

Brian J. Mankin, Esq. [CSB No. 216228]
Peter J. Carlson, Esq. [CSB No. 295611]
FERNANDEZ & LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444
Fax: (951) 320-1445
bjm@fernandezlauby.com
pjc@fernandezlauby.com

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

JOANNE SOWLE, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

SHERPAUL CORPORATION, a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: RIC2002410
[Assigned to Hon. Sunshine Sykes, Dept. 6]

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

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

PAGA CLAIMS

- (10) Failure to Pay Minimum Wages;
- (11) Failure to Pay Overtime Wages;
- (12) Failure to Provide Meal Periods;
- (13) Failure to Provide Rest Breaks;
- (14) Failure to Reimburse Expenses;
- (15) Unlawful Deduction of Wages;
- (16) Failure to Timely Pay Wages (§ 204);
- (17) Failure to Timely Pay Final Wages;
- (18) Failure to Provide Accurate Itemized Wage Statements;

Complaint Filed: June 1, 2020

1 Plaintiff Joanne Sowle (“Plaintiff”), on behalf of herself, on a representative basis, and on
2 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 employer, Defendants Sherpaul
5 Corporation and DOES 1 through 20, (collectively, the “Defendants”) on behalf of all current
6 and former non-exempt employees employed by Defendants in California (hereinafter, the
7 “Class” or “Represented Employees”), for California Labor Code violations stemming from
8 Defendants’ failure to pay minimum wages, failure to pay overtime wages, failure to provide
9 compliant meal periods and rest breaks, failure to reimburse business expenses, unlawful
10 deduction of wages, failure to timely pay final wages, and failure to provide accurate itemized
11 wage statements.

12 2. Plaintiff was employed by Defendants as a non-exempt employee from
13 approximately 2007 through April 2020.

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

17 4. At all relevant times, Plaintiff and the Represented Employees were not provided
18 proper minimum and overtime wages due to Defendants’ failure to accurately record and
19 compensate for all hours worked, including travel time. For instance, at all relevant times,
20 Defendants utilized a rounding policy and practice that routinely undercompensated Plaintiff and
21 resulted in a net benefit to Defendants and a net loss for Plaintiff. As a result of Defendants’
22 rounding policy and practice, Plaintiff and the Represented Employees were not fully
23 compensated for all minimum, regular, and overtime wages.

24 5. Furthermore, Plaintiff and the Represented Employees were frequently required to
25 perform routine and recurring tasks for Defendants at the beginning of the shift (before being
26 allowed to clock in) and at the end of the shift (after being allowed to clock out), without
27 compensation.
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1 6. Additionally, Defendants paid Plaintiff and the Represented Employees on an
2 hourly basis but used multiple rates within the same workweek (e.g., Defendants paid weekend
3 work at a higher hourly rate of pay). However, during workweeks where the Represented
4 Employees earned more than one rate of pay, Defendants failed to pay proper overtime because
5 the overtime was based solely on 1.5 times the base rate of pay – violating the well-established
6 rule that overtime must always be paid at time and one-half the regular rate of pay. As a result of
7 these violations and others, Defendants failed to pay proper minimum and overtime wages to
8 Plaintiff and the Represented Employees.

9 7. Furthermore, at all relevant times, Plaintiff and the Represented Employees were
10 denied 30-minute off-duty meal periods, as mandated by California law, during their
11 employment with Defendants. As a result of Defendants’ policies and practices, Plaintiff and the
12 Represented Employees were subjected to meal period violations when they were: (1) unable to
13 take meal periods due to workload, (2) forced to take on-duty meal period while under the
14 control of Defendants, (3) forced to take meal periods, if such a meal occurred, after the 5th hour
15 of work, and (4) not provided a mandated second meal period for shifts in excess of 10 hours

16 8. Defendants also failed to provide Plaintiff and the Represented Employees with
17 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
18 mandated by California law. Defendants did not schedule rest breaks and the Represented
19 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
20 overwhelmed by their hectic workload. Additionally, Plaintiff and the Represented Employees
21 were not permitted to leave the premises for rest breaks, in violation of California law.
22 Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of
23 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

24 9. Moreover, Defendants required Plaintiff and the Represented Employees to incur
25 necessary business-related expenses and costs without reimbursement, including, but not limited
26 to, acquiring and maintaining a smart phone and related monthly data plan to communicate with
27 Defendants via phone and text message. And Defendants also violated Labor Code § 221
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1 regarding the unlawful deduction of wages when they required Plaintiff and the Represented
2 Employees to purchase supplies and personal protective equipment directly from Defendants.

