(a) and (f)(2), as well as attorney’s fees and costs all recoverable in an amount
15 according to proof.

16 142. Plaintiff, as a representative of the general public, will and does seek to recover
17 any and all penalties for each and every violation, in an amount according to proof, as to those
18 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
19 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
20 of California.

21 **ELEVENTH CAUSE OF ACTION**
22 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE AT LEAST ONE DAY’S**
23 **REST IN SEVEN**
[Lab. Code §§ 2698, *et seq.*]

24 143. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

25 144. Labor Code sections 2699(a) and 2699(f) provide for the assessment and
26 collection of civil penalties for violations of the labor code, to be recovered through a civil
27 action brought by an aggrieved employee on behalf of himself or herself and other current or
28 former employees pursuant to the procedures specified in Section 2699.3. Labor Code section

1 558(a) provides a civil penalty for violations of sections of that chapter.

2 145. As alleged herein, during the PAGA period, Defendants failed to provide
3 Plaintiff and other aggrieved employees with one day's rest in seven as required by California
4 law. On information and belief, Defendants caused Plaintiff and other aggrieved employees to
5 work every day for several weeks straight without a day of rest.

6 146. Defendants' conduct violated, and continues to violate, Labor Code sections 551-
7 552, 1197, and 1198.

8 147. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
9 other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2),
10 2699(a) and (f)(2), as well as attorney's fees and costs all recoverable in an amount according to
11 proof.

12 148. Plaintiff, as a representative of the general public, will and does seek to recover
13 any and all penalties for each and every violation, in an amount according to proof, as to those
14 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
15 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
16 of California.

17 **TWELFTH CAUSE OF ACTION**
18 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS**
19 **[Lab. Code §§ 2698, *et seq.*]**

20 149. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

21 150. Labor Code sections 2699(a) and 2699(f) provide for the assessment and
22 collection of civil penalties for violations of the labor code, to be recovered through a civil
23 action brought by an aggrieved employee on behalf of himself or herself and other current or
24 former employees pursuant to the procedures specified in Section 2699.3.

25 151. As alleged herein, during the PAGA period, Defendants failed to provide
26 Plaintiff and other aggrieved employees with legally compliant, uninterrupted meal periods
27 required by California law, and failed to provide meal period premiums in lieu thereof.

28 152. Defendants' conduct violated, and continues to violate, Labor Code sections
226.7, 512, and 1198, as well as the "Meal Periods" section of the applicable IWC Wage Order.

1 153. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
2 other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2),
3 1197.1, and 2699(a) and (f)(2), as well as attorney's fees and costs all recoverable in an amount
4 according to proof.

5 154. Plaintiff, as a representative of the general public, will and does seek to recover
6 any and all penalties for each and every violation, in an amount according to proof, as to those
7 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
8 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
9 of California.

10 **THIRTEENTH CAUSE OF ACTION**
11 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE REST PERIODS**
12 **[Lab. Code §§ 2698, *et seq.*]**

13 155. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

14 156. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
15 of civil penalties for violations of the labor code, to be recovered through a civil action brought
16 by an aggrieved employee on behalf of himself or herself and other current or former employees
17 pursuant to the procedures specified in Section 2699.3.

18 157. As alleged herein, during the PAGA period, Defendants failed to provide
19 Plaintiff and other aggrieved employees with legally compliant, uninterrupted rest periods
20 required by California law, and failed to provide rest period premiums in lieu thereof.

21 158. Defendants' conduct violated, and continues to violate, Labor Code sections
22 226.7 and 1198, as well as the "Rest Periods" section of the applicable IWC Wage Order.

23 159. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
24 other aggrieved employees, for penalties as required by Labor Code sections 2699(a) and (f)(2),
25 as well as attorney's fees and costs all recoverable in an amount according to proof.

26 160. Plaintiff, as a representative of the general public, will and does seek to recover
27 any and all penalties for each and every violation, in an amount according to proof, as to those
28 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State

of California.

FOURTEENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR UNLAWFUL DEDUCTION OF WAGES
[Lab. Code §§ 2698, *et seq.*]

161. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

162. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

163. As alleged herein, during the PAGA period, Defendant illegally deducted wages for hours aggrieved employees worked during meal periods.

164. Defendants' conduct violated, and continues to violate, Labor Code sections 221-224.

165. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 2699(a) and (f)(2), as well as attorney's fees and costs all recoverable in an amount according to proof.

166. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

FIFTEENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS-RELATED
EXPENSES
[Lab. Code §§ 2698, *et seq.*]

167. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

168. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

1 169. Aggrieved employees are entitled to pursue civil penalties under the PAGA for
2 violations of Labor Code section 2802. Labor Code § 2699.5.

3 170. As alleged herein, during the PAGA period, Defendant failed to reimburse
4 Plaintiff and other aggrieved employees for or all necessary expenditures incurred, including the
5 use of personal cell phones and computers for business purposes.

6 171. Defendants' conduct violated, and continues to violate, Labor Code section 2802.

7 172. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
8 other aggrieved employees, for penalties as required by Labor Code sections 2699(a) and (f)(2),
9 as well as attorney's fees and costs all recoverable in an amount according to proof.

10 173. Plaintiff, as a representative of the general public, will and does seek to recover
11 any and all penalties for each and every violation, in an amount according to proof, as to those
12 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
13 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
14 of California.

15 **SIXTEENTH CAUSE OF ACTION**
16 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED**
17 **WAGE STATEMENTS**
18 **[Lab. Code §§ 2698, *et seq.*]**

19 174. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

20 175. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
21 of civil penalties for violations of the labor code, to be recovered through a civil action brought
22 by an aggrieved employee on behalf of himself or herself and other current or former employees
23 pursuant to the procedures specified in Section 2699.3.

24 176. Labor Code section 226.3 provides for civil penalties for violations of Labor
25 Code section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each
26 subsequent violation.

27 177. As alleged herein, during the PAGA period, Defendants failed to provide
28 accurate itemized wage statements to aggrieved employees. Wage statements provided were
deficient in that they did not include all wages due, all applicable hourly rates in effect during

1 the pay period and the corresponding number of hours worked at each hourly rate by the
2 employee.

3 178. Defendants' conduct violated, and continues to violate, Labor Code section 226.

4 179. As a result, Defendants willfully violated the Labor Code and are liable to
5 Plaintiff and other aggrieved employees for civil penalties as required by Labor Code sections
6 226.3 and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs,
7 all recoverable in an amount according to proof.

8 180. Plaintiff, as a representative of the general public, will and does seek to recover
9 any and all penalties for each and every violation, in an amount according to proof, as to those
10 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
11 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
12 of California.

13 **SEVENTEENTH CAUSE OF ACTION**
14 **PAGA CIVIL PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
15 **[Lab. Code §§ 2698, *et seq.*]**

16 181. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

17 182. Labor Code section 1174(d) requires each employer to "[k]eep, at a central
18 location in the state or at the plants or establishments at which employees are employed, payroll
19 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
20 units earned by and any applicable piece rate paid to, employees employed at the respective
21 plants or establishments."

22 183. The "Records" section of the applicable IWC Wage Order requires each
23 employer to maintain "[t]ime records showing when the employee begins and ends each work
24 period. Meal periods, split shift intervals and total daily hours worked shall also be recorded."

25 184. Labor Code section 1174.5 imposes a \$500 civil penalty for any failure to
26 maintain records required by Section 1174(d).

27 185. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
28 of civil penalties for violations of the labor code, to be recovered through a civil action brought
by an aggrieved employee on behalf of himself or herself and other current or former employees

1 pursuant to the procedures specified in Section 2699.3.

2 186. During the PAGA period, Defendants failed to maintain accurate records
3 showing the accurate number of hours worked by, and wages owed to, Plaintiff and other
4 aggrieved employees, as required by law.

5 187. Defendants' conduct violated, and continues to violate, Labor Code section
6 1174(d) as well as the "Records" section of the applicable Wage Order.

7 188. As a result, Defendants willfully violated the Labor Code and are liable to
8 Plaintiff and other aggrieved employees for penalties as required by Labor Code sections 1174.5
9 and 2699(a), or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs, all
10 recoverable in an amount according to proof.

11 189. Plaintiff, as a representative of the general public, will and does seek to recover
12 any and all penalties for each and every violation, in an amount according to proof, as to those
13 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
14 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
15 of California.

16 **EIGHTEENTH CAUSE OF ACTION**
17 **PAGA CIVIL PENALTIES FOR FAILURE TO PAY WAGES DUE DURING AND**
18 **UPON TERMINATION OF EMPLOYMENT**
[Lab. Code §§ 2698, *et seq.*]

19 190. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

20 191. Labor Code section 204(a) states, in pertinent part: "All wages...earned by any
21 person in any employment are due and payable twice during each calendar month, on days
22 designated in advance by the employer as the regular paydays." Section 204(d) states: "The
23 requirements of this section shall be deemed satisfied by the payment of wages for weekly,
24 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
25 following the close of the payroll period." The "Minimum Wages" Section of the applicable
26 Wage Order further states: "Every employer shall pay to each employee, on the established
27 payday for the period involved, not less than the applicable minimum wage for all hours worked
28 in the payroll period."

