

LEBE LAW, APLC

JONATHAN M. LEBE (State Bar No. 284605)

Jon@lebelaw.com

ZACHARY GERSHMAN (State Bar No. 348002)

Zachary@lebelaw.com

777 S. Alameda Street, Second Floor

Los Angeles, CA 90021

Telephone: (213) 358-7046

Facsimile: (310) 820-1258

AEGIS LAW FIRM, PC

SAMUEL A. WONG, State Bar No. 217104

KASHIF HAQUE, State Bar No. 218672

JESSICA L. CAMPBELL, State Bar No. 280626

9811 Irvine Center Drive, Suite 100

Irvine, California 92618

Telephone: (949) 379-6250

Facsimile: (949) 379-6251

Attorneys for Plaintiff Tanya Savidis,
individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

TANYA SAVIDIS, individually and on
behalf of all others similarly situated

Plaintiff,

vs.

LUMBER LIQUIDATORS, INC.; and
DOES 1 through 20, inclusive,

Defendants.

Case No.: RG20057480

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods
4. Failure to Permit Rest Breaks;
5. Failure to Reimburse all Business Expenses;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay All Wages Due Upon Separation of Employment and Within the Required Time;
8. Violation of Business and Professions Code §§ 17200, *et seq.*; and
9. Enforcement of Labor Code § 2698 *et seq.* (“PAGA”)

Jury Trial Demanded

1 Plaintiff Tanya Savidis, individually and on behalf of others similarly situated, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Tanya Savidis ("Plaintiff") brings this putative class action against
5 Defendants Lumber Liquidators Inc., and DOES 1 through 20, inclusive (collectively,
6 "Defendants"), on behalf of herself individually and a putative class of non-exempt employees
7 employed by Defendants at their California retail stores.

8 2. Defendants operate retail stores which sell hardwood flooring.

9 3. Through this action, Plaintiff alleges that Defendants have engaged in a
10 systematic pattern of wage and hour violations under the California Labor Code and Industrial
11 Welfare Commission ("IWC") Wage Orders, all of which contribute to Defendants' deliberate
12 unfair competition.

13 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
14 increased their profits by violating state wage and hour laws by, among other things:

- 15 (a) Failing to pay minimum wages;
- 16 (b) Failing to pay overtime wages;
- 17 (c) Failing to authorize or permit meal breaks or provide compensation in
18 lieu thereof;
- 19 (d) Failing to authorize or permit rest breaks or provide compensation in lieu
20 thereof;
- 21 (e) Failing to pay all business expenses;
- 22 (f) Failing to provide accurate itemized wage statements;
- 23 (g) Failing to pay all wages due upon separation of employment; and

24 5. For at least four years prior to the filing of this action and through to the present,
25 Defendants consistently maintained and enforced against the class the following unlawful
26 practices and policies, in violation of California state wage and hour laws:

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1 (a) Defendants required Plaintiff and class members to perform off-the-
2 clock work, such as delivering products to customer's homes, picking products
3 up from customer's homes, and required Plaintiff and class members to
4 participate in mandatory, off-the-clock conference calls.

5 (b) Defendants have failed to pay overtime and doubletime wages at the
6 regular rate of pay by failing to account for non-discretionary sales bonuses and
7 other performance-based pay earned by Plaintiff and class members when
8 calculating overtime and doubletime wages.

9 (c) Defendants have required class members to be continue working during
10 meal and rest periods such that they have not been provided with legally
11 compliant meal and rest periods under California law.

12 (d) Defendants have required Plaintiff and class members to use their own
13 automobiles to make deliveries for Defendants, among other things, and were
14 rarely, if ever, reimbursed for this business expense.

15 (e) Defendants have required Plaintiff and class members to use their personal
16 cellular devices for conference calls, without being reimbursed for this business
17 expense.

18 (f) Defendants have required Plaintiff and class members to travel as part of
19 their job duties, without paying Plaintiff and class members for their hotel and
20 other travel-related expenses.

21 (g) Defendants have failed to timely pay all final wages, including accrued
22 paid-time-off ("PTO") earned by Plaintiff and class members after Plaintiff and
23 class members were either terminated or voluntarily resigned.