3 10. Plaintiff also alleges that she and the Represented Employees were not paid all
4 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
5 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
6 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
7 Employees at the time their employment ended with Defendants, including, but not limited to
8 minimum, regular, and overtime wages, wage premiums, among others.

9 11. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
10 statements that fully complied with the requirements of Labor Code § 226(a).

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

15 13. At all material times, Defendants and DOES 1 through 20 were and/or are
16 Represented Employees' employers or persons acting on behalf of Represented Employees'
17 employer, within the meaning of California Labor Code § 558, who violated or caused to be
18 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
19 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
20 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
21 California law.

22 14. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
23 monetary relief against Defendants and each of them, on behalf of themselves and the
24 Represented Employees to recover, among other things, unpaid wages and benefits, interest,
25 attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201,
26 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 256, 510, 512, 1194, 1194.2, and
27 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the right to
28 name additional representatives throughout the State of California.

1 **II. JURISDICTION**

2 15. 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.

4 **III. VENUE**

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

10 **IV. PARTIES**

11 **Plaintiff**

12 17. Plaintiff and Class Representative Joanne Sowle was employed by Defendants as
13 a non-exempt employee from approximately 2007 through April 2020 and performed work for
14 Defendants in Riverside County.

15 **Defendants**

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

20 19. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
21 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
22 inclusive, but on information and belief alleges that those Defendants are legally responsible for
23 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
24 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
25 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
26 Defendants when ascertained.

27 20. Plaintiff is informed and believes and thereon alleges that she and the Represented
28 Employees worked under the joint direction and control of Defendants and that Defendants, and

1 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
2 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
3 each Defendant are legally attributable to the other Defendants. On information and belief, a
4 unity of interest and ownership between each Defendant exists such that all Defendants acted as
5 a single employer of Plaintiff and other Represented Employees.

6 21. Furthermore, Plaintiff is informed and believes and thereon alleges that
7 Defendants, and each of them, are an integrated enterprise and should be treated as a single
8 employer because these entities share an interrelation of operations, with common human
9 resources and personnel policies and shared common offices and facilities. Additionally,
10 Defendants also have a shared website, common management, a centralized control of labor
11 operations, and common ownership or financial control.

12 22. Plaintiff is informed and believes and thereon alleges that, in conducting
13 themselves in the manner described herein, Defendants, and each of them, were acting in active
14 concert with one another such that the acts of each were and are fully attributable to the others in
15 all material respects. Plaintiff is further informed and believes that at all relevant times
16 Defendants and each of them are now, and at all material times herein mentioned were, the
17 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
18 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
19 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
20 their remaining co-Defendants.

21 23. Plaintiff is further informed and believes that at all relevant times, Defendants
22 have been inadequately capitalized to conduct business, have failed to follow appropriate
23 corporate formalities, and have simply been a shell and instrumentality through which
24 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
25 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
26 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
27 separate existence of these corporate entities would permit abuse of the corporate privilege,
28 thereby sanctioning fraud and promoting injustice.

1 **V. CLASS ACTION ALLEGATIONS**

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

4 25. Plaintiff brings this action on behalf of herself and all others similarly situated as
5 a class action, pursuant to Code of Civil Procedure § 382.

6 26. The relevant time period for this class action is defined as the time period
7 beginning four years prior to the filing of this action until class certification (the “Relevant Time
8 Period”).

9 27. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
10 represent is defined as follows:

11 All current and former non-exempt employees employed by
12 Defendants in the State of California during the Relevant
13 Time Period.

