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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 03 2020

BY Sandra Ortega
SANDRA ORTEGA/DEPUTY

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 SAN BERNARDINO

MARIA SALGADO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

AMERICAN JERKY COMPANY, LLC, a
Delaware Limited Liability Company;
JOBSOURCE, INC., a California
Corporation; JOBSOURCE MIRA LOMA,
INC., a California Corporation; JOBSOURCE
HOLDINGS, INC., a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIV DS 2016568

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 Timely Pay Final Wages;
- (6) Failure to Provide Accurate Itemized Wage Statements;
- (7) Unfair and Unlawful Competition;

PAGA CLAIMS

- (8) Failure to Pay Minimum Wages;
- (9) Failure to Pay Overtime Wages;
- (10) Failure to Provide Meal Periods;
- (11) Failure to Provide Rest Breaks;
- (12) Failure to Timely Pay Wages Each Period;
- (13) Failure to Timely Pay Final Wages;
- (14) Failure to Provide Accurate Itemized Wage Statements; and
- (15) Failure to Provide Suitable Seating

JURY TRIAL DEMANDED

1 Plaintiff Maria Salgado (“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 employer(s), Defendants American
5 Jerky Company, LLC, JobSource, Inc., JobSource Mira Loma, Inc., JobSource Holdings, Inc.,
6 and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all current and
7 former nonexempt employees employed by Defendants in California (the “Class” or
8 “Represented Employees”)¹, for Labor Code violations stemming from Defendants’ failure to
9 pay all wages owed, including minimum, regular, and overtime wages, failure to provide meal
10 periods, failure to provide rest breaks, failure to timely pay wages, failure to provide accurate
11 itemized wage statements, and failure to provide suitable seating.

12 2. Plaintiff was employed by Defendants from approximately 2017 through March
13 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 employment.

17 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
18 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
19 worked.

20 5. Additionally, Defendants paid Plaintiff and the Represented Employees on an
21 hourly basis but also paid additional earned compensation in the form of gift cards, bonuses, and
22 similar pay. However, during workweeks where the Plaintiff and the Represented Employees
23 worked overtime hours and earned additional nondiscretionary compensation, Defendants failed
24 to include this additional nondiscretionary compensation in the calculations for the regular rate
25 of pay and instead paid overtime at only 1.5 times the base rate of pay – violating the well-
26 established rule that overtime must always be paid at time and one-half the regular rate of pay.

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¹ This definition specifically includes direct hires and employees placed by a staffing agency; Plaintiff alleges that all staffed employees were jointly employed by Defendants and the staffing agency.

1 6. Furthermore, Plaintiff and the Represented Employees were denied 30-minute
2 off-duty meal periods, as mandated by California law. As a result of Defendants' policies and
3 practices, the Represented Employees were subjected to meal period violations when they were:
4 (1) unable to take meal periods due to workload, (2) forced to take on-duty meal periods while
5 under Defendants' control, (3) forced to take meal periods, if such a meal occurred, after the 5th
6 hour of work, and (4) not provided mandated second meal periods for shifts over 10 hours.

7 7. Moreover, Plaintiff and the Represented Employees were often subjected to short
8 meal periods (less than 30 minutes in length) because Defendants only provided 30 minutes for
9 mandated meal periods, yet Plaintiff and the Represented Employees were required to leave the
10 work area and walk a long distance to the break room and back at the end of lunch – all within
11 those 30 minutes. Due to this walking time, Plaintiff and the Represented Employees were
12 regularly not provided with uninterrupted meal periods of at least 30 minutes, as required by
13 California law.

14 8. Defendants also failed to provide Plaintiff and the Represented Employees with
15 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
16 mandated by California law. Defendants did not schedule rest breaks and the Represented
17 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
18 overwhelmed by their hectic workload. Additionally, Plaintiff and the Represented Employees
19 were not permitted to leave the premises for rest breaks, in violation of California law.
20 Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of
21 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

22 9. Plaintiff also alleges that she and the Represented Employees were not paid all
23 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
24 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
25 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
26 Employees at the time their employment ended with Defendants, including, but not limited to
27 minimum, regular, and overtime wages, wage premiums, among others.
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1 10. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
2 statements that fully complied with the requirements of Labor Code § 226(a), as detailed below.

3 11. Finally, Plaintiff also alleges that Defendants failed to comply with California's
4 mandate to provide employees "with suitable seats when the nature of the work reasonably
5 permits the use of seats."

