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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY LOS ANGELES

GINA ROBERTSON, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

ALL CARE HOME HEALTH PROVIDER, a
California Corporation; ALL CARE HOME
HEALTH OF SAN GABRIEL, a California
Corporation; ALL CARE HOSPICE, a
California Corporation; ALL CARE
PROVIDER SERVICES, INC., a California
Corporation; COMCARE HOME HEALTH,
INC., a California Corporation; ANDREW J.
PAGSISIHAN, an individual; LILIA
PAGSISIHAN, an individual; APOLONIO
PAGSISIHAN, an individual; and DOES 1
through 10, inclusive;

Defendants.

Case No.: 20STCV18318
*[Assigned to Hon. Daniel J. Buckley, Dept 1,
for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION

- (1) Failure to Pay Regular and Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Periods;
- (5) Failure to Reimburse Business Expenses;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition

PAGA CLAIMS

- (9) PAGA Assessment for Failure to Pay Minimum Wages;
- (10) PAGA Assessment for Failure to Pay Overtime Wages;
- (11) PAGA Assessment for Failure to Provide Meal Periods;
- (12) PAGA Assessment for Failure to Provide Rest Breaks;
- (13) PAGA Assessment for Failure to Reimburse Business Expenses;
- (14) PAGA Assessment for Failure to

Timely Pay Wages;
(15) PAGA Assessment for Failure to
Provide Accurate Itemized Wage
Statements

Complaint filed: 5/14/2020

Plaintiff GINA ROBERTSON (“Plaintiff”), on behalf of herself, on a representative basis, and on behalf of others similarly situated, complains and alleges as follows.

I. INTRODUCTION AND GENERAL ALLEGATIONS

1. Plaintiff was employed by Defendants ALL CARE HOME HEALTH PROVIDER (“Defendant All Care”), ALL CARE HOME HEALTH OF SAN GABRIEL (“Defendant All Care of San Gabriel”), ALL CARE HOSPICE (“Defendant All Care Hospice”), ALL CARE PROVIDER SERVICES, INC. (“Defendant All Care Provider”), COMCARE HOME HEALTH, INC. (“Defendant Comcare”), ANDREW J. PAGSISIHAN (“Defendant Andrew Pagsisihan”), LILIA PAGSISIHAN (“Defendant Lilia Pagsisihan”), APOLONIO PAGSISIHAN (“Defendant Apolonio Pagsisian”), and DOES 1 through 10, inclusive, (collectively, the “Defendants”) from on or about June 2012 to about present as nurse who in-home medical treatment on behalf of Defendants’ customers. However, at all relevant times herein, Defendants engaged in a practice of willfully misclassifying Plaintiff as an independent contractor.

2. Plaintiff brings this action against Defendants on behalf of herself and all other similarly situated persons who performed in-home nursing care for Defendants in the State of California within the four years preceding the filing of the Complaint (the “Represented Employees”), against Defendants for California Labor Code violations stemming from Defendants’ willful misclassification, failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and paid rest breaks, failure to reimburse business expenses, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

1 3. Plaintiff alleges on information and belief that the Represented Employees were
2 subjected to the same policies, working conditions, and corresponding wage and hour violations
3 to which Plaintiff was subjected during their employment.

4 4. At all relevant times, Plaintiff and the Represented Employees performed specific
5 duties for Defendants as nurses. Specifically, Plaintiff and the Represented Employees provided
6 in-home nursing and hospice care to Defendants' clients. Defendants have maintained policies
7 and practices based on or including the willful misclassification of Plaintiff and the Represented
8 Employees as independent contractors. Under applicable standards of law, Plaintiff and the
9 Represented Employees are, or were during their employment with Defendant, employees and
10 not independent contractors.

11 5. Defendants claim that Plaintiff and the Represented Employees are independent
12 contractors when, in reality, Plaintiff and the Represented Employees are/were subject to the
13 control and direction of the company in connection with the performance of their work, both
14 under contract and in fact, and Plaintiff and the Represented Employees performed work that
15 was the core business of the company, and therefore the Represented Employees' tasks were not
16 outside the usual course of Defendants' business.

17 6. Plaintiff and the Represented Employees were subject to the direction and control
18 of Defendants in regard to what tasks they were required to perform, how they were to perform
19 their required tasks, the instrumentalities they used to complete their required tasks, where they
20 were required to perform their required tasks, and when they were required to perform their
21 required tasks.

22 7. Furthermore, through the performance of their job duties, Plaintiff and the
23 Represented Employees performed an integral and entirely essential aspect of Defendants'
24 business. In fact, Plaintiff and the Represented Employees were tasked to perform the primary
25 business function Defendants provided – in-home nursing care. The clients who received nursing
26 care were and/or are Defendants' customers, not those of Plaintiff and the Represented
27 Employees.
28

1 8. Despite the facts discussed herein, Defendants misclassified Plaintiff and the
2 Represented Employees as independent contractors rather than as employees, leading to
3 violations of the California Labor Code and IWC Wage Orders discussed below.

4 9. Plaintiff and the Represented Employees were not paid at least the minimum
5 wage for each hour they worked for Defendants, nor were they paid overtime wages for each
6 overtime hour they worked.