14 28. Plaintiff also seeks to represent the following subclasses:

15 **Meal Break Subclass**

16 All nonexempt Represented Employees who worked a shift
17 in excess of 5 hours during the Relevant Time Period.

18 **Rest Break Subclass**

19 All nonexempt Represented Employees who worked a shift
20 of at least 3.5 hours during the Relevant Time Period.

21 **Unreimbursed Expense Subclass**

22 All Represented Employees who were required to incur
23 expenses to discharge their duties for Defendants without
24 reimbursement during the Relevant Time Period.

25 **Unlawful Deduction Subclass**

26 All Represented Employees who were required to purchase
27 supplies and/or equipment directly from Defendants during
28 the Relevant Time Period.

Waiting Time Penalties Subclass

All Represented Employees who separated from their employment with Defendants during the period three years before the filing of this action and ending when final judgment is entered.

Wage Statement Penalties Subclass

All Represented Employees during the period one year before the filing of this action and ending when final judgment is entered.

29. Plaintiff reserves the right to amend or modify the class and subclass descriptions with greater specificity or further division into subclasses or limitation to particular issues as appropriate.

30. Plaintiff, as Class Representative, is a member of the class and subclasses that she seeks to represent.

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

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

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

i. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all hours worked;

1 ii. Whether Defendants violated the California Labor Code and applicable
2 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented
3 Employees for hours above 8 and/or 12 per day and/or 40 per week;

4 iii. Whether Defendants violated the California Labor Code and applicable
5 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Meal Break
6 Subclass and whether Defendants failed to compensate Plaintiff and the Meal Break Subclass
7 with one additional hour of wages at the regular rate of pay for each instance when a compliant
8 meal period was not provided;

9 iv. Whether Defendants violated the California Labor Code and applicable
10 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
11 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
12 with one additional hour of wages at the regular rate of pay for each instance when a paid rest
13 break was not provided;

14 v. Whether Defendants violated the California Labor Code and applicable
15 IWC Wage Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for
16 business expenses incurred while discharging their duties or in obedience to the directions of
17 their employer;

18 vi. Whether Defendants violated the California Labor Code and applicable
19 IWC Wage Order by requiring Plaintiff and the Unlawful Deduction Subclass to purchase
20 supplies and/or equipment directly from Defendants;

21 vii. Whether Defendants violated the California Labor Code by failing to
22 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
23 the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

24 viii. Whether Defendants violated the California Labor Code by failing to
25 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
26 wage statements;

27 ix. Whether Defendants violated California Business & Professions Code §§
28 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest

breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and failure to timely pay final wages; and

x. Whether Plaintiff and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

34. **Typicality:** Plaintiff's claims, as the Class Representatives, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, failure to provide mandated meal periods, failure to provide mandated rest breaks, failure to pay reimburse business expenses, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

35. **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 Representatives' counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

36. **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.

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FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

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

Plaintiff and the Represented Employees Against All Defendants

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

38. 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.

39. At all relevant times, Plaintiff and the Represented Employees were not provided proper minimum wages due to Defendants' failure to accurately record and compensate for all hours worked. For instance, at all relevant times, Defendants utilized a rounding policy and practice that routinely undercompensated Plaintiff and resulted in a net benefit to Defendants and a net loss for Plaintiff. As a result of Defendants' rounding policy and practice, Plaintiff and the Represented Employees were not fully compensated for all minimum and regular wages.

40. Furthermore, Plaintiff and the Represented Employees were frequently required to perform routine and recurring tasks for Defendants at the beginning of the shift (before being allowed to clock in) and at the end of the shift (after being allowed to clock out), without compensation.

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

42. 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).

43. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay wages to P Plaintiff and the Represented Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

1 44. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
2 Represented Employees were entitled to be paid wages throughout the statutory period for each
3 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
4 accordance thereto.

5 45. At all material times, Defendants DOES 1 through 10 were and/or are Plaintiff's
6 and the Represented Employees' employers or persons acting on behalf of Plaintiff and the
7 Represented Employees' employer, within the meaning of California Labor Code § 558, who
8 violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2,
9 Chapter 1 of the California Labor Code regulating hours and days of work respectively.

