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Attorneys for Plaintiff Suzanne Linde,
individually, and on behalf of all others similarly situated.

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

SUZANNE LINDE, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

AVANTSTAY, INC.; and DOES 1 - 10,
inclusive,

Defendants.

Case No. Case No. 20STCV27979
Assigned for All Purposes to:
Hon. Maren Nelson, Dept. 17

**[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

NOV 02 2020

Sherri B. Carter, Executive Office/Clerk
By: Maisha Pryor, Deputy

1 Plaintiff Suzanne Linde, individually and on behalf of all others similarly situated, allege as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Suzanne Linde (“Plaintiff”) bring this putative class and representative
5 action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*, against
6 AvantStay, Inc. and Does 1 through 10, inclusive (collectively “Defendants”) on behalf of herself
7 individually and on behalf of Defendants’ non-exempt employees who were misclassified as
8 independent contractors.

9 2. Defendants are in the business of providing short term rental property.

10 3. Through this action, Plaintiff is alleging that Defendants have engaged in a systematic
11 pattern of wage and hour violations under the California Labor Code (“Labor Code”), all of which
12 contribute to Defendants’ deliberate unfair competition.

13 4. Plaintiff is informed and believes, and thereon alleges, during the relevant time
14 period, Defendants had a consistent policy of violating state wage and hour laws by, among other
15 things:

- 16 (a) Misclassifying Plaintiff and other workers as independent contractors;
- 17 (b) Failing to pay all wages for all hours worked, including minimum and
18 overtime wages;
- 19 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
20 thereof;
- 21 (d) Failing to provide meal periods or compensation in lieu thereof;
- 22 (e) Willfully failing to provide accurate semi-monthly itemized wage statements;
- 23 (f) Failing to pay all wages due upon separation of employment; and
- 24 (g) Failing to reimburse all business expenses incurred by class members in direct
25 consequence of the discharge of his or her duties.

26 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of
27 herself and all others similarly to recover, among other things, unpaid wages and benefits, interest,
28 attorney’s fees, costs and expenses and penalties pursuant to Labor Code §§ 201-204, 210, 226,

226.3, 226.7, 226.8, 510, 512, 558, 1182.12, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and 2698, *et seq.*

6. Plaintiff, on behalf of herself and all class members, pursuant to Business and Professions Code sections 17200, *et seq.*, also seeks injunctive relief and restitution for the unfair, unlawful, or fraudulent practices alleged in this Complaint

JURISDICTION AND VENUE

7. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

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

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

10. Venue is proper in this Court because, upon information and belief, Defendants transact business or have at least one facility in this county, or acts and omissions alleged herein took place in this county.

THE PARTIES

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

12. Defendants were and are, upon information and belief, a corporation doing business throughout the State of California, and at all times hereinafter mentioned, an employer as defined in and subject to the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, whose employees are and were engaged throughout this county and the State of California.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants sued herein as Does 1 to 10, inclusive, are currently unknown to Plaintiff, who

1 therefore sue said Defendants by such fictitious names under California Code of Civil Procedure
2 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
3 designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to
4 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
5 capacities of the Defendants designated hereinafter as DOES when such identities become known.

6 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
7 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
8 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants are
9 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
10 employers and/or joint employers of Plaintiff and the class members.

11 **CLASS ACTION ALLEGATIONS**

12 15. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of herself
13 and all other members of the general public similarly situated who were affected by Defendants'
14 Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

15 16. All claims alleged herein arise under California law for which Plaintiff seeks relief
16 authorized by California law.

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

18 Class

19 All California citizens who performed work for Defendants in the State of
20 California, who were misclassified as independent contractors from April
21 6, 2016¹ to the date of class certification.

22 18. Plaintiff also seeks to certify the following Subclass:

23 Waiting Time Subclass

24 All members of the Class whose working relationship with Defendants was
25 severed at any time from April 6, 2017 to the date the Subclass is certified.

26
27 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I,
28 Emergency Rule No. 9.