7 10. Plaintiff and the Represented Employees were not provided off-duty meal and rest
8 periods to which they were entitled.

9 11. Plaintiff and the Represented Employees were also required to incur substantial
10 expenses in direct consequence of the discharge of their duties for Defendants without
11 reimbursement. For example, Plaintiff and the Represented Employees incurred expenses in
12 relation to the use of their personal vehicles to carry out their duties for Defendants, including
13 but not limited to travel to clients' houses, without reimbursement.

14 12. Plaintiff and the Represented Employees were not paid all earned and unpaid
15 wages Employees upon termination of their employment within the time required by Labor Code
16 §§ 201 – 202 as a result of Defendants' failure to pay Plaintiff and Represented Employees at
17 least the minimum wage for each hour worked, overtime wages for overtime hours worked, and
18 premium pay for the failure to provide off-duty meal and rest periods.

19 13. Plaintiff and the Represented Employees also did not receive accurate itemized
20 wage statements as required by Labor Code § 226. The wage statements that Defendants
21 provided to Plaintiff and the Represented Employees failed to accurately state all items required
22 by Labor Code § 226(a).

23 14. Plaintiff alleges that Defendants' violations of the wage and hour components of
24 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
25 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
26 competitors.

27 15. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
28 monetary relief against Defendants and each of them, on behalf of herself and the Represented

Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 218.6, 221, 223, 226, 226.2, 226.7, 510, 512, 558, 1194, 1194.2, and 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name additional representatives throughout the State of California.

II. JURISDICTION

16. This Court has jurisdiction over the claims for relief of Plaintiff and the Represented Employees pursuant to the Labor Code and the IWC Wage Orders, among other sections.

III. VENUE

17. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil Procedure § 395(a). Defendants transact business in Los Angeles County and the unlawful acts alleged herein have a direct effect on Plaintiff and the Represented Employees in Los Angeles County. Furthermore, Defendants employed or employ Plaintiff and Represented Employees in Los Angeles County.

IV. PARTIES

Plaintiff

18. Plaintiff and Class Representative Gina Robertson was employed by Defendants from on or about June 2012 to present, and performs work for Defendants in Los Angeles County, California.

Defendants

19. Plaintiff is informed and believes and thereon alleges that Defendant All Care Home Health Provider is a California Corporation authorized to and doing business in Los Angeles County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

20. Plaintiff is informed and believes and thereon alleges that Defendant All Care Home Health of San Gabriel is a California Corporation authorized to and doing business in Los Angeles County, California, and is and/or was the legal employer of Plaintiff and the

1 Represented Employees during the applicable statutory periods.

2 21. Plaintiff is informed and believes and thereon alleges that Defendant All Care
3 Hospice is a California Corporation authorized to and doing business in Los Angeles County,
4 California, and is and/or was the legal employer of Plaintiff and the Represented Employees
5 during the applicable statutory periods.

6 22. Plaintiff is informed and believes and thereon alleges that Defendant All Care
7 Provider Services, Inc. is a California Corporation authorized to and doing business in Los
8 Angeles County, California, and is and/or was the legal employer of Plaintiff and the
9 Represented Employees during the applicable statutory periods.

10 23. Plaintiff is informed and believes and thereon alleges that Defendant Comcare
11 Home Health, Inc. is a California Corporation authorized to and doing business in Los Angeles
12 County, California, and is and/or was the legal employer of Plaintiff and the Represented
13 Employees during the applicable statutory periods.

14 24. Plaintiff is informed and believes and thereon alleges that Defendant Andrew J.
15 Pagsisihan is an individual authorized to and doing business in Los Angeles County, California,
16 and is and/or was the legal employer of Plaintiff and the Represented Employees during the
17 applicable statutory periods.

18 25. Plaintiff is informed and believes and thereon alleges that Defendant Lilia
19 Pagsisihan is an individual authorized to and doing business in Los Angeles County, California,
20 and is and/or was the legal employer of Plaintiff and the Represented Employees during the
21 applicable statutory periods.

22 26. Plaintiff is informed and believes and thereon alleges that Defendant Apolonio
23 Pagsisihan is an individual authorized to and doing business in Los Angeles County, California,
24 and is and/or was the legal employer of Plaintiff and the Represented Employees during the
25 applicable statutory periods.

26 27. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
27 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 10,
28 inclusive, but on information and belief alleges that those Defendants are legally responsible for

1 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
2 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
3 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
4 Defendants when ascertained.

5 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
6 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
7 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
8 each Defendant are legally attributable to the other Defendants. On information and belief, a
9 unity of interest and ownership between each Defendant exists such that all Defendants acted as
10 a single employer of Plaintiff and other similarly situated employees.

11 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
12 each of them, are now, and at all material times herein mentioned were, the agents, servants,
13 employees, partners, affiliates, and/or representatives of each of their remaining co-Defendants,
14 and were, at all times herein mentioned, acting within the course, scope, and purpose of such
15 relationship(s) and with the knowledge, consent and/or ratification of each of their remaining co-
16 Defendants.