24 6. Plaintiff brings this lawsuit seeking monetary relief against Defendants on
25 behalf of herself and all others similarly situated in California to recover, among other things,
26 unpaid wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant
27 to Labor Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194,
28 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

JURISDICTION AND VENUE

7. This is a class action, pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

8. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

9. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

10. Venue is proper because the Defendants do business in the State of California, they did not list a principal place of business in California with the California Secretary of State, and their principal place of business is outside of California.

THE PARTIES

11. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during the Class Period in California.

12. Plaintiff is informed and believes, and thereon alleges, that Defendants at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees were and are engaged throughout this county and the State of California.

13. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted

1 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
2 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
3 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
4 the employer and/or joint employer of Plaintiff and the class members.

5 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
6 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
7 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
8 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
9 the official policy of Defendants.

10 16. At all relevant times, Defendants, and each of them, acted within the scope of
11 such agency or employment, or ratified each and every act or omission complained of herein.
12 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
13 each and all the other Defendants in proximately causing the damages herein alleged.

14 17. Plaintiff is informed and believes, and thereon alleges, that each of said
15 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
16 omissions, occurrences and transactions alleged herein.

17 **CLASS ACTION ALLEGATIONS**

18 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
19 himself and all others similarly situated who were affected by Defendants' Labor Code,
20 Business and Professions Code §§ 17200 and IWC Wage Order violations. Plaintiff also brings
21 this lawsuit as a representative action brought under the Private Attorneys General Act of 2004,
22 Cal. Lab. Code § 2698 *et seq.* ("PAGA").

23 19. All claims alleged herein arise under California law for which Plaintiff seeks
24 relief authorized by California law.

25 20. Plaintiff's proposed Class consists of and is defined as follows:

26 Class

27 All California citizens currently or formerly employed as non-exempt employees
28 by Defendants at their California retail stores within four years prior to the filing
of this action to the date of class certification.

1 21. Plaintiff also seeks to certify the following Subclass of employees:

2 Waiting Time Subclass

3 All members of the Class who separated their employment from Defendants
4 within three years prior to the filing of this action to the date of class certification.

5 22. Members of the Class and Subclass described above will be collectively referred
6 to as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or
7 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
8 specific theories of liability.

9 23. This action has been brought and may properly be maintained as a class action
10 under the California Code of Civil Procedure § 382 because there are common questions of law
11 and fact as to the Class that predominate over questions affecting only individual members
12 including, but not limited to:

- 13 (a) Whether Defendants failed to compensate Plaintiff and class members to work off-
14 the-clock, resulting in a failure to pay all minimum wages and overtime wages;
- 15 (b) Whether Defendants paid Plaintiff and class members overtime compensation at
16 the proper rates;
- 17 (c) Whether Defendants required Plaintiff and class members to work over 8 hours
18 per day, over twelve (12) hours per day and/or over forty (40) hours per week
19 and failed to pay them overtime compensation at the proper rate;
- 20 (d) Whether Defendants deprived Plaintiff and class members of meal breaks or
21 required Plaintiff and class members to work through meal breaks without
22 compensation;
- 23 (e) Whether Defendants deprived Plaintiff and class members of rest breaks or
24 required Plaintiff and class members to work through rest breaks without
25 compensation;
- 26 (f) Whether Defendants required Plaintiff and class members to use their personal
27 automobiles and then failed to reimburse Plaintiff and class members for gas
28 mileage and wear and tear on the car, resulting in failure to reimburse Plaintiff
 and class members for all business expenses necessarily incurred in their duties;

- 1 (g) Whether Defendants required Plaintiff and class members to use their personal
2 cellular devices to for work-related purposes, without paying a reasonable
3 percentage of their cell phone bills;
- 4 (h) Whether Defendants required Plaintiff and class members to incur hotel
5 expenses for work-related purposes, without paying for such expenses
6 necessarily incurred in their duties;
- 7 (i) Whether Defendants failed to timely pay Plaintiff and former class members all
8 accrued PTO due upon termination or within 72 hours of resignation;
- 9 (j) Whether Defendants failed to timely pay Plaintiff and former class members all
10 wages due upon termination or within 72 hours of resignation;
- 11 (k) Whether Defendants failed to furnish Plaintiff and class members with accurate,
12 itemized wage statements;
- 13 (l) Whether Defendants engaged in unfair business practices in violation of Business
14 & Professions Code §§ 17200, *et seq.*

15 24. There is a well-defined community of interest in this litigation and the Class is
16 readily ascertainable:

- 17 (a) Numerosity: The members of the Class are so numerous that joinder of all
18 members is impractical. Although the members of the Class are unknown
19 to Plaintiff at this time, on information and belief, the Class is estimated to
20 be greater than 100 individuals. The identity of the class members are
21 readily ascertainable by inspection of Defendants' employment and payroll
22 records.
- 23 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
24 claims (or defenses, if any) of the Class because Defendants' failure to
25 comply with the provisions of California wage and hour laws entitled each
26 class member to similar pay, benefits and other relief. The injuries
27 sustained by Plaintiff are also typical of the injuries sustained by the Class
28 because they arise out of and are caused by Defendants' common course of

1 conduct as alleged herein.