1 192. Labor Code section 210(a) provides: “In addition to, and entirely independent
2 and apart from, any other penalty provided in this article, every person who fails to pay the
3 wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205,
4 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
5 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation,
6 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
7 employee, plus 25 percent of the amount unlawfully withheld.”

8 193. Labor Code section 256 states that a civil penalty shall be imposed “in an amount
9 not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

10 194. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
11 of civil penalties for violations of the labor code, to be recovered through a civil action brought
12 by an aggrieved employee on behalf of himself or herself and other current or former employees
13 pursuant to the procedures specified in Section 2699.3.

14 195. As set forth herein, during the PAGA period, Defendants failed to pay Plaintiff
15 and other aggrieved employees all wages that were due and owing to them including meal
16 period premiums, and regular, minimum, and overtime wages, within the required time during
17 their employment and upon their separation of employment, in violation of the Labor Code and
18 the applicable IWC Wage Order.

19 196. Additionally, during the PAGA period, Defendants failed to pay Plaintiff and
20 other aggrieved employees all final wages earned within the time required by Labor Code
21 sections 201-202. Defendants also failed to pay waiting time penalty wages for failing to timely
22 pay final wages. Even when Defendants did pay final wages within the time frame required,
23 Defendants nevertheless failed to pay timely because they did not pay all wages earned as set
24 forth herein.

25 197. Defendants also failed to pay a day’s wages for every day final pay was not paid
26 through the date final wages were paid, as required by Labor Code section 203.

27 198. Defendants’ conduct violated, and continues to violate, Labor Code sections 201-
28 204.

199. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff and other aggrieved employees for penalties as required by Labor Code sections 210, 256, and 2699(a), or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs, all recoverable in an amount according to proof.

200. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

VII.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

1. That the Court determine this action may be maintained as a class action and Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;

2. For injunctive relief as provided by the Labor Code to the extent permitted by law including, but not limited to, pursuant to Section 226(h), and Business and Professions Code sections 17200, *et seq.*;

3. For restitution as provided by Business and Professions Code sections 17200, *et seq.*;

4. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code sections 17200, *et seq.*;

5. For an award of unpaid wages, including minimum and overtime wages, to the extent permissible by law to each affected person;

6. For an award of liquidated damages to the extent permissible by Labor Code section 1194.2;

7. For an award of meal period premium wages equal to one hour of pay at the

1 employee's regular rate of pay for each workday that a meal period was not provided in
2 accordance with Labor Code sections 226.7 and 512 and Section 11 of the applicable IWC
3 Wage Order;

4 8. For an award of rest period premium wages equal to one hour of pay at the
5 employee's regular rate of pay for each workday that a rest period was not provided in
6 accordance with Labor Code section 226.7 and Section 12 of the applicable IWC Wage Order;

7 9. For reimbursement of unpaid expenses incurred as a result of the use of cell
8 phones at the direction of and for the benefit of Defendants, in accordance with Labor Code
9 section 2802;

10 10. For penalties to the extent permitted pursuant to the Labor Code, and Orders of
11 the Industrial Welfare Commission including, but not limited to penalties under Labor Code
12 section 226(e);

13 11. For penalties to the extent permitted pursuant to the Labor Code, and Orders of
14 the Industrial Welfare Commission including, but not limited to penalties under Labor Code
15 sections 558 and 558.1;

16 12. For an award of waiting time penalties per former employee pursuant to Labor
17 Code section 203(a);

18 13. For an award of penalties incurred under sections 210, 226.3, 226(e), and 1174.5
19 per underpaid employee pursuant to Labor Code sections 210, 226(e), 226.3, and 1174.5;

20 14. For the remedies provided by Labor Code section 233 including reasonable
21 attorneys' fees;

22 15. For an award of liquidated damages to the extent permissible by Labor Code
23 section 1194.2;

24 16. For penalties incurred under Labor Code section 1197.1 for each underpaid
25 employee per pay period for which the employee was underpaid;

26 17. For pre- and post-judgment interest to the extent permitted by law including, but
27 not limited to, Labor Code sections 218.6 and 1194;

28 18. For determination of the appropriate remedy to compensate Plaintiff, Plaintiff

1 Class, and Subclass Members, as required to promote fairness and justice, including but not
2 limited to establishing procedures for compensation, and fluid recovery if appropriate.