1 19. Members of the Class and Subclass described above will collectively be referred to
2 as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or modify
3 any Class or Subclass definition, as appropriate based on investigation, discovery and specific
4 theories of liability.

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

- 9 a. Whether Defendants misclassified Plaintiff and class members as independent
10 contractors rather than non-exempt employees;
- 11 b. Whether Defendants failed to pay at least minimum wage for all hours worked
12 by Plaintiff and class members;
- 13 c. Whether Defendants failed to pay overtime wages earned by Plaintiff and
14 class members;
- 15 d. Whether Defendants failed to provide Plaintiff and class members with meal
16 periods;
- 17 e. Whether Defendants deprived Plaintiff and class members of paid rest breaks
18 or required Plaintiff and class members to work through rest breaks without
19 compensation;
- 20 f. Whether Defendants failed to pay all wages to Plaintiff and class members for
21 time spent in rest breaks;
- 22 g. Whether Defendants failed to timely pay Plaintiff and class members all
23 earned wages during their employment;
- 24 h. Whether Defendants failed to timely pay Plaintiff and former class members
25 all wages due upon termination or within 72 hours of resignation;
- 26 i. Whether Defendants failed to furnish Plaintiff and class members with
27 accurate itemized wage statements;

- j. Whether Defendants required Plaintiff and class members to use their personal cellular devices to for work-related purposes, without paying a reasonable percentage of their cell phone bills;
- k. Whether Defendants required Plaintiff and class members to use their personal funds for business expenses and then failed to adequately reimburse them;
- l. Whether Defendants' conduct was willful or reckless; and
- m. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

21. There is a well-defined community of interest in the litigation and the Class is readily ascertainable.

- (a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.
- (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.
- (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent and protect the interests of all members of the Class because it is in their best interest to prosecute the claims alleged herein to obtain full compensation and penalties due him and the Class. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and are versed in the rules governing class action discovery,

1 certification and settlement. Plaintiff has incurred and, throughout the
2 duration of this action, will continue to incur attorneys' fees and costs that
3 have been and will be necessarily expended for the prosecution of this action
4 for the substantial benefit of each class member.

5 (d) Superiority: The nature of this action makes the use of class action
6 adjudication superior to other methods. A class action will achieve economies
7 of time, effort and expense as compared with separate lawsuits, and will avoid
8 inconsistent outcomes because the same issues can be adjudicated in the same
9 manner and at the same time for each Class. If appropriate this Court can, and
10 is empowered to, fashion methods to efficiently manage this case as a class
11 and/or collective action.

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

21 **GENERAL ALLEGATIONS**

22 22. Plaintiff performed services for Defendants during the relevant time period. During
23 the relevant time period, Plaintiff was classified by Defendants as an independent contractor.

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

1 24. Through this action, Plaintiff alleges that Defendants have engaged in a systematic
2 pattern of wage and hour violations under the California Labor Code and IWC Wage Orders, all of
3 which contribute to Defendants' deliberate unfair competition.

4 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive wages for all time
6 worked (including minimum and overtime wages) and that they were not receiving all wages earned
7 for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders,
8 Plaintiff and class members were not paid wages (including minimum and overtime wages) for all
9 hours worked when Defendants failed to pay or underpaid Plaintiff and class members for all hours
10 worked, and failed to pay for time spent in rest breaks, among other things.

11 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to receive all rest breaks or
13 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when a
14 rest break was missed, and were entitled to payment of wages for time spent when rest breaks were
15 taken. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members did not
16 receive paid rest breaks or payment of one (1) additional hour of pay at Plaintiff and class members'
17 regular rate of pay when a rest break was missed.

18 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive all meal periods or
20 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when
21 they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC
22 Wage Orders, Plaintiff and class members did not receive all meal periods or payment of one (1)
23 additional hour of pay at Plaintiff's and class members' regular rate of pay when they did not receive
24 a timely, uninterrupted meal period.