2 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
3 and protect the interests of all members of the Class because it is in his best
4 interest to prosecute the claims alleged herein to obtain full compensation
5 and penalties due to him and the Class. Plaintiff's attorneys, as proposed
6 class counsel, are competent and experienced in litigating large
7 employment class actions and are versed in the rules governing class action
8 discovery, certification and settlement. Plaintiff has incurred and,
9 throughout the duration of this action, will continue to incur attorneys' fees
10 and costs that have been and will be necessarily expended for the
11 prosecution of this action for the substantial benefit of each class member.

12 (d) Superiority: The nature of this action makes the use of class action
13 adjudication superior to other methods. A class action will achieve
14 economies of time, effort and expense as compared with separate lawsuits,
15 and will avoid inconsistent outcomes because the same issues can be
16 adjudicated in the same manner and at the same time for each Class. If
17 appropriate this Court can, and is empowered to, fashion methods to
18 efficiently manage this case as a class action.

19 (e) Public Policy Considerations: Employers in the State of California and
20 other states violate employment and labor laws every day. Current
21 employees are often afraid to assert their rights out of fear of direct or
22 indirect retaliation. Former employees are fearful of bringing actions
23 because they believe their former employers might damage their future
24 endeavors through negative references and/or other means. Class actions
25 provide the class members who are not named in the complaint with a
26 type of anonymity that allows for the vindication of their rights at the
27 same time as affording them privacy protections.

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GENERAL ALLEGATIONS

25. At all relevant times mentioned herein, Defendants employed Plaintiff and other persons as non-exempt employees at their California retail stores.

26. Plaintiff was employed in a non-exempt position at one of Defendants' retail stores in California.

27. Defendants continue to employ non-exempt employees at their California retail stores.

28. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices and the requirements of California law.

29. Plaintiff is informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiff and class members were entitled to receive wages for all hours worked and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members were not paid wages (including minimum wages and overtime wages) when Defendants required Plaintiff and class members to work off-the-clock delivering products to customer's homes, picking up products from customer's homes, and to take part in required, off-the-clock conference calls.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants improperly calculated the overtime rate of pay for Plaintiff and Class Members because the rates did not include non-discretionary wages, including, but not limited to, sales bonuses and/or other incentive pay into the computation of their regular rate of pay for purposes of calculating the overtime rate of pay.

31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive all required meal periods or payment of one (1) additional hour of pay when they did not receive a timely meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members did

1 not receive all timely meal periods or payment of one (1) additional hour of pay when they did
2 not receive a timely meal period.

3 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive all rest breaks or
5 payment of one (1) additional hour of pay when a rest break was missed. In violation of the
6 Labor Code and IWC Wage Orders, Plaintiff and class members did not receive all rest breaks
7 or payment of one (1) additional hour of pay when a rest break was missed.

8 33. Plaintiff are informed and believe, and thereon allege, that Defendants knew or
9 should have known that they had a duty to indemnify Plaintiff and class members for all
10 necessary expenditures or losses incurred in the discharge of their duties, including, for
11 example, Plaintiff and class members automobile, personal cellular device, and hotel expenses
12 related to their job duties. In violation of the Labor Code, Defendants did not indemnify
13 Plaintiff and class members for the necessary expenses they incurred in the discharge of their
14 duties.

15 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to receive itemized wage
17 statements that accurately showed their gross and net wages earned, inclusive dates of pay
18 periods, total hours worked and all applicable hourly rates in effect and the number of hours
19 worked at each hourly rate in accordance with California law. In violation of the Labor Code,
20 Plaintiff and class members were not provided with accurate itemized wage statements.

21 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and Waiting Time Subclass members were entitled to timely
23 payment of all accrued PTO due upon separation of employment. In violation of the Labor
24 Code, Plaintiff and class members did not receive payment of all wages within permissible time
25 periods.

