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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

KENNEDY BIROZY, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

KIPS SCHOOL OF GYMNASTICS, INC., a
California corporation; DENNIS MAILLY, an
individual; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: RIC 2001812
*[Assigned to Honorable Judge Sunshine
Sykes, Dept 6, for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

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

PAGA CLAIMS

- (8) PAGA Assessment for Failure to Pay Minimum Wages;
- (9) PAGA Assessment for Failure to Pay Overtime Wages;
- (10) PAGA Assessment for Failure to Provide Rest Breaks;
- (11) PAGA Assessment for Failure to Provide Meal Periods;
- (12) PAGA Assessment for Failure to Timely Pay Wages;
- (13) PAGA Assessment for Failure to Provide Accurate Itemized Wage Statements

Complaint Filed: June 17, 2020

1 Plaintiff Kennedy Birozy (“Plaintiff”), on behalf of herself, on a representative basis, and
2 on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against her former employers, KIPS SCHOOL OF
5 GYMNASTICS, INC., DENNIS MAILLY, and DOES 1 through 10, (collectively the
6 “Defendants”) on behalf of herself, and all other similarly situated current and former non-
7 exempt employees who were employed by Defendants in the State of California (hereinafter, the
8 “Represented Employees”), for California Labor Code violations stemming from Defendants’
9 failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant rest
10 breaks, failure to provide compliant meal periods, failure to timely pay final wages, and failure to
11 provide accurate itemized wage statements.

12 2. Plaintiff was employed by Defendants as a non-exempt employee who taught
13 gymnastics classes for Defendants from approximately January 18, 2020 through February 17,
14 2020 and performs work for Defendants in Riverside County, California.

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

18 4. At all relevant times during her employment with Defendants, Plaintiff was paid
19 per class that she taught but was not paid for 15-minute intervals between classes where she
20 performed additional duties for the company such as timekeeping and attending meetings with
21 supervisors related to class scheduling. As a result, Plaintiff and the Represented Employees
22 were deprived of minimum wages for each hour worked.

23 5. As a result of Defendants’ failure to pay for all hours worked by Plaintiff and the
24 Represented Employees, Defendants’ also failed overtime compensation for hours in excess of 8
25 per day as mandated by California law.

26 6. Defendants also failed to provide 10 minutes of net rest break time for every four
27 hours of work, or major fraction thereof, as required by California law due to: (1) Defendants’
28 “per class” pay policy, (2) Defendants’ policy of not scheduling each rest break as part of each

1 work shift, (3) Defendants' policy that only permitted Plaintiff to take a rest break if and when
2 such rest break could be accommodated by her workload, (4) Defendants' practice of imposing
3 so much work on Plaintiff that it made it unlikely that she would be able to take her break, and
4 (5) no compliant formal written rest break policy that encouraged employees to take rest breaks.
5 Furthermore, on occasions when Plaintiff worked in excess of 10 hours in a shift, Defendants
6 failed to authorize and/or permit a third mandated rest break.

7 7. Also, at all relevant times, Plaintiff was denied 30-minute off-duty meal periods,
8 as mandated by California law, during her employment with Defendants. Defendants scheduled
9 Plaintiff's workload in such a way that she was not provided mandated meal periods until after
10 the fifth or sixth hour of work. Additionally, Plaintiff was typically unable to take an off-duty
11 meal period whatsoever due to the way Defendants scheduled her workload, as she was often
12 denied a meal or was asked to return to work by her supervisor prior to the end of her meal
13 period. Plaintiff also often worked in excess of 10 hours in a shift yet was not provided
14 mandated second meal periods on such occasions.

15 8. Plaintiff was also not paid all wages due and owing upon her separation of
16 employment within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that
17 Defendants engaged in the practice of failing to pay all wages due and owing to Plaintiff and the
18 Represented Employees at the time their employment ended with Defendants, including, but not
19 limited to minimum wages, regular wages, overtime wages, wage premiums, among others.