10 46. During employment of Plaintiff and the Represented Employees, Defendants
11 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

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

14 48. Plaintiff, on behalf of herself and the Represented Employees, seeks recovery of
15 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of
16 suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven
17 at trial.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME WAGES**

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

21 *Plaintiff and the Represented Employees Against All Defendants*

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

24 50. Plaintiff and the Represented Employees were employees of Defendants who did
25 not receive proper protections and benefits of the laws governing payment of overtime wages.

26 51. 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.

52. At all relevant times, Plaintiff and the Represented Employees were not provided proper minimum and overtime wages due to Defendants' failure to accurately record and compensate for all hours worked, including travel time. For instance, at all relevant times, Defendants utilized a rounding policy and practice that routinely undercompensated Plaintiff and resulted in a net benefit to Defendants and a net loss for Plaintiff. As a result of Defendants' rounding policy and practice, Plaintiff and the Represented Employees were not fully compensated for all overtime wages.

53. Furthermore, Plaintiff and the Represented Employees were frequently required to perform routine and recurring tasks for Defendants at the beginning of the shift (before being allowed to clock in) and at the end of the shift (after being allowed to clock out), without compensation.

54. Additionally, Defendants paid Plaintiff and the Represented Employees on an hourly basis but used multiple rates within the same workweek (e.g., Defendants paid weekend work at a higher hourly rate of pay). However, during workweeks where the Represented Employees earned more than one rate of pay, Defendants failed to pay proper overtime because the overtime was based solely on 1.5 times the base rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay.

55. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper overtime compensation.

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

58. At all material times, Defendants DOES 1 through 10 were and/or are the employer of Plaintiff and the Represented Employees or were persons acting on behalf of said employer(s), within the meaning of California Labor Code § 558, who violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and days of work respectively.

9 59. During the employment of Plaintiff and the Represented Employees, Defendants
10 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

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

61. Plaintiff, on behalf of herself and the Represented Employees, seeks recovery of
all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against
Defendants in an amount to be proven at trial.

FAILURE TO PROVIDE MEAL PERIODS

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

Plaintiff and the Meal Break Subclass against All Defendants

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

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

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

65. 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

1 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
2 except that if the total work period per day of the employee is no more than six hours, the meal
3 period may be waived by mutual consent of both the employer and the employee. Employers
4 may not employ an employee for a work period more than 10 hours per day without providing
5 the employee with a second meal period of not less than 30 minutes.

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

9 67. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
10 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
11 practices, Plaintiff and the Represented Employees were subjected to meal period violations
12 when they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal
13 period while under the control of Defendants, (3) forced to take meal periods, if such a meal
14 occurred, after the 5th hour of work, and (4) not provided a mandated second meal period for
15 shifts in excess of 10 hours.

16 68. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
17 Order every pay period with respect to Plaintiff and the Meal Break Subclass because Plaintiff
18 and the Meal Break Subclass were not provided with all mandatory meal periods and Defendants
19 failed to pay Plaintiff and the Meal Break Subclass one additional hour of compensation at the
20 regular rate of pay in lieu thereof.

21 69. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
22 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated
23 meal or rest periods, thereby receiving an economic benefit.

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

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

9 72. 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 Meal
11 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REST BREAKS**

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

15 *Plaintiff and the Rest Break Subclass against All Defendants*

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

18 74. Plaintiff and the Rest Break Subclass are and/or were "non-exempt" employees of
19 Defendants who did not receive proper protections and benefits of the laws governing mandatory
20 rest breaks.

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

24 76. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
25 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
26 each work period. Employees shall receive a 10-minute rest period every four hours or major
27 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
28 hours worked, for which there shall be no deduction from wages.