17 30. Plaintiff is informed and believes, and based thereon alleges, that in conducting
18 themselves in the manner described herein Defendants, and DOES 1 through 10, inclusive, were
19 acting in active concert with one another such that the acts of each were fully attributable to the
20 others in all material respects. Plaintiff is further informed and believe that at all material times
21 herein mentioned Defendants DOES 1 through 10, inclusive, were the alter ego of Defendants,
22 and vice versa, in that there existed a unity of interest and ownership between said Defendants
23 such that any separateness between them ceased to exist and Defendants exercised undue
24 dominance, control, influence, and management over Defendants DOES 1 through 10, inclusive.

25 **V. CLASS ACTION ALLEGATIONS**

26 31. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
27 alleged herein.
28

1 32. Plaintiff brings this action on behalf of herself and all others similarly situated as
2 a class action pursuant to Code of Civil Procedure § 382. The Class, also referred to as the
3 “Represented Employees,” that Plaintiff seeks to represent is defined as follows:

4 All persons who performed nursing care for Defendants in the
5 State of California at any time beginning four years preceding the
6 filing of this Complaint through class certification and/or
7 preliminary approval.

8 33. Plaintiff reserves the right to amend or modify the class description with greater
9 specificity or further division into subclasses or limitation to particular issues as appropriate.

10 34. Plaintiff, as Class Representative, is a member of the class that she seeks to
11 represent.

12 35. This action has been brought and may properly be maintained as a class action
13 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
14 litigation and the proposed class is easily ascertainable from Defendants’ personnel and payroll
15 records.

16 36. **Numerosity:** The potential members of the Class as defined are so numerous that
17 a joinder of all Represented Employees is impracticable. Although the exact number is currently
18 unknown to Plaintiff, this information is easily ascertainable from Defendants’ payroll and
19 personnel records.

20 37. **Commonality:** There are questions of law and fact common to the class which
21 predominate over any questions affecting only individual members of the class, including
22 without limitation:

23 i. Whether Defendants misclassified the Represented Employees as
24 independent contractors;

25 ii. Whether Defendants violated the California Labor Code and IWC Wage
26 Order by failing to pay Plaintiff and the Represented Employees at least the minimum wage for
27 each hour worked;
28

1 iii. Whether Defendants violated the California Labor Code and IWC Wage
2 Order by failing to pay Plaintiff and the Represented Employees overtime wages for overtime
3 hours worked;

4 iv. Whether Defendants violated the California Labor Code by failing to
5 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
6 Represented Employees, whether such separation was voluntary or involuntary;

7 v. Whether Defendants violated the California Labor Code and applicable
8 IWC Wage Order by failing to reimburse Plaintiff and the Represented Employees for business
9 expenses incurred while discharging their duties or in obedience to the directions of their
10 employer;

11 vi. Whether Defendants violated the California Labor Code by failing to
12 provide Plaintiff and Represented Employees with complete, accurate, itemized wage statements;
13 and

14 vii. Whether Defendants violated the California Labor Code and IWC Wage
15 Order by failing to provide Plaintiff and the Represented Employees compliant and off-duty
16 meal and rest periods;

17 viii. Whether Defendants violated the California Labor Code and IWC Wage
18 Order by failing to provide Plaintiff and the Represented Employees with separate hourly
19 compensation for rest and recovery periods and other nonproductive time as required by Labor
20 Code § 226.2.

21 38. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
22 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
23 ongoing Labor Code and Wage Order violations including those pertaining to failure to pay
24 minimum wages, failure to pay overtime wages, failure to timely pay final wages, failure to
25 reimburse business expenses, failure to provide accurate itemized wage statements, failure to
26 provide meal breaks, failure to provide rests breaks, and failure to provide separate compensation
27 for rest and recovery periods and other nonproductive time. Plaintiff further seeks the same
28 types of damages, penalties, and other relief on the same theories and legal grounds as the

members of the Class that she seeks to represent.

39. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Class Representative's counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

40. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Represented Employees is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Represented Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies and practices set forth above. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

FIRST CAUSE OF ACTION

FAILURE TO PAY REGULAR AND MINIMUM WAGES

(Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

(Against All Defendants)

41. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

42. Plaintiff and the Represented Employees were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the statutory period for each hour worked.

43. At all relevant times, Plaintiff and the Represented Employees were illegally not paid proper minimum and/or regular wages when performing on-duty tasks such as driving between appointments, waiting for appointments to begin, and contacting individuals regarding an appointment.

1 44. As a result of Defendants' policies or practices described above, Plaintiff and the
2 Represented Employees were required to perform off-the-clock work that Defendants either
3 knew or should have known they were performing.

4 45. Consequently, Defendants violated California Labor Code laws and minimum
5 and/or regular wage laws, including the Labor Code and IWC Wage Orders.

6 46. Plaintiff is informed and believes and thereon alleges that Defendants
7 intentionally, willfully, and improperly failed to pay wages to her and the Represented
8 Employees for each hour worked in violation of the Labor Code and IWC Wage Orders.

9 47. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
10 Represented Employees were entitled to be paid all such earned wages throughout the statutory
11 period, yet Defendants chose not to pay them in accordance thereto.

12 48. At all relevant times, Defendants failed to pay Plaintiff and the Represented
13 Employees all wages to which they were entitled, thereby receiving an economic benefit.