26 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and Waiting Time Subclass members were entitled to timely
28 payment of wages due upon separation of employment. In violation of the Labor Code,

1 Plaintiff and Waiting Time Subclass members did not receive payment of all wages within
2 permissible time periods.

3 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known they had a duty to compensate Plaintiff and class members, and Defendants
5 had the financial ability to pay such compensation but willfully, knowingly and intentionally
6 failed to do so all in order to increase Defendants' profits.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY MINIMUM WAGES**

9 **(Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order)**

10 38. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
13 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
14 wage than the minimum so fixed is unlawful.

15 40. During the relevant time period, Defendants paid Plaintiff and class members
16 less than minimum wages when Defendants required Plaintiff and class members to work off-
17 the-clock when Plaintiff and class members delivered products to customer's homes, picked up
18 products from customer's homes, and participated in mandatory, off-the-clock conference calls.

19 41. During the relevant time period, Defendants regularly failed to pay at least
20 minimum wages to Plaintiff and class members for all hours worked pursuant to Labor Code
21 §§ 1194 and 1197.

22 42. Defendants' failure to pay Plaintiff and class members the required minimum
23 wages violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class
24 members are entitled to recover the unpaid balance of their minimum wage compensation as
25 well as interest, costs and attorneys' fees.

26 43. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to
27 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
28 thereon.

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1 50. In violation of state law, Defendants have knowingly and willfully refused to
2 perform their obligations and compensate Plaintiff and class members for all wages earned as
3 alleged above.

4 51. Defendants' failure to pay Plaintiff and class members the unpaid balance of
5 overtime compensation, as required by California law, violates the provisions of Labor Code
6 §§ 510 and 1198, and is therefore unlawful.

7 52. Pursuant to Labor Code § 1194, Plaintiff and class members are entitled to
8 recover their unpaid overtime compensation as well as interest, costs and attorneys' fees.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

11 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

12 53. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
13 though fully set forth herein.

14 54. Labor Code § 226.7 provides that no employer shall require an employee to work
15 during any meal period mandated by the IWC Wage Orders.

16 55. Section 11 of the applicable IWC Wage Order states, "no employer shall employ
17 any person for a work period of more than five (5) hours without a meal period of not less than
18 30 minutes, except that when a work period of not more than six (6) hours will complete the
19 day's work the meal period may be waived by mutual consent of the employer and the
20 employee."

21 56. Labor Code § 512(a) provides that an employer may not require, cause or permit
22 an employee to work for a period of more than five (5) hours per day without providing the
23 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
24 the total work period per day of the employee is not more than six (6) hours, the meal period
25 may be waived by mutual consent of both the employer and the employee.

26 57. Labor Code § 512(a) also provides that an employer may not employ an
27 employee for a work period of more than ten (10) hours per day without providing the employee
28 with a second meal period of not less than thirty (30) minutes, except that if the total hours

1 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
2 consent of the employer and the employee only if the first meal period was not waived.

3 58. During the relevant time period, Plaintiff and class members did not receive
4 compliant meal periods for each five hours worked per day because compliant meal periods for
5 each five hours worked.

6 59. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
7 an employer to pay an employee one additional hour of pay for each work day that a meal
8 period is not provided.

9 60. At all relevant times, Defendants often failed to pay Plaintiff and class members
10 meal period premiums for meal period violations pursuant to Labor Code § 226.7(b) and section
11 11 of the applicable IWC Wage Order.

12 61. As a result of Defendants' failure to pay Plaintiff and class members an
13 additional hour of pay for each day a meal period was not provided, Plaintiff and class members
14 suffered and continue to suffer a loss of wages and compensation.

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PERMIT REST BREAKS**

17 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)**

18 62. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
19 though fully set forth herein.

20 63. Labor Code § 226.7(a) provides that no employer shall require an employee to
21 work during any rest period mandated by the IWC Wage Orders.

22 64. Section 12 of the applicable IWC Wage Order states "every employer shall
23 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
24 the middle of each work period" and the "authorized rest period time shall be based on the total
25 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
26 fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

27 65. During the relevant time period, Plaintiff and class members did not receive a ten
28 (10) minute rest period for every four (4) hours or major fraction thereof worked.

66. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one additional hour of pay for each workday that the rest period is not provided.