25 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to timely payment of wages during
27 their employment. In violation of the California Labor Code, Plaintiff and class members did not
28 receive payment of all wages within permissible time periods.

1 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and Waiting Time class members were entitled to timely payment
3 of wages upon separation of employment. In violation of the California Labor Code, Plaintiff and
4 Waiting Time class members did not receive payment of all wages including, but not limited to,
5 unpaid wages within permissible time periods.

6 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to receive complete and accurate
8 wage statements in accordance with California law. In violation of the California Labor Code,
9 Plaintiff and class members were not furnished with complete and accurate wage statements showing
10 their total hours worked, number of hours or pieces worked at each hourly or piece rate, and gross
11 and net wages, among other things.

12 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to reimbursement for necessary
14 expenditures incurred in connection with the performance and execution of their job duties. In
15 violation of the California Labor Code, Plaintiff and class members did not receive adequate
16 reimbursement for necessary business expenses, including but not limited to reimbursement for use
17 of personal vehicles for work purposes.

18 32. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
19 herein, Defendants knew or should have known that it had a duty to compensate Plaintiff and class
20 members, and that Defendants had the financial ability to pay such compensation but willfully,
21 knowingly and intentionally failed to do so, all in order to increase Defendants' profits.

22 33. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief against
23 Defendants on behalf of herself and all class members to recover, among other things, unpaid wages,
24 interest, attorneys' fees, penalties, reimbursements, costs and expenses.

25 //

26 //

27 //

28 //

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197)**

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

6 35. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed
7 by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than
8 the minimum so fixed is unlawful.

9 36. During the relevant time period, failed to pay Plaintiff and class members all
10 minimum wages owed when Defendants did not pay for all hours worked, and did not pay for time
11 spent in rest breaks, among other reasons. Plaintiff and class members were not being paid at least
12 minimum wage for their work.

13 37. During the relevant time period, Defendants regularly failed to pay at least minimum
14 wage to Plaintiff and class members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

15 38. Defendants' failure to pay Plaintiff and class members the minimum wage as required
16 violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class members are
17 entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs
18 and attorney's fees.

19 39. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to recover
20 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY OVERTIME**

23 **(Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order)**

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

26 41. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful
27 to employ persons without compensating them at a rate of pay either one and one-half (1½) or
28

two (2) times the person's regular rate of pay, depending on the number of hours or days worked by the person on a daily or weekly basis.

42. Specifically, the applicable IWC Wage Orders provide that Defendants are and were required to pay overtime compensation to Plaintiff and Class Members at the rate of one and one-half times (1½) their regular rate of pay when working and for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8) hours of work on the seventh day of work in a workweek.

43. The applicable IWC Wage Orders further provide that Defendants are and were required to pay overtime compensation to Plaintiff and Class Members at a rate of two times their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

44. California Labor Code § 510 codifies the right to overtime compensation at one and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a workweek.

45. Labor Code § 510 and the applicable IWC Wage Orders provide that employment of more than six days in a workweek is only permissible if the employer pays proper overtime compensation as set forth herein.

46. Plaintiff and Class Members were non-exempt employees entitled to the protections of California Labor Code §§ 510 and 1194.

47. During the relevant time period, Defendants failed to pay Plaintiff and Class Members overtime wages for all overtime hours worked when Plaintiff and Class Members worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh consecutive day of work in a workweek, or when Plaintiff and Class Members worked in excess of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a work week.

1 48. In violation of state law, Defendants knowingly and willfully refused to perform
2 their obligations and compensate Plaintiff and Class Members for all wages earned and all hours
3 worked.

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

7 50. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to
8 recover their unpaid overtime and double time compensation as well as interest, costs, and
9 attorneys' fees

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

17 53. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall employ
18 any person for a work period of more than five (5) hours without a meal period of not less than 30
19 minutes, except that when a work period of not more than six (6) hours will complete the day's
20 work the meal period may be waived by mutual consent of the employer and the employee."