14 49. As a result of Defendants' wrongful conduct, Plaintiff and the Represented
15 Employees have been damaged in amounts to be proven at trial.

16 50. Plaintiff, on behalf of herself and the Represented Employees, seeks recovery of
17 all unpaid wages, including unpaid wages, liquidated damages, penalties, interest, attorneys' fees
18 and costs of suit against Defendants in an amount to be proven at trial.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME WAGES**

21 (Labor Code §§ 204, 510, and 1198; IWC Wage Order § 3(A))

22 (Against All Defendants)

23 51. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 52. At all times relevant to this Complaint, Labor Code section 510(a) was in effect
26 and provided: "Eight hours of labor constitutes a day's work. Any work in excess of eight hours
27 in one workday and any work in excess of forty hours in any one workweek . . . shall be
28 compensated at the rate of no less than one and one-half times the regular rate of pay for an

1 employee.”

2 53. At all times mentioned, Plaintiff and the Represented Employees worked shifts
3 that consisted of more than eight hours in a workday and/or more than forty hours in a work
4 week and were not paid proper overtime wages for all hours worked. For instance, when
5 Plaintiff worked overtime hours, she was still compensated at her base rate of pay.

6 54. Overtime pay is computed based on the regular rate of pay. The regular rate of
7 pay includes many different kinds of remuneration. Under California law, the determination of
8 regular rate of pay for purposes of determining overtime pay must include the employee’s
9 commissions, bonuses, or other non-hourly compensation. Labor Code section 200 defines
10 wages as “all amounts for labor performed by employees of every description, whether the
11 amount is fixed or ascertained by the standard of time, task, piece, commission basis or other
12 methods of calculation.”

13 55. Accordingly, by requiring Plaintiff and the Represented Employees to work in
14 excess of eight hours per day and/or forty hours per week and without properly compensating
15 overtime wages, as described above, Defendants willfully violated the provisions of Labor Code
16 section 1194.

17 56. As a result of the unlawful acts of Defendants, Plaintiff and the Represented
18 Employees have been deprived of overtime wages in amounts to be determined at trial, and are
19 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees and
20 costs, pursuant to Labor Code sections 1194 and 1199, Code of Civil Procedure section 1021.5,
21 and Civil Code section 3287.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS**

24 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

25 (Against All Defendants)

26 57. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
27 as if fully alleged herein.
28

1 58. At all times relevant hereto, California Labor Code Section 512 provided that “An
2 employer may not employ an employee for a work period of more than five hours per day
3 without providing the employee with a meal period of not less than 30 minutes...An employer
4 may not employ an employee for a work period of more than 10 hours per day without providing
5 the employee with a second meal period of not less than 30 minutes...”

6 59. California Labor Code section 226.7 provides (a) No employer shall require any
7 employee to work during any meal or rest period mandated by an applicable order of the
8 Industrial Welfare Commission, and (b) if an employer fails to provide an employee a meal
9 period or rest period in accordance with an applicable order of the Industrial Welfare
10 Commission, the employer shall pay the employee one hour of additional pay at the employee’s
11 regular rate of compensation for each work day that the meal or rest break is not provided.”

12 60. Subdivision 11 of the applicable IWC’s Wage Orders provides: (a) “No employer
13 shall employ any person for a work period of more than five (5) hours without a meal period of
14 not less than 30 minutes...” and (b) If an employer fails to provide an employee a meal period in
15 accordance with the applicable provisions of this order, the employer shall pay the employee one
16 (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal
17 period is not provided...”

18 61. Plaintiff and the Represented Employees were not provided the meal periods they
19 were entitled to under California law. Specifically, Plaintiff and the Represented Employees
20 worked shifts greater than five hours but was not provided with an off-duty thirty (30) minutes
21 meal period within the first five hours of her shifts and/or a second off-duty meal period prior to
22 the start of the tenth hour of her shifts.

23 62. When Defendants failed to provide Plaintiff and the Represented Employees with
24 their required meal periods, Defendants did not pay Plaintiff and the Represented Employees one
25 additional hour of pay at their regular rate of compensation for each day that they were not
26 provided a compliant meal period.

27 63. By their failure to provide Plaintiff and the Represented Employees with the meal
28 periods required by California law, and failing to provide compensation for such unprovided

1 meal periods, as alleged above, Defendants willfully violated the provisions of Labor Code
2 section 512 and applicable Wage Orders.

3 64. As a result of Defendants' unlawful conduct, Plaintiff and the Represented
4 Employees have suffered damages in an amount, subject to proof, to the extent they were not
5 paid additional compensation owed for missed meal periods.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REST BREAKS**

8 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

9 (Against All Defendants)

10 65. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
11 as if fully alleged herein.

12 66. California Labor Code section 226.7 states "No employer shall require any
13 employee to work during any meal or rest period mandated by an applicable order of the IWC."

14 67. The applicable IWC Wage Order states with regards to rest periods: (a) Every
15 employer shall authorize and permit all employees to take rest periods, which insofar as
16 practicable shall be in the middle of each work period. The authorized rest period shall be based
17 on the total hours worked daily at the rate of then (10) minutes net rest time per four (4) hours or
18 a major fraction thereof...Authorized rest period time shall be counted as hours worked for
19 which there shall be no deduction from wages, and (b) If an employer fails to provide an
20 employee a rest period in accordance with the applicable provisions of this Order, the employer
21 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for
22 each work day that the rest period is not provided."