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

4 78. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
5 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
6 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
7 Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due
8 to being overwhelmed by their hectic workload. Additionally, Plaintiff and the Rest Break
9 Subclass were often not permitted to leave the premises for rest breaks, in violation of California
10 law. Furthermore, on occasions when Plaintiff and the Rest Break Subclass worked in excess of
11 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

12 79. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
13 Order every pay period with respect to Plaintiff and the Rest Break Subclass because Plaintiff
14 and the Rest Break Subclass were not provided with all mandatory rest periods and Defendants
15 failed to pay Plaintiff and the Rest Break Subclass one additional hour of compensation in lieu
16 thereof at the regular rate of pay.

17 80. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest
18 Break Subclass all mandated rest breaks and failed to pay proper wage premiums in lieu of
19 mandated rest periods, thereby receiving an economic benefit.

20 81. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
21 as required by California law, and failing to pay one hour of additional wages at the regular rate
22 of pay in lieu of each rest break not provided, Defendants willfully violated Labor Code §§ 226.7
23 and 512, and IWC Wage Order § 12. Accordingly, Defendants are liable for one hour of
24 additional wages at the employee's regular rate of compensation for each work day that a meal
25 period and/or paid rest break was not lawfully provided in an amount to be proven at time of
26 trial.
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1 82. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
2 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest
3 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 (Labor Code § 2802)

7 *Plaintiff and the Unreimbursed Expense Class against All Defendants*

8 83. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

10 84. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of
11 Defendants who did not receive proper protections and benefits of the laws governing
12 reimbursement of business expenses.

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

16 86. At all relevant times herein mentioned, as a condition of employment, Defendants
17 required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related
18 expenses and costs without reimbursement, including, but not limited to, acquiring and
19 maintaining a smart phone and related monthly data plan to communicate with Defendants via
20 phone and text message.

21 87. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
22 failed to reimburse Plaintiff and the Unreimbursed Expense Subclass for expenses incurred as a
23 direct consequence of employment with Defendants and/or under the direction of Defendants.

24 88. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
25 Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to
26 Defendants, thereby receiving an economic benefit.

27 89. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
28 Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to

1 suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in
2 seeking to compel Defendants to fully perform their obligations under the law, all in an amount
3 to be proved at time of trial.

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

10 91. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
11 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
12 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
13 section." Therefore, Plaintiff and the Unreimbursed Expense Subclass seek to recover the
14 unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney's fees
15 necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and
16 attorney's fees will be in an amount to be proved at the time of trial.

17 **SIXTH CAUSE OF ACTION**

18 **UNLAWFUL DEDUCTION OF WAGES**

19 (Labor Code § 221)

20 *Plaintiff and the Unlawful Deduction Subclass against All Defendants*

21 92. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
22 as if fully alleged herein.

23 93. California Labor Code § 221 states that "[i]t shall be unlawful for any employer to
24 collect or receive from an employee any part of wages theretofore paid by said employer to said
25 employee." Labor Code § 221 reflects "'California's strong public policy favoring the protection
26 of employees' wages.'" *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166,
27 quoting *Harris v. Investor's Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40–41.
28

1 94. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221
2 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor
3 Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski*, supra at 1166.
4 Also, under Labor Code §§ 219 and 221, an employer may not “require its employees to consent
5 to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34
6 Cal.App.4th 1109, 1124.

7 95. As previously alleged herein, Defendant engaged in the unlawful deduction of
8 wages when it required Plaintiff and the Represented Employees to purchase supplies and/or
9 equipment directly from Defendants, as this unlawfully deducted amounts from the wages of
10 Plaintiff and the Represented Employee,

11 96. As a result of Defendants’ violations of Labor Code § 221, Plaintiff and the
12 Represented Employees seek to recover the total amount of wages unlawfully deducted, as well
13 as penalties, interest, attorneys’ fees, and costs as permitted under California law.

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO TIMELY PAY FINAL WAGES**

16 (Labor Code §§ 201 – 203)

17 *Plaintiff and the Waiting Time Penalties Subclass against All Defendants*

18 97. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

20 98. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
21 Defendants who did not receive proper protections and benefits of the laws governing the timing
22 and payment of wages.