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

26 55. Labor Code § 512(a) also provides that an employer may not employ an employee
27 for a work period of more than ten (10) hours per day without providing the employee with a second
28 meal period of not less than thirty (30) minutes, except that if the total hours worked is no more

1 than twelve (12) hours, the second meal period may be waived by mutual consent of the employer
2 and the employee only if the first meal period was not waived.

3 56. During the relevant time period, Plaintiff and Class Members did not receive
4 compliant meal periods for working more than five (5) and/or ten (10) hours per day because their
5 meal periods were missed, late, short, interrupted, and/or they were not permitted to take a second
6 meal period.

7 57. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires
8 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
9 compensation for each work day that a compliant meal period is not provided.

10 58. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
11 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code §
12 226.7(b) and section 11 of the applicable IWC Wage Order.

13 As a result of Defendants' failure to pay Plaintiff and Class Members an additional hour of pay for
14 each day a compliant meal period was not provided, Plaintiff and Class Members suffered and
15 continue to suffer a loss of wages and compensation

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PERMIT REST BREAKS**

18 **(Violation of Labor Code § 226.7)**

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

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

23 61. Section 12 of the applicable IWC Wage Order states "every employer shall authorize
24 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
25 each work period" and the "authorized rest period time shall be based on the total hours worked daily
26 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the
27 total daily work time is less than three and one-half (3½) hours.
28

62. Labor Code 226.7(d) provides that a rest period mandated by state law or IWC Wage Order “shall be counted as hours worked, for which there shall be no deduction from wages.”

63. During the relevant time period, Plaintiff and class members did not receive a ten (10) minute net rest period for every four (4) hours or major fraction thereof worked because they were required to work through their daily rest periods and/or were not authorized to take their rest periods.

64. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

65. At all relevant times, Defendants failed to pay Plaintiff and class members the full rest period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON SEPARATION

OF EMPLOYMENT AND WITHIN THE REQUIRED TIME

(Violations of Labor Code §§ 201, 202, 203 and 210)

67. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as though fully set forth herein.

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

69. During the relevant time period, Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all their earned wages upon termination including, but not limited

1 to, minimum wages, either at the time of discharge or within seventy-two (72) hours of their leaving
2 Defendants' employ.

3 70. Defendants' failure to pay Plaintiff and Waiting Time Subclass Members all their
4 earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
5 employ, is in violation of California Labor Code §§ 201 and 202.

6 71. California Labor Code § 203 provides that if an employer willfully fails to pay wages
7 owed promptly upon discharge or resignation as required under California Labor Code §§ 201 and
8 202, then the wages of the employee shall continue as a penalty from the due date, and at the same
9 rate until paid or until an action is commenced; but the wages shall not continue for more than thirty
10 (30) days.

11 72. Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all
12 wages due and, as a result, owe Plaintiff and Waiting Time Subclass Members regular daily wages
13 for each day they were not paid, at their regular rates of pay up to a thirty (30) day maximum pursuant
14 to California Labor Code § 203 all in an amount to be shown according to proof at trial.

15 73. Based on these violations, Plaintiff and the Waiting Time Subclass they seek to
16 represent request relief as described herein and below.

17 **SIXTH CAUSE OF ACTION**

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

19 **(Violation of Labor Code § 226)**

20 74. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
21 though fully set forth herein.

22 75. California Labor Code § 226(a) requires employers to furnish their employees with
23 an accurate itemized writing that shows gross wages earned, total hours worked, all deductions, net
24 wages earned, the inclusive dates of the period for which the employee is paid, the name of the
25 employee and the portion of his or her social security number as required by law, the name and
26 address of the legal entity that is the employer and all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate by the employee.
28

1 76. Defendants have intentionally and willfully failed to provide Plaintiff and class
2 members with complete and accurate wage statements. The deficiencies include, among other things,
3 the failure to list the gross wages earned, net wages earned, hours worked, and all applicable hourly
4 rates in effect during the pay period.