23 68. Pursuant to Labor Code section 226.7, if an employer fails to provide an
24 employee with a paid rest period as provided in the applicable IWC Wage Order, the employer
25 shall pay the employee one additional hour of pay at the employee's regular rate of
26 compensation for each work day that the rest period was not provided.

27 69. Plaintiff and the Represented Employees were not provided the paid, off-duty rest
28 periods they were entitled to. When Defendants failed to provide Plaintiff and the Represented

1 Employees with their required rest periods, Defendants did not pay them one additional hour of
2 pay at their regular rate of compensation for each day that they were not provided a compliant
3 rest period.

4 70. By their failure to provide Plaintiff and the Represented Employees the rest
5 periods contemplated by California law, and failing to provide compensation for such
6 unprovided rest periods, as alleged above, Defendants willfully violated the provisions of Labor
7 Code section 226.7 and applicable Wage Orders.

8 71. As a result of Defendants' unlawful conduct, Plaintiff and the Represented
9 Employees have suffered damages in an amount, subject to proof, to the extent they were not
10 paid additional pay owed for missed rest periods.

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

13 (Labor Code § 2802 and IWC Wage Order § 9(B))

14 (Against All Defendants)

15 72. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
16 as if fully alleged herein.

17 73. Plaintiff and the Represented Employees are and/or were employees of
18 Defendants who did not receive proper protections and benefits of the laws governing
19 reimbursement of business expenses.

20 74. Labor Code § 2802(a) requires that the employer indemnify its employees for
21 expenses and losses incurred while discharging their duties or in obedience to the directions of
22 their employer.

23 75. At all relevant times herein, as a condition of employment, Plaintiff and the
24 Represented Employees were required to incur substantial expense in direct consequence of the
25 discharge of their duties for Defendants without reimbursement. For example, Plaintiff and the
26 Represented Employees incurred various expenses in relation to the use of their personal vehicle
27 to carry out their duties for Defendants, including but not limited to travelling to client's houses
28 for their appointments, without reimbursement.

1 76. At all relevant times, Defendants failed to reimburse Plaintiff and the Represented
2 Employees for expenses incurred in direct consequence of the discharge of their duties for
3 Defendants, thereby receiving an economic benefit.

4 77. Defendants violated Labor Code § 2802 every pay period with respect to Plaintiff
5 and each and every Represented Employee because Defendant failed to reimburse Plaintiff and
6 the Represented Employees for expenses incurred while discharging their duties or obedience to
7 the directions of their employer.

8 78. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
9 Order § 9(B), Plaintiff and the Represented Employees have suffered, and continue to suffer,
10 substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to
11 compel Defendants to fully perform their obligations under the law, all in an amount to be
12 proved at time of trial.

13 79. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
14 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
15 civil actions, and said interest will accrue from the date on which the employee incurred the
16 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
17 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
18 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

19 80. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
20 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
21 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
22 section." Therefore, Plaintiff and the Represented Employees seek to recover the unreimbursed
23 expenses, interest on the unreimbursed expenses, and the costs and attorney's fees necessarily
24 incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney's
25 fees will be in an amount to be proved at the time of trial.

26 ///

27 ///

28 ///

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code § 201 – 203)

(Against All Defendants)

81. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

82. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the timing and payment of wages.

83. Labor Code § 201 requires that the employer immediately pay any wages, without abatement or reduction, to any employee who is discharged.

84. Labor Code § 202 requires that the employer pay all wages earned and unpaid, without abatement or reduction, no later than 72 hours of receiving an employee's notice of intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

85. Labor Code §§ 201-203 cause the unpaid wages of the employee to 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 thirty (30) days.

86. At all relevant times, Defendants failed to pay all wages due and owing to Plaintiff and the Represented Employees upon separation of employment within the time required by Labor Code §§ 201 – 202 because Defendants failed to pay Plaintiff and Represented Employees at least the minimum wage for each hour worked, overtime wages for overtime hours worked, and premium pay for meal and rest periods that were not provided.

87. Plaintiff alleges that, at all times material to this action, Defendants had a planned pattern and practice of failing to timely pay to Plaintiff and certain affected Represented Employees all wages due and owing upon separation of employment as required by Labor Code §§ 201 and 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and certain affected Represented Employees the above-described waiting time penalty, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

(Against All Defendants)

88. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

89. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the provision of accurate itemized wage statements.

90. Labor Code § 226(a) requires that employers furnish its employees with written itemized wage statements, semimonthly or at the time of each payment of wages, that show “(1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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...”