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

25 100. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
26 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
27 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.
28

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

4 102. At all relevant times, Defendants employed a policy and practice whereby
5 Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
6 separation of employment within the time required by Labor Code §§ 201 and 202.

7 103. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
8 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
9 employment, including, but not limited to, minimum, regular, and overtime wages, as well as
10 meal and rest period premiums.

11 104. Plaintiff alleges that, at all times material to this action, Defendants had a planned
12 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
13 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
14 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting
15 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
16 according to proof at trial and within the jurisdiction of this Court.

17 **EIGHTH CAUSE OF ACTION**

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

19 (Labor Code § 226)

20 *Plaintiff and the Wage Statement Penalties Subclass against All Defendants*

21 105. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
22 as if fully alleged herein.

23 106. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
24 Defendants who did not receive proper protections and benefits of the laws governing the
25 provision of accurate itemized wage statements.

26 107. Labor Code § 226(a) requires an employer to provide its employees with itemized
27 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
28 inclusive dates of the pay period, the employee's name and the last four digits of his or her

1 Social Security number (or employee identification number), the name and address of the legal
2 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.

4 108. Defendants violates Labor Code § 226(a) every pay period with respect to
5 Plaintiff and the Wage Statement Penalties Subclass because the wage statements that
6 Defendants issued to Plaintiff and the Wage Statement Penalties Subclass failed to accurately
7 state gross wages earned, total hours worked, all deductions, net wages earned, the name and
8 address of the legal entity that is the employer, and all applicable hourly rates in effect during the
9 pay period and the corresponding number of hours at each hourly rate by the employee.

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

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

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

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

10 **NINTH CAUSE OF ACTION**

11 **UNFAIR AND UNLAWFUL COMPETITION**

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

13 *Plaintiff and the Represented Employees against All Defendants*

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

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

20 115. Defendants, and each of them, are "persons" as defined under Business &
21 Professions Code § 17021.

22 116. As alleged herein, Defendants engaged in conduct that violated California's wage
23 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
24 mandated meal periods and rest breaks, failure to reimburse business expenses, the unlawful
25 deduction of wages, and failure to timely pay final wages, all in order to decrease their costs and
26 increase their profits.

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

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

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

9 120. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
10 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
11 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
12 of Civil Procedure § 1021.5.

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

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

26 123. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
27 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
28 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the

1 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
2 Represented Employees are not obligated to establish individual knowledge of the unfair
3 practices of Defendants in order to recover restitution.

4 124. Plaintiff, individually, and on behalf of the Represented Employees, is further
5 entitled to and does seek a declaration that the above described business practices are unfair,
6 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
7 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
8 the future.

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

15 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
16 **(Cal. Lab. Code. §§ 2698 – 2699.5)**

17 126. Plaintiff is an “aggrieved employee” under the PAGA as she was employed by
18 Defendants during the applicable statutory period and suffered one or more of the Labor Code
19 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
20 action filed on behalf of herself and all other similarly situated current and former aggrieved
21 employees in California against whom one or more of the alleged violations was committed
22 (hereinafter the “Aggrieved Employees”).

23 127. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
24 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
25 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
26 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
27 does she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.
28

1 128. Pursuant to Labor Code § 2699.3(a), on May 1, 2020, Plaintiff gave written notice
2 by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified
3 mail to Defendants of the specific provisions of the Labor Code alleged to have been violated,
4 including the facts and theories to support the alleged violations. More than sixty-five (65) days
5 have elapsed since the date Plaintiff provided the written notice of the claims alleged herein
6 without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has
7 fully satisfied the administrative prerequisites to suit under the PAGA.

8 **TENTH CAUSE OF ACTION**

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

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

11 *Plaintiff and the Aggrieved Employees against All Defendants*

12 129. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
13 as if fully alleged herein.

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

17 131. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
18 proper minimum wages due to Defendants’ failure to accurately record and compensate for all
19 hours worked. For instance, at all relevant times, Defendants utilized a rounding policy and
20 practice that routinely undercompensated Plaintiff and resulted in a net benefit to Defendants and
21 a net loss for Plaintiff. As a result of Defendants’ rounding policy and practice, Plaintiff and the
22 Aggrieved Employees were not fully compensated for all minimum and regular wages.