67. At all relevant times, Defendants failed to pay Plaintiff and class members rest period premiums for rest period violations pursuant to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

68. As a result of Defendants' failure to pay Plaintiff and class members an additional hour of pay for each day a rest period was not provided, Plaintiff and class members suffered and continue to suffer a loss of wages and compensation.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE ALL BUSINESS EXPENSES

(Violation of Labor Code §§ 2800, 2802)

69. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

70. Labor Code § 2800 provides, in pertinent part, “[a]n employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

71. Labor Code § 2802 provides, in pertinent part, “[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...”

72. Further, Labor Code § 2802 additionally provides, in pertinent part: “(c)...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 this section.”

73. During the relevant time period, Defendants required Plaintiff and class members to use their own automobiles to make deliveries for Defendants, among other things, and were rarely, if ever, compensated for wear and tear on their vehicles.

74. During the relevant time period, Defendants required Plaintiff and class members to use their personal cellular devices for conference calls, and to communicate with Defendants throughout the day on their cellular devices, without paying Plaintiff and class members for a

1 reasonable percentage of their cell phone bills.

2 75. During the relevant time period, Defendants required Plaintiff and class members
3 to travel as part of their job duties, without paying Plaintiff and class members for their hotel and
4 other travel-related expenses.

5 76. During the relevant time period, Defendants were required to indemnify and
6 reimburse Plaintiff and class members for all expenditures or losses caused by the employer's
7 want of ordinary care and/or incurred in direct consequent of the discharge of their duties, but
8 failed to indemnify and reimburse Plaintiff and class members in violation of Labor Codes §§
9 2800 and 2802.

10 77. As a direct and proximate result, Plaintiff and class members have suffered, and
11 continue to suffer, substantial losses, related to the use and enjoyment of such monies to be
12 reimbursed, lost interest on such monies, and expenses and attorney's fees in seeking to compel
13 Defendants to fully perform their obligations under California law, all to their damage in amounts
14 according to proof at the time of trial.

15 **SIXTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

17 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

18 78. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
19 though fully set forth herein.

20 79. Labor Code § 226(a) requires Defendants to provide each employee with an
21 accurate wage statement in writing showing nine pieces of information, including: (1) gross
22 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
23 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
24 deductions, provided that all deductions made on written orders of the employee may be
25 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
26 for which the employee is paid, (7) the name of the employee and the last four digits of his or
27 her social security number or an employee identification number other than a social security
28 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable

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

3 80. During the relevant time period, Defendants have knowingly and intentionally
4 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
5 and class members. The deficiencies include, among other things, the failure to correctly state
6 the gross and net wages earned, accurate inclusive dates of the pay period, and all applicable
7 hourly rates in effect and the number of hours worked at each hourly rate by Plaintiff and class
8 members.

9 81. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
10 and class members have suffered injury and damage to their statutorily protected rights.
11 Specifically, Plaintiff and class members have been injured by Defendants' intentional
12 violation of California Labor Code § 226(a) because they were denied both their legal right to
13 receive, and their protected interest in receiving, accurate itemized wage statements under
14 California Labor Code § 226(a). Plaintiff has had to file this lawsuit in order to determine the
15 extent of the underpayment of wages, thereby causing Plaintiff to incur expenses and lost time.
16 Plaintiff would not have had to engage in these efforts and incur these costs had Defendants
17 provided the accurate wages earned. This has also delayed Plaintiff's ability to demand and
18 recover the underpayment of wages from Defendants.

19 82. California Labor Code § 226(a) requires an employer to pay the greater of all
20 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,
21 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,
22 plus attorney's fees and costs, to each employee who was injured by the employer's failure to
23 comply with California Labor Code § 226(a).

24 83. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
25 and class members from knowing, understanding and disputing the wages paid to them, and
26 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
27 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
28 class members have suffered an injury, and the exact amount of damages and/or penalties is all

1 in an amount to be shown according to proof at trial.

2 84. Plaintiff and class members are also entitled to injunctive relief under California
3 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
4 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND**

7 **WITHIN THE REQUIRED TIME**

8 **(Violation of Labor Code §§ 201, 202 and 203; Violation of IWC Wage Order)**

9 85. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
10 though fully set forth herein.