6 12. Plaintiff alleges that Defendants' violations of the wage and hour components of
7 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
8 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
9 its competitors.

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

16 14. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
17 monetary relief against Defendants and each of them, on behalf of herself and the Represented
18 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
19 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
20 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,
21 among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name
22 additional representatives throughout the State of California.

23 15. Pursuant to Labor Code § 2699.3(a), on July 20, 2020, Plaintiff gave written
24 notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by
25 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
26 violated, including the facts and theories to support the alleged violations. Plaintiff is currently
27 complying with the procedures for bringing suit specified in California Labor Code § 2699.3,
28 and this Complaint will be deemed amended to include the PAGA allegations enumerated below

1 when more than sixty-five (65) days have passed since the Notice was mailed to Defendants and
2 the LWDA chooses not to investigate the allegations herein.

3 **II. JURISDICTION**

4 16. This Court has jurisdiction over the claims for relief of Plaintiff and the
5 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

6 **III. VENUE**

7 17. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
8 Procedure § 395(a) and § 395.5. Defendants transact business in San Bernardino County and the
9 unlawful acts alleged herein have a direct effect on Plaintiff and the Represented Employees in
10 San Bernardino County. Furthermore, Defendants employed or employ Plaintiff and
11 Represented Employees in San Bernardino County.

12 **IV. PARTIES**

13 **Plaintiff**

14 18. Plaintiff and Class Representative Maria Salgado was employed by Defendants
15 from approximately 2017 through March 2020 and performed work for Defendants in San
16 Bernardino County.

17 **Defendants**

18 19. Plaintiff is informed and believes and thereon alleges that Defendant American
19 Jerky Company, LLC, is a Delaware limited liability company authorized to and doing business
20 in San Bernardino County, California, and is and/or was the legal employer of Plaintiff and the
21 Represented Employees during the applicable statutory periods.

22 20. Plaintiff is informed and believes and thereon alleges that Defendant JobSource,
23 Inc., is a California Corporation authorized to and doing business in San Bernardino County,
24 California, and is and/or was the legal employer of Plaintiff and the Represented Employees
25 during the applicable statutory periods.

26 21. Plaintiff is informed and believes and thereon alleges that Defendant JobSource
27 Mira Loma, Inc., is a California Corporation authorized to and doing business in San Bernardino
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County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

22. Plaintiff is informed and believes and thereon alleges that Defendant JobSource Holdings, Inc., is a California Corporation authorized to and doing business in San Bernardino County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

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

24. Plaintiff is informed and believes and thereon alleges that she and the Represented Employees worked under the joint direction and control of Defendants and that Defendants, and each of them, acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. On information and belief, a unity of interest and ownership between each Defendant exists such that all Defendants acted as a single employer of Plaintiff and other Represented Employees.

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

26. Plaintiff is informed and believes and thereon alleges that, in conducting themselves in the manner described herein, Defendants, and each of them, were acting in active

concert with one another such that the acts of each were and are fully attributable to the others in all material respects. Plaintiff is further informed and believes that at all relevant times Defendants and each of them are now, and at all material times herein mentioned were, the agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of their remaining co-Defendants.

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

V. CLASS ACTION ALLEGATIONS

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

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

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

31. Plaintiff seeks to represent a Class (“Represented Employees”) defined as:

California Class²

All current and former nonexempt employees employed by
Defendants in California during the Relevant Time Period.

² This definition specifically includes direct hires and employees placed by a staffing agency; Plaintiff alleges that all staffed employees were jointly employed by Defendants and the staffing agency.

32. Plaintiff also seeks to represent the following subclasses:

Meal Break Subclass

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

Rest Break Subclass

All Represented Employees who worked a shift of at least 3.5 hours during 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.

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

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

35. 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.

36. **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

1 unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and
2 personnel records.

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

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

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

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

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

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

25 vi. Whether Defendants violated the California Labor Code by failing to
26 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
27 wage statements;
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vii. Whether Defendants violated California Business & Professions Code §§ 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, and failure to timely pay final wages; and

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

38. **Typicality:** Plaintiff's claims, as the Class Representative, 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 paid rest breaks, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

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

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

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

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

Plaintiff and the Represented Employees Against All Defendants

1 41. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
2 alleged herein.