23 132. Furthermore, Plaintiff and the Aggrieved Employees were frequently required to
24 perform routine and recurring tasks for Defendants at the beginning of the shift (before being
25 allowed to clock in) and at the end of the shift (after being allowed to clock out), without
26 compensation.
27
28

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

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

7 135. Plaintiff is informed and believes and thereon alleges that Defendants
8 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
9 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

10 136. 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 PAGA.

13 **ELEVENTH CAUSE OF ACTION**

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

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

16 *Plaintiff and the Aggrieved Employees against All Defendants*

17 137. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
18 as if fully alleged herein.

19 138. Plaintiff and the Aggrieved Employees were "nonexempt" employees of
20 Defendants who did not receive proper protections and benefits of the laws governing payment
21 of overtime wages.

22 139. Labor Code § 204 requires that the employer timely pay all overtime wages to its
23 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
24 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
25 any one workweek shall be compensated at the rate of no less than one and one-half times the
26 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
27 in one workday shall be compensated at twice the regular rate of pay for an employee.
28

1 140. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
2 proper minimum and overtime wages due to Defendants' failure to accurately record and
3 compensate for all hours worked, including travel time. For instance, at all relevant times,
4 Defendants utilized a rounding policy and practice that routinely undercompensated Plaintiff and
5 resulted in a net benefit to Defendants and a net loss for Plaintiff. As a result of Defendants'
6 rounding policy and practice, Plaintiff and the Aggrieved Employees were not fully compensated
7 for all overtime wages.

8 141. Furthermore, Plaintiff and the Aggrieved Employees were frequently required to
9 perform routine and recurring tasks for Defendants at the beginning of the shift (before being
10 allowed to clock in) and at the end of the shift (after being allowed to clock out), without
11 compensation.

12 142. Additionally, Defendants paid Plaintiff and the Aggrieved Employees on an
13 hourly basis but used multiple rates within the same workweek (e.g., Defendants paid weekend
14 work at a higher hourly rate of pay). However, during workweeks where the Aggrieved
15 Employees earned more than one rate of pay, Defendants failed to pay proper overtime because
16 the overtime was based solely on 1.5 times the base rate of pay – violating the well-established
17 rule that overtime must always be paid at time and one-half the regular rate of pay.

18 143. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
19 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because
20 Defendants failed to pay Plaintiff and the Aggrieved Employees for all overtime hours worked,
21 and required Plaintiff and the Aggrieved Employees to work without being properly
22 compensated for all overtime wages earned.

23 144. Plaintiff is informed and believes and thereon alleges that Defendants
24 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
25 Employees for each hour worked in violation of Labor Code §§ 204, 221-223, 510, 1194 and
26 1197.
27
28

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

4 **TWELFTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

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

7 *Plaintiff and the Aggrieved Employees against All Defendants*

8 146. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

10 147. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws governing mandatory meal
12 periods.

13 148. Labor Code § 226.7 requires employers, including Defendants, to provide
14 employees with meal periods as mandated by the Industrial Welfare Commission.

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

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

25 151. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
26 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
27 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
28 they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal

1 period while under the control of Defendants, (3) forced to take meal periods, if such a meal
2 occurred, after the 5th hour of work, and (4) not provided a mandated second meal period for
3 shifts in excess of 10 hours.

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

9 153. On information and belief, Plaintiff and the Aggrieved Employees did not
10 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
11 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
12 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
13 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
14 Employees to take meal periods in accordance with California law.

15 154. 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 **THIRTEENTH CAUSE OF ACTION**

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

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

21 *Plaintiff and the Aggrieved Employees against All Defendants*

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

24 156. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
25 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

26 157. Labor Code § 226.7 requires employers, including Defendants, to provide rest
27 breaks to its employees as mandated by Order of the Industrial Welfare Commission.
28

1 158. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
2 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
3 each work period. Employees shall receive a 10-minute rest period every four hours or major
4 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
5 hours worked, for which there shall be no deduction from wages.