91. Defendants failed to provide Plaintiff and the Represented Employees accurate itemized wage statements that contained all of the information required by Labor Code Section 226(a). Specifically, Plaintiff and the Represented Employees did not receive wage statements that accurately stated their gross wages, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

1 92. Defendants' failure to provide the required writing deprived the Represented
2 Employees, including Plaintiff, of the ability to know, understand, and question the calculation
3 and rate of pay and hours used to calculate the wages paid by Defendants. Therefore, the
4 Represented Employees, including Plaintiff, had no way to dispute the resulting miscalculation
5 of wages, all of which resulted in an unjustified economic enrichment to said Defendants. As a
6 direct result, the Represented Employees have suffered and continue to suffer, substantial losses
7 related to the use and enjoyment of such wages, lost interest on such wages and expenses and
8 attorney's fees in seeking to compel Defendants to fully perform its obligation under state law,
9 all to their respective damages in amounts according to proof at trial.

10 93. As a result of Defendants' knowing and intentional failure to comply with Labor
11 Code § 226(a), the Represented Employees, including Plaintiff, have suffered an injury in that
12 each was prevented from knowing, understanding and disputing the wage payments paid to
13 them. Furthermore, the Represented Employees have each suffered an injury in that the failure
14 to show all wages earned on the itemized wage statements resulted in each Represented
15 Employee being denied all necessary deductions, payments, and withholdings owed by the
16 employer, including, but not limited to, the failure to make all necessary contributions for
17 unemployment benefits, social security benefits, proper payment of taxes and withholdings, and
18 other mandated state and federal benefits.

19 94. Plaintiff has also been injured as a result of having to bring this action to attempt
20 to obtain correct wage information following Defendants' refusal to comply with many of the
21 mandates of California's Labor Code and related laws and regulations.

22 95. Labor Code § 226(e) requires said Defendants to pay the greater of all actual
23 damages or fifty dollars (\$50.00) per employee for the initial pay period in which a violation
24 occurred, and one hundred dollars (\$100.00) per employee for each violation in subsequent pay
25 periods, plus attorney's fees and costs, to each Represented Employee, including Plaintiff, who
26 was injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of
27 the applicable penalty is all in an amount to be shown according to proof at trial.

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EIGHTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

(Business and Professions Code § 17200 *et seq.*)

(Against All Defendants)

96. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

97. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact, due to the unfair and unlawful business practices of Defendants as alleged herein.

98. Defendants, and each of them, are “persons” as defined under Business & Professions Code § 17021.

99. As alleged herein, Defendants engaged in conduct that violated California’s wage and hour laws, including failure to pay earned wages, failure to timely pay final wages, failure to reimburse business expenses, and failure to provide meal and rest periods all in order to decrease their costs and increase their profits.

100. At all times relevant herein, Defendants did not pay Plaintiff and the Represented Employees wages and monies and other financial obligations attached thereto to which they were entitled.

101. As a result of Defendants’ failure to comply with the Labor Code and IWC Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. Defendants’ ongoing violations of the foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

102. Defendants’ violations of the California Labor Code and IWC Wage Orders and its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business practices because it was done in a systematic manner over a period of time to the detriment of the Plaintiff and all others similarly-situated.

1 103. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
2 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
3 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
4 Code of Civil Procedure § 1021.5.

5 104. A violation of California Business & Professions Code § 17200, et seq. may be
6 predicated on the violation of any state or federal law. All of the acts described herein as
7 violations of, among other things, the California Labor Code and IWC Wage Orders, are
8 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
9 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
10 practices in violation of California Business and Professions Code §§ 17200, et seq.

11 105. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
12 speedy, and/or adequate remedy at law to redress the injuries which she has suffered as a
13 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
14 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
15 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
16 harm unless Defendants, and each of them, are restrained from continuing to engage in said
17 unfair, unlawful and/or fraudulent business practices.

18 106. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
19 and does seek such relief as may be necessary to disgorge the profits which Defendants have
20 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
21 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
22 Represented Employees are not obligated to establish individual knowledge of the unfair
23 practices of Defendants in order to recover restitution.

24 107. Plaintiff, individually, and on behalf of the Represented Employees, is further
25 entitled to and does seek a declaration that the above described business practices are unfair,
26 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
27 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
28 the future.

108. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and the Represented Employees are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of the Complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Represented Employees; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

VI. LABOR CODE PRIVATE ATTORNEY GENERAL ACT CAUSES OF ACTION
(Labor Code § 2698 – 2699.5)

109. Plaintiff Robertson is an "aggrieved employee" under the PAGA as she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil action filed on behalf of herself and all other similarly situated current and former aggrieved employees in California against whom one or more of the alleged violations was committed.

110. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

111. Pursuant to Labor Code § 2699.3(a), on November 19, 2020, Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendants All Care Home Health Provider, All Care Home Health of San Gabriel, All Care Hospice, All Care Provider Services, Inc., Comcare Home Health, Inc., Andrew J. Pagsisihan, Lilia Pagsisihan, and Apolonio Pagsisihan, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit

under the PAGA.

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGE

(Labor Code §§ 1194, 1194.2, 1197; IWC Wage Order § 4)

112. Plaintiff realleges and incorporates the paragraphs 1-30 and 109-111 of the First Amended Complaint as if fully alleged herein.

113. Plaintiff and the Aggrieved Employees were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the statutory period for each hour worked.

114. At all relevant times herein, Plaintiff and the Aggrieved Employees were illegally not paid proper minimum and/or regular wages when performing on-duty tasks such as driving between appointments, waiting for appointments to begin, and contacting individuals regarding an appointment.