20 9. Plaintiff also alleges that she and the Represented Employees did not receive
21 accurate itemized wage statements at all, or when they did, the wage statements did not fully
22 comply with the requirements of Labor Code § 226(a), as the wage statements that Defendants
23 provided to Plaintiff and the Represented Employees failed to accurately state all applicable
24 hourly rates, gross wages earned, net wages earned, all deductions, and total hours worked.

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

11. At all material times, Defendants and DOES 1 through 10 were and/or are Represented Employees' employers or persons acting on behalf of Represented Employees' employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under California law, including *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112.

12. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and 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 §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name additional representatives throughout the State of California.

13. Pursuant to Labor Code § 2699.3(a), on May 6, 2020, Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. The waiting period imposed by Labor Code § 2699.3(a)(2)(A) has not yet elapsed. In accordance with Labor Code § 2699(g)(1), Plaintiff reserves the right to amend this complaint or bring a separate complaint within 60 days of: 1) receipt of notice from the LWDA that it does not intend to investigate the alleged violation, or 2) if no notice is provided by the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(C), "[n]otwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part."

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1 **II. JURISDICTION**

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

5 **III. VENUE**

6 15. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil
7 Procedure § 395(a). Defendants transact business in Riverside County and the unlawful acts
8 alleged herein have a direct effect on Plaintiff and the Represented Employees in Riverside
9 County. Furthermore, Defendants employed or employ Plaintiff and Represented Employees in
10 Riverside County, and Plaintiff performed work for Defendants in Riverside County.

11 **IV. PARTIES**

12 **Plaintiff**

13 16. Plaintiff and Class Representative Kennedy Birozy was employed by Defendants
14 from approximately January 2020 through February 2020 and performed work for Defendants in
15 Riverside County, California.

16 **Defendants**

17 17. Plaintiff is informed and believes and thereon alleges that Defendant KIPS School
18 of Gymnastics, Inc., is a California Corporation authorized to and doing business in Riverside
19 County, California, and is and/or was the legal employer of Plaintiff and the Represented
20 Employees during the applicable statutory periods.

21 18. Plaintiff is informed and believes and thereon alleges that Defendant Dennis
22 Mailly, is an individual authorized to and doing business in Riverside County, California, and is
23 and/or was the legal employer of Plaintiff and the Represented Employees during the applicable
24 statutory periods.

25 19. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
26 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 10,
27 inclusive, but on information and belief alleges that those Defendants are legally responsible for
28 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of

1 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
2 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
3 Defendants when ascertained.

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

11 21. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that
12 Defendants, and each of them, are an integrated enterprise and should be treated as a single
13 employer because these entities share an interrelation of operations, with common human
14 resources and personnel policies and shared common offices and facilities.

15 **V. CLASS ACTION ALLEGATIONS**

16 22. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
17 alleged herein.

18 23. Plaintiff brings this action on behalf of herself and all others similarly situated as
19 a class action pursuant to Code of Civil Procedure § 382.

20 24. The relevant time period for this class action is defined as the time period
21 beginning four years prior to the filing of this action until preliminary approval is entered (the
22 "Relevant Time Period").

23 25. The Class, also referred to as the "Represented Employees," that Plaintiff seeks to
24 represent is defined as follows:

25 **The Class**

26 All current and former non-exempt employees employed
27 by Defendants in the State of California during the
28 Relevant Time Period.

1 26. Plaintiff reserves the right to amend or modify the class descriptions with greater
2 specificity or further division into subclasses or limitation to particular issues as appropriate.

3 27. Plaintiff, as Class Representative, is a member of the classes that she seeks to
4 represent.

5 28. This action has been brought and may properly be maintained as a class action
6 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
7 litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll
8 records.

9 29. **Numerosity:** The potential members of the Class as defined are so numerous that
10 a joinder of all Represented Employees is impracticable. Although the exact number is currently
11 unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and
12 personnel records.