3 19. For maintenance of this claim as a Representative Action under the PAGA, and
4 providing Plaintiff and her counsel with all enforcement capability as if this action had been
5 instituted by the Department of Labor Standards Enforcement (“DLSE”);

6 20. For recovery of civil penalties as permitted by Labor Code sections 2699.3,
7 1197.1, and 558(a)(1)-(2) in an amount according to proof;

8 21. For recovery of civil penalties as permitted by Labor Code section 226.3 for
9 failing to provide accurate itemized wage statements, in an amount to be assessed and according
10 to proof;

11 22. For recovery of civil penalties as permitted by Labor Code sections 210 for
12 failing to timely pay wages due during employment;

13 23. For recovery of civil penalties as permitted by Labor Code section 256 for failing
14 to timely pay wages due upon termination of employment;

15 24. For recovery of civil penalties as permitted by Labor Code sections 1174 and
16 1174.5 for failing to maintain accurate records;

17 25. For recovery of civil penalties as permitted by Labor Code section 2699(f)(2)
18 where a statutory civil penalty is not provided, including but not limited to failing to comply
19 with Labor Code sections 201-203, 221-224, and 226.7;

20 26. Attorneys’ fees and costs of suit, including expert fees and fees pursuant to
21 California Labor Code sections 218.5, 226, 226(h), 1194, and Code of Civil Procedure section
22 1021.5, and all other applicable state laws;

23 27. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as
24 to any restitution recovery; and

25 ///

26 ///

27 ///

28 ///

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC •

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

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JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA
ROSEMARY C. KHOURY

(† Also admitted in Illinois)

August 27, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency ("LWDA")

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Intuit, Inc.
2700 Coast Avenue
Mountain View, CA 94043

Intuit, Inc.
c/o CSC-Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Gail Wilkerson on behalf of herself and all other non-exempt employees of Intuit, Inc. in the State of California, as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator and Intuit, Inc.:

This letter shall serve as Gail Wilkerson (hereafter "Claimant")'s Notice pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698, *et seq.* regarding her claims against Intuit, Inc. (referred to herein as "the Employer"). Claimant submits this notice on behalf of herself and all current and former non-exempt employees employed by the Employer in California during the one year preceding the date of this notice who have all suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

If the LWDA does not intend to investigate the allege violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of herself and all other aggrieved employees of the Employer, seeking civil penalties. A copy of this notice is being sent to the Employer by certified mail at the addresses above.

On information and belief, Claimant and other non-exempt employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violations of the Labor Code as set forth below.

FACTUAL STATEMENT

Claimant worked for the Employer as a non-exempt employee in the position of Seasonal Tax Support from approximately January 2020 through March 2020. At all relevant times at least one year prior to the date of this Notice, the Employer subjected Claimant and non-exempt employees to policies and practices which caused the violations of the Labor Code as described

herein. Claimant now seeks civil penalties individually and on behalf of other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages* per *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239. Claimant's claims are set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order(s) on behalf of herself and all other non-exempt employees employed by the Employer in California.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the
“Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order)

Labor Code section 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 1198 provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)((2), provides that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employer violated Labor Code sections 218, 510, 1194, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum,

regular, and overtime wages for all hours worked. The Employer failed to properly calculate the accurate wages owed, including regular and overtime wages due Claimant and other aggrieved employees. For example, Claimant was paid at her regular hourly rate of \$20 per hour for 111 hours worked in a single pay period. Additionally, the Employer deducted time for meal periods that were not taken and did not pay for all hours worked included time worked during meal periods and off-the-clock. Lastly, Claimant regularly worked seven consecutive days without receiving compensation equal to twice the regular rate of pay for work performed on the seventh consecutive day of work, as required under California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE AT LEAST ONE DAY'S REST IN SEVEN

(Labor Code §§ 550, 551, 553, and 1198, and the "Hours and Days of Work" Section of the applicable IWC Wage Order)

Labor Code section 551 states: "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven."

Labor Code section 552 states: "No employer of labor shall cause his employees to work more than six days in seven."

Labor Code section 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)(2), provides that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Pursuant to the "Hours & Days of Work" Section of the applicable Wage Order, "[t]he provisions of Labor Code Sections 551 and 552 regarding one (1) day's rest in seven (7) shall

not be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires the employee to work seven (7) or more consecutive days; provided, however, that in each calendar month, the employee shall receive the equivalent of one (1) day's rest in seven (7)."