11 86. California Labor Code §§ 201 and 202 provide that if an employer discharges an
12 employee, the wages earned and unpaid at the time of discharge are due and payable
13 immediately, and that if an employee voluntarily leaves his employment, his wages shall
14 become due and payable not later than seventy-two (72) hours thereafter, unless the employee
15 has given seventy-two (72) hours previous notice of his intention to quit, in which case the
16 employee is entitled to his wages at the time of quitting.

17 87. During the relevant time period, Defendants willfully failed to pay Plaintiff and
18 Waiting Time Subclass Members all their accrued PTO, either at the time of discharge of
19 within seventy-two (72) hours of their leaving Defendants' employ.

20 88. During the relevant time period, Defendants willfully failed to pay Plaintiff and
21 Waiting Time Subclass members all their earned wages upon termination including, but not
22 limited to, proper minimum wages and overtime compensation, either at the time of discharge
23 or within seventy-two (72) hours of their leaving Defendants' employ.

24 89. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all
25 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
26 Defendants' employ is in violation of Labor Code §§ 201 and 202.

27 90. California Labor Code § 203 provides that if an employer willfully fails to pay
28 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201

1 and 202, then the wages of the employee shall continue as a penalty from the due date at the
2 same rate until paid or until an action is commenced; but the wages shall not continue for more
3 than thirty (30) days.

4 91. Plaintiff and Waiting Time Subclass members are entitled to recover from
5 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
6 members' regular daily wages for each day they were not paid, at their regular hourly rate of
7 pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

8 **EIGHTH CAUSE OF ACTION**

9 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.***

10 92. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 93. Defendants' conduct, as alleged herein, has been and continues to be unfair,
13 unlawful and harmful to Plaintiff and class members. Plaintiff seek to enforce important rights
14 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

15 94. Defendants' activities, as alleged herein, violate California law and constitute
16 unlawful business acts or practices in violation of California Business and Professions Code §§
17 17200, *et seq.*

18 95. A violation of Business and Professions Code §§ 17200, *et seq.* may be
19 predicated on the violation of any state or federal law.

20 96. Defendants' policies and practices have violated state law in at least the
21 following respects:

22 (a) Failing to pay all minimum wages to Plaintiff and class members in violation of
23 Labor Code §§ 1194, 1194.2, and 1197;

24 (b) Failing to pay all overtime wages to Plaintiff and class members in violation of
25 Labor Code §§ 510, 1194 and 1198;

26 (c) Failing to provide timely meal periods without paying Plaintiff and class
27 members premium wages for every day said meal periods were not provided in violation of
28 Labor Code §§ 226.7 and 512;

1 (d) Failing to authorize or permit rest breaks without paying Plaintiff and class
2 members premium wages for every day said rest breaks were not authorized or permitted in
3 violation of Labor Code § 226.7;

4 (e) Failing to reimburse Plaintiff and class members for all business expenses
5 incurred in violation of Labor Code §§ 2800 and 2803;

6 (f) Failing to provide Plaintiff and class members with accurate itemized wage
7 statements in violation of Labor Code § 226; and

8 (e) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass
9 members upon separation of employment in violation of Labor Code §§ 201, 202 and 203.

10 97. Defendants intentionally avoided paying Plaintiff and class members' wages and
11 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
12 undercut their competitors and establish and gain a greater foothold in the marketplace.

13 98. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class
14 members are entitled to restitution of the wages unlawfully withheld and retained by
15 Defendants during a period that commences four years prior to the filing of the Complaint; an
16 award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable
17 laws; and an award of costs.

18 **NINTH CAUSE OF ACTION**

19 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

20 99. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
21 though fully set forth herein.

22 100. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
23 for a civil penalty to be assessed and collected by the Labor and Workforce Development
24 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies or
25 employees for violation of the code may, as an alternative, be recovered through a civil action
26 brought by an aggrieved employee on behalf of himself and other current or former employees
27 pursuant to the procedures specified in Labor Code § 2699.3.

1 101. For all provisions of the Labor Code except those for which a civil penalty is
2 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
3 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
4 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
5 period in which Defendants violated these provisions of the Labor Code.