13 30. **Commonality:** There are questions of law and fact common to the class which
14 predominate over any questions affecting only individual members of the class, including
15 without limitation:

16 i. Whether Defendants violated the California Labor Code and applicable
17 IWC Wage Order by failing to pay proper minimum wages to Plaintiff and the Class;

18 ii. Whether Defendants violated the California Labor Code and applicable
19 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Class;

20 iii. Whether Defendants violated the California Labor Code and applicable
21 IWC Wage Order by failing to provide paid rest breaks to Plaintiff and the Class and whether
22 Defendants failed to compensate Plaintiff and the Class with one additional hour of wages for
23 each instance when a paid rest break was not provided;

24 iv. Whether Defendants violated the California Labor Code and applicable
25 IWC Wage Order by failing to provide mandated meal periods to Plaintiff and the Class and
26 whether Defendants failed to compensate Plaintiff and the Class with one additional hour of
27 wages for each instance when a mandated meal period was not provided;

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1 v. Whether Defendants violated the California Labor Code by failing to
2 timely pay all wages due and owing upon separation of employment between Defendants and
3 Plaintiff and the Class, whether such separation was voluntary or involuntary;

4 vi. Whether Defendants violated the California Labor Code by failing to
5 provide Plaintiff and the Class with complete, accurate, itemized wage statements;

6 vii. Whether Defendants violated California Business & Professions Code §§
7 17200 *et seq.* due to the: failure to pay proper minimum and overtime wages; failure to provide
8 mandated paid rest breaks; failure to provide mandated meal periods; failure to reimburse
9 business expenses; and, failure to timely pay final wages;

10 viii. Whether Defendants violated § 17200 *et seq.* of the California Business
11 and Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, 204, 208,
12 210, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 227.3, 256, 510, 512, 1194, 1194.2, and 1197,
13 among possibly other sections inadvertently omitted, and the applicable IWC Wage Order, which
14 violations constitute false, fraudulent, unlawful, unfair and deceptive business practices; and

15 ix. Whether Plaintiff and the Class are entitled to equitable relief pursuant to
16 California Business & Professions Code §§ 17200 *et seq.*

17 31. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
18 claims of the Class. Plaintiff, like other members of the Class, were subjected to Defendants'
19 ongoing Labor Code and Wage Order violations including the failure to pay proper minimum
20 and overtime wages, failure to provide mandate paid rest breaks, failure to provide mandated
21 meal periods, failure to timely pay final wages, and failure to provide accurate itemized wage
22 statements.

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

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

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY REGULAR AND MINIMUM WAGES**

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

12 34. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
13 alleged herein.

14 35. Plaintiff and the Class were not exempt from the requirement to be paid at least
15 the applicable California minimum wage throughout the statutory period for each hour worked.

16 36. At all relevant times, Defendants failed to pay proper wages for all hours worked
17 due to Defendants' failure to compensate Plaintiff and members of the Class for all hours
18 worked.

19 37. As a result of Defendants' policies or practices described above, Plaintiff and the
20 Class were required to perform off-the-clock work that Defendants either knew or should have
21 known they were performing.

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

25 39. Plaintiff is informed and believes and thereon alleges that Defendants
26 intentionally, willfully, and improperly failed to pay wages to Plaintiff and members of the Class
27 for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

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44. Plaintiff, on behalf of herself and the Class seek recovery of all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

FAILURE TO PAY OVERTIME WAGES

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

1 in one workday shall be compensated at twice the regular rate of pay for an employee.

2 48. At all relevant times, as a result of Defendants' failure to properly record and
3 account for all hours worked (resulting in the failure to pay minimum wages discussed above),
4 Defendant also failed to pay proper overtime wages to Plaintiff and the Class for all hours
5 worked above 8 and/or 12 per day.

6 49. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
7 Order § 3(A) every pay period with respect to Plaintiff and the Class because Defendants failed
8 to pay Plaintiff and the Class for all hours worked, including overtime hours, and required
9 Plaintiff and the Class to work without being properly compensated for all overtime wages
10 earned.