5 77. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and
6 class members have suffered injury and damage to their statutorily protected rights. Specifically,
7 Plaintiff and class members have been injured by Defendants' intentional violation of California
8 Labor Code § 226(a) because they were denied both their legal right to receive, and their protected
9 interest in receiving, accurate itemized wage statements under California Labor Code § 226(a). In
10 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
11 Defendants have prevented Plaintiff and class members from determining if all hours worked were
12 paid at the appropriate rate and the extent of the underpayment. Plaintiff has had to file this lawsuit
13 in order to analyze whether in fact Plaintiff was paid correctly and the extent of the underpayment,
14 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in
15 these efforts and incur these costs had Defendants provided the accurate rate of pay. This has also
16 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

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

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

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

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE ALL BUSINESS EXPENSES

(Violation of Labor Code §§ 2800, 2802)

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

82. Labor Code § 2800 states that an employer shall in all cases indemnify its employee for losses.

83. Labor Code § 2802 requires employers to indemnify their employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties.

84. Section 9 of the applicable IWC Wage Order states that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.

85. During the relevant time period, Defendants required Plaintiff and class members to use their personal vehicles for work, among other expenses, without properly compensating them.

86. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify Plaintiff and class members for these expenses.

87. In committing the violations as herein alleged, Defendants have intentionally and willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs and expenses. As a direct result, Plaintiff and class members have suffered and continue to suffer substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and attorney's fees.

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EIGHTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES

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

88. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as though fully set forth herein.

89. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice"

90. A violation of California Business and Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law causing Plaintiff and class members to suffer and continue to suffer injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in violation of the California Labor Code and IWC Wage Orders, such as failing to pay minimum wages, failing to authorize or permit paid rest breaks, failing to provide meal periods, failing to pay wages for time spent in rest breaks and/or recovery periods, failing to pay all wages due and owing upon separation of employment and in a timely manner, failing to furnish accurate wage statements, and failing to reimburse business expenses, all in order to decrease their costs of doing business and increase their profits.

91. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and class members wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish and/or gain a greater foothold in the marketplace.

92. At the time Plaintiff and class members were hired, Defendants knowingly, intentionally and wrongfully misrepresented to each of them their conformance with the California Labor Code and IWC Wage Orders including proper payments required by law.

93. At all relevant times herein, Defendants held themselves out to Plaintiff and class members as being knowledgeable concerning the labor laws of California.

94. At all times relevant herein, Plaintiff and class members relied on and believed Defendants' representations concerning their conformance with California's wage and hour laws all to their detriment.

95. As a result of Defendants' intentional, willful, purposeful and wrongful misrepresentation of their conformance with the California Labor Code and IWC Wage Orders, Plaintiff and class members suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. By violating the foregoing statutes and regulations as herein alleged, Defendants' acts constitute unfair and unlawful business practices under California Business and Professions Code §§ 17200, *et seq.*

96. Defendants' violations of the California Labor Code and IWC Wage Orders and their scheme to lower their payroll costs as alleged herein, constitute unlawful business practices because they were done in a systematic manner over a period of time to the detriment of Plaintiff and class members.

97. As a result of the unfair business practices of Defendants, as alleged herein, Plaintiff and class members are entitled to injunctive relief, disgorgement and restitution in an amount to be shown according to proof at trial.

98. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members and to the general public. Based on Defendants' conduct as alleged herein, Plaintiff and class members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698 *ET SEQ.* (“PAGA”)

99. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as though fully set forth herein.

100. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for

1 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an
2 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
3 to the procedures specified in Labor Code § 2699.3.