115. As a result of Defendants' policy or practice described above, Plaintiff and the Aggrieved Employees were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

116. Consequently, Defendants violated California Labor Code laws and minimum wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

117. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

TENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

(Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

118. Plaintiff realleges and incorporates the paragraphs 1-30 and 109-117 of the First Amended Complaint as if fully alleged herein.

1 119. Plaintiff and the Aggrieved Employees were “non-exempt” employees of
2 Defendants who did not receive proper protections and benefits of the laws governing payment
3 of overtime wages.

4 120. Labor Code § 204 requires that the employer timely pay all overtime wages to its
5 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
6 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
7 any one workweek shall be compensated at the rate of no less than one and one-half times the
8 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
9 in one workday shall be compensated at twice the regular rate of pay for an employee.

10 121. At all relevant times, Plaintiff and the Aggrieved Employees were required by
11 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper
12 overtime compensation.

13 122. As a result of Defendants’ failure to pay for off-the-clock work performed by the
14 Aggrieved Employees, Defendants violate Labor Code §§ 204 and 510 and the applicable IWC
15 Wage Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees
16 because Defendants failed to pay Plaintiff and members of the Aggrieved Employees for all
17 hours worked, including overtime hours, and required Plaintiff and the Aggrieved Employees to
18 work without being properly compensated for all overtime wages earned.

19 123. Plaintiff is informed and believes and thereon alleges that Defendants
20 intentionally, willfully, and improperly failed to pay minimum and overtime wages to Plaintiff
21 and the Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

22 124. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
23 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
24 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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ELEVENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

(Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

125. Plaintiff realleges and incorporates the paragraphs 1-30 and 109-124 of the First Amended Complaint as if fully alleged herein.

126. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory meal periods.

127. Labor Code § 226.7 requires employers, including Defendants, to provide non-exempt employees with meal periods as mandated by the Industrial Welfare Commission.

128. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers may not employ an employee for a work period more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.

129. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B), Defendants shall pay an employee one additional hour of pay at the employee’s regular rate of compensation for each meal period that is missed.

130. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied the 30-minute meal periods to which they were entitled.

131. At all relevant times, Plaintiff and the Aggrieved Employees were denied 30-minute off-duty meal periods, as mandated by California law, during their employment with Defendants. As such, Plaintiff and the Aggrieved Employees were regularly not provided with uninterrupted meal periods of at least 30 minutes, as required by California law.

132. On information and belief, Plaintiff and the Aggrieved Employees did not voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers

1 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
2 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
3 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
4 Employees to take meal periods in accordance with California law.

5 133. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
6 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
7 and the Aggrieved Employees were not provided with all mandatory meal and Defendants failed
8 to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu
9 thereof.

10 134. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
11 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
12 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under the
13 PAGA.

14 **TWELFTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

16 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

17 135. Plaintiff realleges and incorporates the paragraphs 1-30 and 109-134 of the First
18 Amended Complaint as if fully alleged herein.

19 136. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees
20 of Defendants who did not receive proper protections and benefits of the laws governing
21 mandatory rest breaks.

22 137. Labor Code § 226.7 requires employers, including Defendants, to provide rest
23 breaks to its non-exempt employees as mandated by Order of the Industrial Welfare
24 Commission.

25 138. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
26 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
27 each work period. Employees shall receive a 10-minute rest period every four hours or major
28 fraction thereof that they are required to work. Authorized rest period time shall be counted, as

hours worked, for which there shall be no deduction from wages.

139. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, Defendants shall pay Plaintiff one additional hour of pay at her regular rate of compensation for each day that the rest period is not provided.

140. At all relevant times herein, Plaintiff and the Aggrieved Employees were not provided with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law.

141. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu thereof.

142. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

THIRTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9)

143. Plaintiff realleges and incorporates the paragraphs 1-30 and 109-142 of the First Amended Complaint as if fully alleged herein.

144. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

145. Labor Code § 2802(a) requires that the employer indemnify its employees for expenses and losses incurred while discharging their duties or in obedience to the directions of their employer.

146. At all relevant times herein mentioned, as a condition of employment, Plaintiff and the Represented Employees Plaintiff incur substantial expense in direct consequence of the

1 discharge of their duties for Defendants without reimbursement. For example, Plaintiff and the
2 Represented Employees incurred various expenses in relation to the use of their personal vehicle
3 to carry out their duties for Defendants, including but not limited to travelling to client's houses
4 for their appointments, without reimbursement.

5 147. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
6 failed to reimburse Plaintiff and the Represented Employees for expenses incurred as a direct
7 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants,
8 including, but not limited to, the cost of acquiring, utilizing, and maintaining a smart phone and
9 related cellular phone expenses.

10 148. Defendants violated Labor Code §2802 every pay period with respect to Plaintiff
11 and each and every aggrieved employee because Defendant failed to reimburse Plaintiff and the
12 Represented Employees for expenses incurred while discharging their duties or obedience to the
13 directions of their employer.

14 149. At all relevant times herein, Defendants failed to reimburse the Represented
15 Employees, including Plaintiff, for expenses incurred while discharging duties to Defendants,
16 thereby receiving an economic benefit.