11 50. Plaintiff is informed and believes and thereon alleges that Defendants
12 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Class for each
13 hour worked in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

14 51. Defendants' conduct was willful, as Defendants knew that Plaintiff and the Class
15 were entitled to be paid proper overtime wages throughout the statutory period, yet Defendants
16 chose not to pay them in accordance thereto.

17 52. At all material times, Defendants DOES 1 through 10 were and/or are Plaintiff
18 and the Class' employers or persons acting on behalf of Plaintiff and the Class' employer, within
19 the meaning of California Labor Code § 558, who violated or caused to be violated Labor Code §
20 204 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating
21 hours and days of work respectively.

22 53. During Plaintiff's and the Class' employment, Defendants failed to pay them all
23 wages to which they were entitled, thereby receiving an economic benefit.

24 54. As a result of Defendants' wrongful conduct, Plaintiff and the Class have been
25 damaged in amounts to be proven at trial.

26 55. Plaintiff, on behalf of herself and the Class, seeks recovery of all unpaid overtime
27 wages, penalties, interest, attorneys' fees and costs of suit, pursuant to Labor Code §§ 1194,
28 against Defendants in an amount to be proven at trial.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

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

56. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

57. Plaintiff and members of the Class are and/or were “non-exempt” employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

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

59. The IWC Wage Order § 12 states, in part, that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Employees shall receive a 10-minute rest period every four hours or major 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.

60. 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.

61. At all relevant times, Defendants failed to provide 10 minutes of net rest break time for every four hours of work, or major fraction thereof, as required by California law due to: (1) Defendants’ “per class” pay policy that did not separate compensate for rest breaks, (2) Defendants’ policy of not scheduling each rest break as part of each work shift, (3) Defendants’ policy that only permitted Plaintiff and the Class to take a rest break if and when such rest break could be accommodated by their workload, (4) Defendants’ practice of imposing so much work on Plaintiff and the Class that it made it unlikely that they would be able to take mandated breaks, and (5) no compliant formal written rest break policy that encouraged employees to take their rest breaks.

62. Furthermore, on occasions when Plaintiff and the Class worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

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

64. At all relevant times herein, Defendants failed to provide Plaintiff and the Class all mandated rest breaks and failed to pay wage premiums in lieu of mandated rest periods, thereby receiving an economic benefit.

65. By their failure to provide Plaintiff and the Class with rest breaks as required by California law, and failing to pay one hour of additional wages in lieu of each rest break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate of compensation for each workday that a paid rest break was not lawfully provided in an amount to be proven at time of trial.

66. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512, and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Class for unpaid wage premiums, penalties, costs, and interest.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

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

67. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

68. Plaintiff and members of the Class are and/or were "non-exempt" employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory meal periods.

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

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

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

11 72. At all relevant times, Plaintiff and the Class were denied 30-minute off-duty meal
12 periods, as mandated by California law, during their employment with Defendants. Defendants
13 scheduled the workload for Plaintiff and the Class in such a way that they were not provided
14 mandated meal periods until after the fifth or sixth hour of work. However, Plaintiff and the
15 Class were typically unable to take an off-duty meal period whatsoever due to the way
16 Defendants scheduled their workload.

17 73. Plaintiff further alleges that she and the Class often worked in excess of ten hours
18 in a shift, but Defendants' policy did not provide for a second meal period on such occasions.

19 74. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
20 Order every pay period with respect to Plaintiff and the Class because Plaintiff and the Class
21 were not provided with all compliant meal periods and Defendants failed to pay Plaintiff and the
22 Class one additional hour of compensation in lieu thereof.

23 75. At all relevant times herein, Defendants failed to provide Plaintiff and the Class
24 all mandated meal periods and failed to pay wage premiums in lieu of mandated meal or rest
25 periods, thereby receiving an economic benefit.