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

6 43. Plaintiff and the Represented Employees were not provided proper minimum and
7 regular wages due to Defendants' failure to accurately record and compensate for all hours
8 worked.

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

12 45. 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 46. Plaintiff is informed and believes and thereon alleges that Defendants
16 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
17 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

18 47. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
19 Represented Employees were entitled to be paid wages throughout the statutory period for each
20 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
21 them in accordance thereto.

22 48. At all material times, Defendants DOES 1 through 20 were and/or are the
23 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
24 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
25 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
26 Labor Code regulating hours and days of work respectively.

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

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

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

7 **SECOND CAUSE OF ACTION**
8 **FAILURE TO PAY OVERTIME WAGES**

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

10 *Plaintiff and the Represented Employees Against All Defendants*

11 52. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
12 alleged herein.

13 53. Plaintiff and the Represented Employees were employees of Defendants who did
14 not receive proper protections and benefits of the laws governing payment of overtime wages.

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

21 55. At all relevant times, Plaintiff and the Represented Employees were required by
22 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
23 Defendants' failure to accurately record and compensate for all hours worked, Plaintiff and the
24 Represented Employees did not receive proper overtime compensation.

25 56. Additionally, Defendants paid Plaintiff and the Represented Employees on an
26 hourly basis but also paid additional earned compensation in the form of gift cards, bonuses, and
27 similar pay. However, during workweeks where the Plaintiff and the Represented Employees
28 worked overtime hours and earned additional nondiscretionary compensation, Defendants failed

1 to include this additional nondiscretionary compensation in the calculations for the regular rate
2 of pay and instead paid overtime at only 1.5 times the base rate of pay – violating the well-
3 established rule that overtime must always be paid at time and one-half the regular rate of pay.

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

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

11 59. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
12 Represented Employees were entitled to be paid proper overtime wages throughout the statutory
13 period, yet Defendants chose not to pay them in accordance thereto.

14 60. At all material times, Defendants DOES 1 through 20 were and/or are the
15 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
16 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
17 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
18 Labor Code regulating hours and days of work respectively.

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

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

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

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2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO PROVIDE MEAL PERIODS**

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

5 *Plaintiff and the Meal Break Subclass Against All Defendants*

6 64. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

8 65. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
9 who did not receive proper protections and benefits of the laws governing mandatory meal
10 periods.

11 66. Labor Code § 226.7 requires employers, including Defendants, to provide
12 employees with meal periods as mandated by the Industrial Welfare Commission.

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

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

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

3 70. Moreover, Plaintiff and the Meal Break Subclass were often subjected to short
4 meal periods (less than 30 minutes in length) because Defendants only provided 30 minutes for
5 mandated meal periods, yet Plaintiff and the Meal Break Subclass were required to leave the
6 work area and walk a long distance to the break room and back at the end of lunch – all within
7 those 30 minutes. Due to this walking time, Plaintiff and the Meal Break Subclass were
8 regularly not provided with uninterrupted meal periods of at least 30 minutes, as required by
9 California law.

10 71. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
11 Order every pay period because Plaintiff and the Meal Break Subclass were not provided with all
12 mandatory meal periods and Defendants failed to pay Plaintiff and the Meal Break Subclass one
13 additional hour of compensation at the regular rate of pay in lieu thereof.

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

17 73. On information and belief, Plaintiff and the Meal Break Subclass did not
18 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
19 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
20 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
21 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
22 to take meal periods in accordance with California law.

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

1 75. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
2 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal
3 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE REST BREAKS**

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

7 *Plaintiff and the Rest Break Subclass Against All Defendants*

8 76. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

10 77. Plaintiff and the Rest Break Subclass are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

12 78. Labor Code § 226.7 requires employers, including Defendants, to provide rest
13 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

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

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

22 81. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
23 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
24 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
25 Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due
26 to being overwhelmed by their hectic workload. Additionally, Plaintiff and the Rest Break
27 Subclass were often not permitted to leave the premises for rest breaks, in violation of California
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1 law. Furthermore, on occasions when Plaintiff and the Rest Break Subclass worked in excess of
2 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

3 82. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
4 Order every pay period because Plaintiff and the Rest Break Subclass were not provided with all
5 mandatory rest periods and Defendants failed to pay Plaintiff and the Represented Employees
6 one additional hour of compensation in lieu thereof.

7 83. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest
8 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
9 rest periods, thereby receiving an economic benefit.