The Employer failed to provide Claimant and other aggrieved employees with one day's rest in seven as required by California law. On information and belief, the Employer caused Claimant and other aggrieved employees to work every day for several weeks straight without a day of rest.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the "Meal Period" and "Rest Period" Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: "[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. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes" Labor Code section 226.7(a) states that "no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

The "Rest Period" Section of applicable IWC Wage Order states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: "[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided."

The Employer failed to provide Claimant and other aggrieved employees with legally compliant meal and rest periods on eligible workdays. The Employer regularly failed to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than 10 hours, as required under California law. On information and belief, Claimant and other aggrieved employees did not waive their right to receive meal periods, including second meal periods and third rest periods on eligible shifts. During Claimant's employment, the Employer failed to provide Claimant and other aggrieved

employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512, and Sections 11 and 12 of the applicable IWC Wage Order. The Employer's employment practices incentivized employees to forego taking meal and rest breaks because employees such as Claimant were pressured to continue to work without taking off-duty meal and rest periods. The Employer deducted 30 minutes of time per workday even though Claimant was not able to take off-duty meal breaks because of the volume of work she had to complete. Furthermore, the Employer failed to pay one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

UNLAWFUL DEDUCTION OF WAGES
(Labor Code §§ 221, 223, 224, and 225.5)

California Labor Code section 221 states that "[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

California Labor Code section 223 states that "[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

California Labor Code section 224 states: "The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee's wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement."

California Labor Code section 225.5 provides:

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

- (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As set forth in detail above, the Employer violated Labor Code sections 221 and 223, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it deducted wages due and earned by Claimant and other aggrieved employees, which also resulted in the failure to pay all minimum, regular, and overtime wages for all hours worked.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES

(Labor Code §§ 2802 and 2804, and the “Tools and Equipment” section of the applicable IWC Wage Order)

Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(c) states that “[f]or purposes of [2802], the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to attorney’s fees incurred by the employee enforcing the rights granted by [2802].”

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Labor Code section 2802 prohibits employers, such as the Employer, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employer failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties. Claimant and other non-exempt employees’ job duties required them to use their personal cell

phone and personal home computer and wi-fi, without reimbursement for these business expenses. The Employer failed to reimburse Claimant and other aggrieved employees for the costs incurred by employees in direct consequence of the discharge of his or her duties.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, 1198, 2699, and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code section 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the Employer fails to provide a wage statement.”

Labor Code section 226.3 imposes an additional civil penalty on the Employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney’s fees.

Due to the Employer’s failure to pay all wages due at all times during Claimant’s employment, including minimum, regular, or overtime wages, the Employer violated Labor Code section 226 by failing to provide accurate itemized wage statements to Claimant and other aggrieved employees. The wage statements issued by the Employer fail to inform of the accurate number of hours worked and accurate total wages due and earned. Furthermore, the itemized wage statements do not accurately reflect the inclusive dates of the period for which the employee is paid, as required by section 226(a).

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code § 1174 and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 1174(d) states: “Every person employing labor in this state shall: Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.”

Labor Code section 1174.5 states: “Any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a civil penalty of five hundred dollars.”

IWC Wage Order 4-2001, section 7 obligates an employer to keep accurate information by underpaying minimum wages, regular wages, and overtime, and not recording accurate meal periods. IWC Wage Order 4-2001, section 7(A)(3) states in pertinent part: “Every employer shall keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

The Employer failed to maintain accurate records showing the accurate number of hours worked and accurate wages owed. Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: “If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee

who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

As detailed above, the Employer failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal period premiums, and regular, minimum, and overtime wages, within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. As a result, the Employer violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employer underpaid Claimant and other aggrieved employees by failing to provide them with compliant meal periods or compensation in lieu thereof and failed to pay overtime wages as required by Labor Code sections 226.7, 510, and 512 and Sections 3 and 11 of the applicable IWC Wage Order. As a result, the Employer is liable for *civil penalties* under Labor Code section 558.

Accordingly, Claimant will pursue civil penalty or other lawful remedies for herself and other current and former non-exempt employees, including recovery of attorney's fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA action.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employer violated this requirement by its failure to accurately record employee hours worked and/or paid including wages owed for off-the-clock time and meal and rest period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employer failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid.

Claimant will pursue all remedies on behalf of herself and other current and former employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employer is liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of the Employer's unlawful actions.

CONCLUSION

The Employer violated Labor Code sections as set forth herein. Claimant will pursue all remedies on behalf of herself and other aggrieved employees, including recovery of attorney's fees, costs, and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, she reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint.

Should you have any questions, please feel free to contact me at your convenience.

Sincerely,
COHELAN KHOURY & SINGER



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