26 76. On information and belief, Plaintiff and the Class did not voluntarily or willfully
27 waive the mandated meal periods. Any expressed or implied waivers obtained from Plaintiff and
28 the Class were not willfully obtained, were not voluntarily agreed to, were a condition of

1 employment, or were a part of a contract of an unlawful adhesion. Defendants did not permit or
2 authorize Plaintiff and the Class to take meal periods in accordance with California law.

3 77. By their failure to provide Plaintiff and the Class with meal periods as required by
4 California law, and failing to pay one hour of additional wages in lieu of each meal period not
5 provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order §
6 11. Accordingly, Defendants are liable for one hour of additional wages at the employee's
7 regular rate of compensation for each workday that a meal period was not lawfully provided in
8 an amount to be proven at time of trial.

9 78. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
10 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Class for
11 unpaid wage premiums, penalties, costs, and interest.

12 **FIFTH CAUSE OF ACTION**

13 **FAILURE TO TIMELY PAY FINAL WAGES**

14 (Labor Code § 201 – 203)

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

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

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

23 82. At all relevant times here, Defendants employed a policy and practice whereby
24 Plaintiff and the Class were not paid all wages due and owing upon separation of employment
25 within the time required by Labor Code §§ 201 and 202.

26 83. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
27 wages due and owing to Plaintiff and the Class upon separation of employment, including, but
28 not limited to minimum wages, overtime wages, wage premiums, among others.

1 84. Plaintiff alleges that, at all times material to this action, Defendants had a planned
2 pattern and practice of failing to timely pay to Plaintiff and formerly-employed members of the
3 Class all wages due and owing upon separation of employment as required by Labor Code §§
4 201 and 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and
5 formerly-employed members of the Class the above-described waiting time penalty, all in an
6 amount to be shown according to proof at trial and within the jurisdiction of this Court.

7 **SIXTH CAUSE OF ACTION**

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

9 (Labor Code § 226)

10 85. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
11 alleged herein.

12 86. Plaintiff and the Class are and/or were employees of Defendants who did not
13 receive proper protections and benefits of the laws governing the provision of accurate itemized
14 wage statements.

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

20 88. At all relevant times, Defendants failed to provide the requisite wage statements,
21 or when they did, the wage statements that Defendant provided to Plaintiff and the Class failed to
22 accurately state all applicable hourly rates, gross wages earned, net wages earned, all deductions,
23 and total hours worked.

24 89. Furthermore, as a result of the violations alleged herein, the wage statements that
25 Defendant provided to Plaintiff and the Class failed to accurately state the gross wages earned,
26 all deductions, and the net wages earned.

27 90. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
28 to Plaintiff and the Class because Defendants failed to provide complete and accurate wage

statements to Plaintiff and the Class that complied with the requirements of Labor Code § 226(a).

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

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

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

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

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SEVENTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

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

95. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

96. 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.

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

98. As alleged herein, Defendants engaged in conduct that violated California’s wage and hour laws, including failure to pay minimum wages, failure to pay overtime wages, failure to provide mandated meal periods and rest breaks, and failure to timely pay final wages, all in order to decrease their costs and increase their profits.

99. At all times relevant herein, Defendants did not pay Plaintiff and the Class wages and monies and other financial obligations to which they were entitled.

100. As a result of Defendants’ failure to comply with the Labor Code and IWC Orders, the Class, 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.*

101. 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.

102. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, the Class, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure §

1021.5.

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

104. Plaintiff, individually, and on behalf of the Class, has no plain, speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on behalf of the Class, has suffered and will continue to suffer irreparable harm unless Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

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

106. Plaintiff, individually, and on behalf of the Class, is further entitled to and do seek a declaration that the above described business practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

107. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and the Class are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Represented Employees; an award

1 of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable
2 laws; and an award of costs.