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

16 85. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
17 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest
18 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO TIMELY PAY FINAL WAGES**

21 (Labor Code §§ 201 – 203)

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

23 86. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
24 alleged herein.

25 87. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
26 Defendants who did not receive proper protections and benefits of the laws governing the timing
27 and payment of wages.
28

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

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

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

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

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

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

22 **SIXTH CAUSE OF ACTION**

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

24 (Labor Code § 226)

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

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

1 95. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
2 Defendants who did not receive proper protections and benefits of the laws governing the
3 provision of accurate itemized wage statements.

4 96. Labor Code § 226(a) requires an employer to provide its employees with itemized
5 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
6 inclusive dates of the pay period, the employee's name and the last four digits of his or her
7 Social Security number (or employee identification number), the name and address of the legal
8 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate by the employee.

10 97. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
11 and the Wage Statement Penalties Subclass because Defendants failed to provide a wage
12 statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
13 requirements of Labor Code § 226(a).

14 98. Specifically, due to violations discussed herein, Defendants' wage statements
15 failed to accurately state total hours worked, the hours worked at each hourly rate, and the
16 accurate overtime rate of pay, and further failed to accurately state gross wages earned, all
17 deductions, and net wages earned.

18 99. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
19 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
20 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
21 requirements of Labor Code § 226(a).

22 100. Defendants' failure to provide the required writing deprived Plaintiff and the
23 Wage Statement Penalties Subclass of the ability to know, understand, and question the
24 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
25 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
26 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
27 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
28 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost

1 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
2 perform its obligation under state law, all to their respective damages in amounts according to
3 proof at trial.

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

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

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

22 **SEVENTH CAUSE OF ACTION**

23 **UNFAIR AND UNLAWFUL COMPETITION**

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

25 *Plaintiff and the Represented Employees against All Defendants*

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

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

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

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

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

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

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

21 111. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
22 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
23 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
24 of Civil Procedure § 1021.5.

25 112. A violation of California Business & Professions Code § 17200, *et seq.* may be
26 predicated on the violation of any state or federal law. All of the acts described herein as
27 violations of, among other things, the California Labor Code and IWC Wage Orders, are
28 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,

1 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
2 practices in violation of California Business and Professions Code §§ 17200, et seq.

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

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

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

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

27
28 ///

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

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

9 118. Pursuant to Labor Code § 2699.3(a), on July 20, 2020, Plaintiff gave written
10 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by
11 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
12 violated, including the facts and theories to support the alleged violations.

13 119. Therefore, once more than sixty-five (65) days have passed since that date,
14 Plaintiff will have fully satisfied the administrative prerequisites to suit under the PAGA and this
15 Complaint will be deemed amended to include the PAGA allegations enumerated below. Once
16 this occurs, Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
17 Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by
18 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
19 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does he, seek
20 class certification of the PAGA claims under Code of Civil Procedure § 382.

21 **EIGHTH CAUSE OF ACTION**

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

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

24 *Plaintiff and the Aggrieved Employees against All Defendants*

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

1 121. 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.

4 122. Plaintiff and the Aggrieved Employees were not provided proper minimum and
5 regular wages due to Defendants' failure to accurately record and compensate for hours worked.

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

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

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

15 126. 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 *Plaintiff and the Aggrieved Employees against All Defendants*

22 127. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
23 alleged herein.

24 128. Plaintiff and the Aggrieved Employees were "nonexempt" employees of
25 Defendants who did not receive proper protections and benefits of the laws governing payment
26 of overtime wages.

27 129. Labor Code § 204 requires that the employer timely pay all overtime wages to its
28 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any

1 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
2 any one workweek shall be compensated at the rate of no less than one and one-half times the
3 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
4 in one workday shall be compensated at twice the regular rate of pay for an employee.

5 130. At all relevant times, Plaintiff and the Aggrieved Employees were required by
6 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
7 Defendants' failure to accurately record and compensate for all hours worked, Plaintiff and the
8 Aggrieved Employees did not receive proper overtime compensation.

9 131. Additionally, Defendants paid Plaintiff and the Aggrieved Employees on an
10 hourly basis but also paid additional earned compensation in the form of gift cards, bonuses, and
11 similar pay. However, during workweeks where the Plaintiff and the Aggrieved Employees
12 worked overtime hours and earned additional nondiscretionary compensation, Defendants failed
13 to include this additional nondiscretionary compensation in the calculations for the regular rate
14 of pay and instead paid overtime at only 1.5 times the base rate of pay – violating the well-
15 established rule that overtime must always be paid at time and one-half the regular rate of pay.