6 102. Defendants' conduct violates numerous Labor Code sections including, but not
7 limited to, the following:

8 (a) Violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 558, 1194, 1197 and
9 1198 for failure to timely pay all earned wages (including minimum and overtime wages) owed
10 to Plaintiff and other aggrieved employees during employment and upon separation of
11 employment as herein alleged;

12 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
13 Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal
14 periods as herein alleged;

15 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
16 other aggrieved employees and failure to pay premium wages for missed rest periods as herein
17 alleged;

18 (d) Violation of Labor Code §§ 2800, 2802 for failing to reimburse Plaintiff and
19 class members for all necessarily incurred business expenses;

20 (e) Violation of Labor Code § 226 for failure to provide accurate itemized wage
21 statements to Plaintiff and other aggrieved employees as herein alleged; and

22 (f) Violation of Labor Code §§ 226 and 1198.5 for failure to produce employment
23 records.

24 103. Plaintiff is an "aggrieved employee" because she was employed by the alleged
25 violator and had one or more of the alleged violations committed against her, and therefore is
26 properly suited to represent the interests of all other aggrieved employees.

27 104. On March 5, 2020, Plaintiff gave notice of these claims to the California Labor
28 and Workforce Development Agency ("LWDA") and to the agent for service of process for

1 Defendant. Plaintiff has not received any response from the LWDA indicating that it intends to
2 investigate these claims. Accordingly, Plaintiff has exhausted all notice requirements under the
3 PAGA.

4 105. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
5 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
6 cited above.

7 106. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred
8 herein.

9 **PRAYER FOR RELIEF**

10 Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief
11 and judgment against Defendants, jointly and severally, as follows:

12 1. For certification of this action as a class action, including certifying the Class
13 and Subclass alleged by Plaintiff;

14 2. For appointment of Tanya Savidis as the class representative;

15 3. For appointment of Aegis Law Firm, PC and Lebe Law, APLC as class counsel
16 for all purposes;

17 4. For compensatory damages in an amount according to proof with interest
18 thereon;

19 5. For economic and/or special damages in an amount according to proof with
20 interest thereon;

21 6. For liquidated damages pursuant to Labor Code § 1194.2;

22 7. For civil penalties under PAGA, 75% of which will be paid to the LWDA and
23 25% of which will be distributed to the aggrieved employees;

24 8. For reasonable attorneys' fees, costs of suit and interest to the extent permitted
25 by law, including pursuant to Code of Civil Procedure § 1021.5 Labor Code §§ 226(e) and
26 1194;

27 9. For statutory penalties to the extent permitted by law, including those pursuant
28 to the Labor Code and IWC Wage Orders;

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

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

5 12. For an award of damages in the amount of unpaid compensation including, but
6 not limited to, unpaid wages, benefits and penalties, including interest thereon;

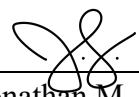
7 13. For pre-judgment interest; and

8 14. For such other relief as the Court deems just and proper.

9
10 Dated: May 13, 2020

LEBE LAW, APLC

11
12 By: _____


Jonathan M. Lebe

Attorney for Plaintiff Tanya Savidis

13
14
15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

17
18 Dated: May 13, 2020

LEBE LAW, APLC

19
20 By: _____


Jonathan M. Lebe

Attorney for Plaintiff Tanya Savidis

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California, I am over the age
3 of eighteen years and not a party to the within entitled action; my business address is 777
S. Alameda Street, Los Angeles, CA 90021.

4 On May 13, 2020 I served the foregoing: **FIRST AMENDED CLASS ACTION AND**
5 **REPRESENTATIVE ACTION COMPLAINT** on the interested parties, by placing a true
copy thereof, by the method of service specified below:

6 RACHAEL LAVI
7 rlavi@littler.com
8 **LITTLER MENDELSON, P.C.**
2049 Century Park East, 5th Floor
Los Angeles, CA 90067

9 KATHERINE KIMSEY
10 kkimsey@littler.com
11 **LITTLER MENDELSON, P.C.**
333 Bush Street, 34th Floor
San Francisco, CA 94104

SAMUEL A. WONG
swong@aegislawfirm.com
KASHIF HAQUE
khaque@aegislawfirm.com
JESSICA L. CAMPBELL
jcampbell@aegislawfirm.com
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite
100
Irvine, California 92618

12
13 ☒ (VIA ELECTRONIC SERVICE) Based on a court order or an agreement of the parties
14 to accept service by electronic transmission, I caused the documents to be sent to the
15 persons at the electronic notification addresses listed above. I did not receive, within a
16 reasonable time after the transmission, any electronic message or other indication that
the transmission was unsuccessful.

17 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California
18 that the above is true and correct.

19 Dated: May 13, 2020

20 
Jonathan M. Lebe