3 **VI. LABOR CODE PRIVATE ATTORNEY GENERAL ACT CAUSES OF ACTION**

4 **(Labor Code § 2698 – 2699.5)**

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

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

15 110. Pursuant to Labor Code § 2699.3(a), on May 6, 2020, Plaintiff gave written notice
16 by online filing to the Labor and Workforce Development Agency ("LWDA") and by certified
17 mail to Defendants KIPS School of Gymnastics, Inc. and Dennis Mailly of the specific
18 provisions of the Labor Code alleged to have been violated, including the facts and theories to
19 support the alleged violations. More than sixty-five (65) days have elapsed since the date
20 Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming
21 jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative
22 prerequisites to suit under the PAGA.

23 **EIGHTH CAUSE OF ACTION**

24 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGE**

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

26 111. Plaintiff realleges and incorporates the paragraphs 1-21 and 108-110 of the First
27 Amended Complaint as if fully alleged herein.

28 ///

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

4 113. At all relevant times herein, Plaintiff and the Aggrieved Employees were paid per
5 class that they taught but were not paid for 15-minute intervals between classes where they
6 performed additional duties for the company such as timekeeping and attending meetings with
7 supervisors related to class scheduling. As a result, Plaintiff and the Represented Employees
8 were deprived of minimum wages for each hour worked.

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

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

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

18 **NINTH CAUSE OF ACTION**

19 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

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

21 117. Plaintiff realleges and incorporates the paragraphs 1-21 and 108-116 of the First
22 Amended Complaint as if fully alleged herein

23 118. Plaintiff and the Aggrieved Employees were "non-exempt" employees of
24 Defendants who did not receive proper protections and benefits of the laws governing payment
25 of overtime wages.

26 119. Labor Code § 204 requires that the employer timely pay all overtime wages to its
27 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
28 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in

any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12) in one workday shall be compensated at twice the regular rate of pay for an employee.

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

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

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

123. 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 PROVIDE REST BREAKS

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

124. Plaintiff realleges and incorporates the paragraphs 1-21 and 108-124 of the First Amended Complaint as if fully alleged herein.

125. 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 rest breaks.

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

Commission.

127. The IWC Wage Order § 12 states, in part, that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Employees shall receive a 10-minute rest period every four hours or major 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.

128. 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.

129. 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. Defendants' policy and practice of failing to pay for downtime intervals between classes meant that all rest breaks were unpaid. As a result, Plaintiff and the Aggrieved Employees were not provided net rest periods of at least 10 minutes for each 4-hour work period, or major fraction thereof.

130. 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.

131. 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.

ELEVENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

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

132. Plaintiff realleges and incorporates the paragraphs 1-21 and 108-132 of the First Amended Complaint as if fully alleged herein.

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

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

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

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

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

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

22 139. On information and belief, Plaintiff and the Aggrieved Employees did not
23 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
24 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
25 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
26 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
27 Employees to take meal periods in accordance with California law.

28 ///

140. 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 meal and Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu thereof.

141. 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 the PAGA.

TWELFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES

(Labor Code §§ 201 – 204)

142. Plaintiff realleges and incorporates the paragraphs 1-21 and 108-142 of the First Amended Complaint as if fully alleged herein.

143. 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 the timing and payment of wages.

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

145. 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.

146. 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.

147. At all relevant times, Defendants engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Aggrieved Employees upon separation of employment, including, but not limited to minimum and overtime wages, wage premiums, among others.

1 148. 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.”

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

13 150. 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 Aggrieved Employees all wages
15 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

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

19 **THIRTEENTH CAUSE OF ACTION**

20 **PAGA ASSESSMENT FOR**

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

22 (Labor Code § 226)

23 152. Plaintiff realleges and incorporates the paragraphs 1-21 and 108-152 of the First
24 Amended Complaint as if fully alleged herein.

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

28 ///

1 154. 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.

6 155. 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.

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

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

26 3. That the First through Seventh 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 Seventh 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 §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, and 1197, 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: July 31, 2020

FERNANDEZ & LAUBY LLP



BY: _____

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