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

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

25 134. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
26 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
27 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
28

TENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

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

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

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

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

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

1 141. Moreover, Plaintiff and the Aggrieved Employees were often subjected to short
2 meal periods (less than 30 minutes in length) because Defendants only provided 30 minutes for
3 mandated meal periods, yet Plaintiff and the Aggrieved Employees were required to leave the
4 work area and walk a long distance to the break room and back at the end of lunch – all within
5 those 30 minutes. Due to this walking time, Plaintiff and the Aggrieved Employees were
6 regularly not provided with uninterrupted meal periods of at least 30 minutes, as required by
7 California law.

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

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

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

22 **ELEVENTH CAUSE OF ACTION**

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

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

25 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

3 147. Labor Code § 226.7 requires employers, including Defendants, to provide rest
4 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

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

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

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

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

25 152. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
26 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
27 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
28

TWELFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

Plaintiff and the Aggrieved Employees against All Defendants

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

154. 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.

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

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

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

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

///

THIRTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203 and 256)

Plaintiff and the Aggrieved Employees against All Defendants

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

160. 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 final wages.

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

162. 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.

163. 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.

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

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

166. 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 §§ 256 and 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

1 **FOURTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR**

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

4 (Labor Code § 226)

5 *Plaintiff and the Aggrieved Employees against All Defendants*

6 167. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

8 168. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
9 who did not receive proper protections and benefits of the laws governing the provision of
10 accurate itemized wage statements.

11 169. Labor Code § 226(a) requires an employer to provide its employees with itemized
12 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
13 inclusive dates of the pay period, the employee's name and the last four digits of his or her
14 Social Security number (or employee identification number), the name and address of the legal
15 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee.

17 170. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
18 and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff
19 and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

20 171. Specifically, due to violations discussed herein, Defendants' wage statements
21 failed to accurately state total hours worked, the hours worked at each hourly rate, and the
22 accurate overtime rate of pay, and further failed to accurately state gross wages earned, all
23 deductions, and net wages earned.

24 172. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
25 to Plaintiff and the Aggrieved Employees because Defendants failed to provide complete and
26 accurate wage statements to Plaintiff and the Aggrieved Employees that complied with the
27 requirements of Labor Code § 226(a).
28

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

6 **FIFTEENTH CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE SUITABLE SEATING**

8 (Labor Code §§ 1198, 1199; IWC Wage Order § 14)

9 174. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
10 alleged.

11 175. Section 14 of the applicable IWC Wage Order states: "All working employees
12 shall be provided with suitable seats when the nature of the work reasonably permits the use of
13 seats." Furthermore, "When employees are not engaged in the active duties of their employment
14 and the nature of the work requires standing, an adequate number of suitable seats shall be
15 placed in reasonable proximity to the work area and employees shall be permitted to use such
16 seats when it does not interfere with the performance of their duties."

17 176. Here, Defendants failed to provide suitable seating to Plaintiff and the Aggrieved
18 Employees, in violation of IWC Wage Order § 14.

19 177. Penalties for the failure to provide suitable can be enforced both through Labor
20 Code §§ 1198 and 1199.

21 178. Labor Code § 1198 states that the "standard conditions of labor fixed by the
22 commission shall be the ... standard conditions of labor for employees. The employment of any
23 employee ... under conditions of labor prohibited by the order is unlawful."

24 179. Labor Code § 1199 makes it unlawful for an employer to work under conditions
25 of labor prohibited by an IWC Wage Order. Labor Code § 1199 also makes it unlawful for an
26 employer to violate, refuse, or neglect to comply with any provision of the IWC Wage Orders.

27 180. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to
28 which the civil penalties under the PAGA apply.

181. 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.

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 Eighth through Fifteenth 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 Seventh 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, 227.3, 256, 510, 512, 558, 1194, 1197, 1198, 1199, 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.

1 **DEMAND FOR JURY TRIAL**

2 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, hereby
3 demands a jury trial as to the First through Fifteenth Causes of Action pled herein.
4

5 Dated: July 29, 2020

FERNANDEZ & LAUBY LLP

6
7 BY:



8 Brian J. Mankin, Esq.
9 Peter J. Carlson, Esq.
10 Attorneys for Plaintiff
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