17 150. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
18 Order § 9(B), Plaintiff and the Represented Employees have suffered, and continue to suffer,
19 substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to
20 compel Defendants to fully perform their obligations under the law, all in an amount to be
21 proved at time of trial.

22 151. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
23 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
24 civil actions, and said interest will accrue from the date on which the employee incurred the
25 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
26 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
27 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.
28

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

5 153. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
6 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
7 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

8 **FOURTEENTH CAUSE OF ACTION**

9 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES**

10 (Labor Code §§ 201 – 204)

11 154. Plaintiff realleges and incorporates the paragraphs 1-21 and 109-153 of the First
12 Amended Complaint as if fully alleged herein.

13 155. Plaintiff and the Represented Employees are and/or were “non-exempt”
14 employees of Defendants who did not receive proper protections and benefits of the laws
15 governing the timing and payment of wages.

16 156. Labor Code § 201 requires that the employer immediately pay any wages, without
17 abatement or reduction, to any employee who is discharged.

18 157. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
19 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
20 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

21 158. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
22 penalty from the due date thereof at the same rate until paid or until an action therefore is
23 commenced, but the wages shall not continue for more than thirty (30) days.

24 159. At all relevant times, Defendants engaged in the practice of failing to pay all
25 wages due and owing to Plaintiff and the Represented Employees upon separation of
26 employment, including, but not limited to minimum and overtime wages, wage premiums,
27 among others.
28

1 160. Furthermore, Labor Code § 204(a) states that all wages earned by a person are
2 due and payable twice during each calendar month, and further states that wages earned during
3 the first through fifteenth days of the month must be paid no later than the twenty-sixth day of
4 the month, and that wages earned between the sixteenth and last day of the month must be paid
5 by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this
6 section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly
7 payroll if the wages are paid not more than seven calendar days following the close of the payroll
8 period.”

9 161. At all relevant times herein, Defendants did not provide Plaintiff and the
10 Represented Employees with all wages due and owing each pay period, including, but not
11 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
12 within the time specified by Labor Code § 204.

13 162. Plaintiff alleges that, at all times material to this action, Defendants had a planned
14 pattern and practice of failing to timely pay to Plaintiff and the Represented Employees all
15 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
16 202.

17 163. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
18 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
19 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

20 **FIFTEENTH CAUSE OF ACTION**

21 **PAGA ASSESSMENT FOR**

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

23 (Labor Code § 226)

24 164. Plaintiff realleges and incorporates the paragraphs 1-30 and 109-173 of the First
25 Amended Complaint as if fully alleged herein.

26 165. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
27 who did not receive proper protections and benefits of the laws governing the provision of
28 accurate itemized wage statements.

1 166. Labor Code § 226(a) requires that employers furnish its employees with written
2 itemized wage statements, semimonthly or at the time of each payment of wages, that show the
3 gross wages earned, total hours worked, all deductions, net wages earned, and all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked at
5 each hourly rate by the employee.

6 167. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
7 and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff
8 and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a) by
9 failing to accurately state gross wages earned, failure to accurately state total hours worked,
10 failure to accurately state all deductions, failure to accurately state net wages earned, and failure
11 to state all applicable hourly rates in effect during the pay period and the corresponding number
12 of hours at each hourly rate by the employee.

13 168. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
14 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
15 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

16 **VI. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of herself, on a representative basis, and all others
18 similarly situated prays for judgment and relief against Defendants, jointly and severally, as
19 follows:

20 1. As to the Ninth through Fifteenth Causes of Action, the assessment of all
21 applicable and available remedies under the PAGA in accordance with Labor § 2699 and/or any
22 other damages permitted under the PAGA provided for by the California Labor Code Private
23 Attorneys General Act of 2004 (Labor Code § 2698, *et seq.*) as a result of Defendants' violations
24 of the Labor Code as alleged herein;

25 2. For reasonable attorneys' fees and costs permitted under the PAGA;

26 3. That the First through Eighth Causes of Action be certified as a class action;

27 4. That Plaintiff be appointed as Class Representative;

28 5. That counsel for Plaintiff be appointed Class Counsel;

6. For all applicable statutory penalties recoverable under the First through Eighth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;

7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;

8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;

9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 218.6, 221, 223, 226, 226.2, 226.7, 510, 512, 558, 1194, 1194.2, 1197, and 2802, among other sections inadvertently omitted;

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

11. For pre- and post-judgment interest; and

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

Dated: September 3, 2020

FERNANDEZ & LAUBY LLP



BY: _____

Brian J. Mankin, Esq.
Misty M. Lauby, Esq.
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE:

I, Tracie Chiarito, declare I am a citizen of the United States of America and am employed in Riverside, California; I am over the age of 18 years and am not a party to the within action; my business address is 4590 Allstate Drive, Riverside, California 92501-1702. On October 5, 2020, I served the within **FIRST AMENDED COMPLAINT** in said action by electronic filing service Case Home Page website to the parties on the service list maintained on the Case Home Page website for this case pursuant to the Court Order establishing the case website and authorizing service of documents.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 5, 2020 at Riverside, California.



Tracie Chiarito, Declarant

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