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

9 102. Defendants' conduct violates numerous Wage Order and Labor Code sections,
10 including, but not limited to, the following:

- 11 (a) violation of Labor Code §§ 201-204, 210, 510, 558, 1182.12, 1194, 1197, and
12 1198 for failure to timely pay all earned wages owed to Plaintiff and other
13 aggrieved employees during employment and upon separation of
14 employment as herein alleged;
- 15 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
16 to Plaintiff and other aggrieved employees and failure to pay premium wages
17 for missed meal periods as herein alleged;
- 18 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff
19 and other aggrieved employees and failure to pay premium wages for missed
20 rest periods as herein alleged;
- 21 (d) violation of Labor Code § 226 for failure to provide accurate itemized wage
22 statements to Plaintiff and other aggrieved employees as herein alleged;
- 23 (e) violation of Labor Code § 226.8 for willful misclassification of Plaintiff and
24 other aggrieved employees as independent contractors as herein alleged;
- 25 (f) violation of Labor Code §§ 2800 and 2802 for failure to reimburse necessary
26 business expenses to Plaintiff and other aggrieved employees as herein
27 alleged; and
28

(g) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees.

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

104. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved employees under PAGA.

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all others similarly situated, pray for judgment against Defendants as follows:

1. For certification of the proposed Class and Waiting Time Subclass and any other appropriate subclasses under California Code of Civil Procedure § 382;
2. For appointment of Suzanne Linde as the class representative;
3. For appointment of Aegis Law Firm, PC and Law Office of Neda Aguirre, APC as class counsel for all purposes;
4. For general damages;
5. For special damages;
6. For liquidated damages pursuant to California Labor Code § 1194.2;
7. For statutory penalties to the extent permitted by law, including those pursuant to the California Labor Code and IWC Wage Orders;
8. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

1 9. For restitution as provided by California Business and Professions Code §§ 17200, *et*
2 *seq.*;

3 10. For an order requiring Defendants to restore and disgorge all funds to each employee
4 acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent
5 and, therefore, constituting unfair competition under California Business and Professions Code §§
6 17200, *et seq.*;

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

9 12. For pre-judgment interest;

10 13. For civil penalties;

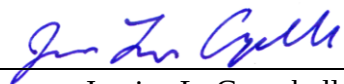
11 14. For reasonable attorney's fees and costs of suit to the extent permitted by law,
12 including pursuant to California Code of Civil Procedure § 1021.5, California Labor Code §§ 226(e),
13 1194, 2802(c), and 2698 *et seq.*; and

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

15
16 Dated: November 2, 2020

AEGIS LAW FIRM, PC

17
18 By: _____



Jessica L. Campbell
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On November 2, 2020, I served the foregoing document entitled:

- 5 • **[Amended as a matter of right, pursuant to Labor Code section 2699.3(a)(2)(C)]**
FIRST AMENDED CLASS ACTION COMPLAINT

6 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
7 copy thereof on the party(ies) addressed below as follows:

8 Alaya B. Meyers
9 Tracy R. Williams
LITTLER MENDELSON, P.C.
10 18565 Jamboree Road, Suite 800
Irvine, CA 92612
11 Telephone: 949.705.3000
Facsimile: 949.724.1201
12 ameyers@littler.com
trwilliams@littler.com

13 *Attorneys for Defendant:*
14 AVANTSTAY, INC.

15 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
16 correspondence for mailing. Under that practice it would be deposited with the U.S.
Postal Service on that same day with postage thereon fully prepaid at Irvine, California
17 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
18 day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
R. Civ. Proc. 5(a); *Fed. R. Civ. Proc.* 5(c).)

19 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
20 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
21 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

22 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
23 electronic transmission via CaseAnywhere to the above listed email addresses on the
date below. (*Cal. Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R.*
Civ. Proc. 5(b)(3).)

24 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
25 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

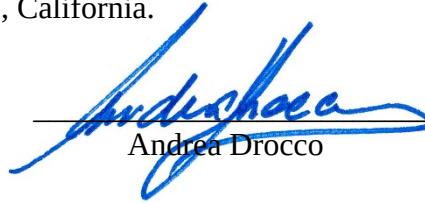
26 ///

27 ///

28 ///

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

3 Executed on November 2, 2020, at Irvine, California.

4 
5 Andrea Drocco
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