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

9 160. At all relevant times, Defendants also failed to provide Plaintiff and the R
10 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
11 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
12 Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks
13 due to being overwhelmed by their hectic workload. Additionally, Plaintiff and the Aggrieved
14 Employees were often not permitted to leave the premises for rest breaks, in violation of
15 California law. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked
16 in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated
17 rest break.

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

22 162. 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.
25

26 ///

27 ///

28 ///

FOURTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

Plaintiff and the Aggrieved Employees against All Defendants

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

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

165. 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.

166. At all relevant times herein mentioned, as a condition of employment, Defendants required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with Defendants via phone and text message.

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

FIFTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR UNLAWFUL DEDUCTION OF WAGES

(Labor Code § 221)

Plaintiff and the Aggrieved Employees against All Defendants

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

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

employee.” Labor Code § 221 reflects “‘California's strong public policy favoring the protection of employees' wages.’” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166, quoting *Harris v. Investor's Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40–41.

170. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski*, supra at 1166. Also, under Labor Code §§ 219 and 221, an employer may not “require its employees to consent to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1124.

171. As previously alleged herein, Defendant engaged in the unlawful deduction of wages when it required Plaintiff and the Aggrieved Employees to purchase supplies and/or equipment directly from Defendants, as this unlawfully deducted amounts from the wages of Plaintiff and the Aggrieved Employees.

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

SIXTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

Plaintiff and the Aggrieved Employees against All Defendants

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

174. Plaintiff and the Aggrieved Employees are and/or were “nonexempt” employees of Defendants who did not receive proper protections and benefits of the laws regarding the timing of payment of wages each period.

175. Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that

1 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
2 the following month.

3 176. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
4 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
5 the wages are paid not more than seven calendar days following the close of the payroll period.”

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

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

15 **SEVENTEENTH CAUSE OF ACTION**

16 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

17 (Labor Code §§ 201 – 203 and 256)

18 *Plaintiff and the Aggrieved Employees against All Defendants*

19 179. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
20 as if fully alleged herein.

21 180. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
22 of Defendants who did not receive proper protections and benefits of the laws governing the
23 timing and payment of final wages.

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

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

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

4 184. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
5 Employees with all wages due and owing upon separation of employment, including, but not
6 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
7 within the time specified by Labor Code §§ 201 – 203.

8 185. Plaintiff alleges that, at all times material to this action, Defendants had a planned
9 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
10 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

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

14 **EIGHTEENTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR**

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

17 (Labor Code § 226)

18 *Plaintiff and the Aggrieved Employees against All Defendants*

19 187. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
20 as if fully alleged herein.

21 188. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
22 who did not receive proper protections and benefits of the laws governing the provision of
23 accurate itemized wage statements.

24 189. Labor Code § 226(a) requires an employer to provide its employees with itemized
25 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
26 inclusive dates of the pay period, the employee's name and the last four digits of his or her
27 Social Security number (or employee identification number), the name and address of the legal
28

entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

190. Defendants violates Labor Code § 226(a) every pay period with respect to Plaintiff and the Wage Statement Penalties Subclass because the wage statements that Defendants issued to Plaintiff and the Wage Statement Penalties Subclass failed to accurately state gross wages earned, total hours worked, all deductions, net wages earned, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours at each hourly rate by the employee.

191. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants failed to provide complete and accurate wage statements to Plaintiff and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

192. As a result of the Defendants' violations of Labor Code §226(a)(9), 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. See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

VII. PRAYER FOR RELIEF

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

1. As to the Tenth through Eighteenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys' fees and costs as permitted under the PAGA;
3. That the First through Ninth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
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 §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 256, 512, 558, 1194, 1194.2, 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.

DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, hereby demand a jury trial as to the First through Eighteenth Causes of Action pled herein.

Dated: July 14, 2020

FERNANDEZ & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Peter J. Carlson, Esq.
Attorneys for Plaintiff