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Assigned for All Purposes
Judge James J. Di Cesare

C-16

Attorneys for Plaintiff, on a Representative Basis and on behalf of the Punitive Class

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

AMADOR SANDOVAL, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

LANDSCAPE WEST MANAGEMENT
SERVICES, INC., a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 30-2021-01187854-CU-OE-CXC

COMPLAINT

CLASS CLAIMS

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

PAGA CLAIMS

- (10) Failure to Pay Minimum Wages;
- (11) Failure to Pay Overtime Wages;
- (12) Failure to Provide Meal Periods;
- (13) Failure to Provide Rest Breaks;
- (14) Failure to Reimburse Business Expenses;
- (15) Failure to Timely Pay Wages;
- (16) Failure to Timely Pay Final Wages; and
- (17) Failure to Provide Accurate Itemized Wage Statements

JURY TRIAL DEMANDED

1 Plaintiff Amador Sandoval (“Plaintiff”), on behalf of himself, on a representative basis,
2 and on behalf of others similarly situated, complain and allege as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his employer, Defendant Landscape West
5 Management Services, Inc., and DOES 1 through 20, (collectively, the “Defendants”) on behalf
6 of all current and former non-exempt employees employed by Defendants in California
7 (hereinafter, the “Class” or “Represented Employees”), for California Labor Code violations
8 stemming from Defendants’ failure to pay all wages owed, including minimum, regular,
9 overtime wages, failure to provide meal periods, failure to provide rest breaks, failure to
10 reimburse business expenses, failure to timely pay wages each period, failure to timely pay final
11 wages, and failure to provide accurate itemized wage statements.

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

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

17 4. At all relevant times, Plaintiff was not provided proper minimum and overtime
18 wages due to Defendants’ failure to accurately record and compensate for all hours worked. In
19 addition, Plaintiff alleges that Defendants utilized a rounding policy and practice that routinely
20 undercompensated the Represented Employees and resulted in a net benefit to Defendants. In
21 other words, Defendants’ rounding policy is not neutral and systematically undercompensates
22 Plaintiff and the Represented Employees, leading to a failure to pay proper minimum, regular,
23 and overtime wages.

24 5. Furthermore, Plaintiff and the Represented Employees were denied 30-minute
25 off-duty meal periods, as mandated by California law. As a result of Defendants’ policies and
26 practices, the Represented Employees were subjected to meal period violations when they were:
27 (1) unable to take meal periods due to workload, (2) forced to take on-duty meal periods while
28

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

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

7. Plaintiff and the Represented Employees were also required to incur necessary business-related expenses and costs without proper reimbursement, including, but not limited to, expenses related to the use of their personal phone and related monthly data plan to communicate with Defendants via phone and text message for the job.

8. Plaintiff further alleges that Defendants engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented Employees each pay period (Labor Code § 204) and at the time employment ended with Defendants (Labor Code §§ 201 – 203), including, but not limited to regular wages, minimum wages, overtime wages, among others.

9. Plaintiff also alleges that he and the Represented Employees did not receive accurate itemized wage statements that fully complied with the requirements of Labor Code § 226(a) due to violations including: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to accurately state net wages earned; and, failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

1 11. At all material times, Defendants and DOES 1 through 20 were and/or are
2 Represented Employees' employers or persons acting on behalf of Represented Employees'
3 employer, within the meaning of California Labor Code § 558, who violated or caused to be
4 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
5 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
6 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
7 California law, including *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
8 Cal.App.4th 1112.

9 12. Plaintiff bring this lawsuit seeking declaratory, injunctive, equitable, and
10 monetary relief against Defendants and each of them, on behalf of himself and the Represented
11 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
12 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
13 210, 218.6, 221-223, 226, 226.3, 227.3, 256, 510, 512, 1194, 1194.2, and 1197 among possibly
14 other sections inadvertently omitted. Plaintiff also reserves the right to name additional
15 representatives throughout the State of California.

16 13. Pursuant to Labor Code § 2699.3(a), on October 29, 2020, Plaintiff gave written
17 notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by
18 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
19 violated, including the facts and theories to support the alleged violations. The waiting period
20 imposed by Labor Code § 2699.3(a)(2)(A) has elapsed.

21 **II. JURISDICTION**

22 14. This Court has jurisdiction over the claims for relief of Plaintiff and the
23 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

24 **III. VENUE**

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

Orange County.

IV. PARTIES

Plaintiff

16. Plaintiff and Class Representative was employed by Defendants as a non-exempt employee from approximately June 2020 through September 2020 and performed work for Defendants in Orange County.

Defendants

17. Plaintiff is informed and believes and thereon alleges that Defendant Landscape West Management Services, Inc. is a California corporation authorized to and doing business in Orange County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

18. 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 allege 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.

19. Plaintiff is informed and believes and thereon alleges 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 similarly situated employees.

20. Furthermore, Plaintiffs are 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.

21. Plaintiffs are 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. Plaintiffs are 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.

22. Plaintiffs are 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

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

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

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

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

California Class

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

27. 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.

Unreimbursed Business Expense Subclass

All Represented Employees who used their personal phones for business related to their employment with Defendants 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 until class certification.

Wage Statement Penalties Subclass

All Represented Employees during the period one year before the filing of this action until class certification.

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

1 29. Plaintiff, as Class Representative, is a member of the class and subclasses that
2 they seek to represent.

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

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

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

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

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

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

25 iv. Whether Defendants violated the California Labor Code and applicable
26 IWC Wage Order by failing to provide compliant rest breaks to Plaintiffs and the Rest Break
27 Subclass and whether Defendants failed to compensate Plaintiffs and the Rest Break Subclass
28 with one additional hour of wages at the regular rate of pay for each instance when a paid rest

break was not provided;

v. Whether Defendants violated the California Labor Code by failing to reimburse Plaintiff and the Represented Employees for use of their personal phones while on-duty and providing services for Defendants;

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

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

viii. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay all wages owed, including minimum, regular, and overtime wages; and, failure to timely pay final wages;

ix. Whether Defendants violated § 17200 *et seq.* of the California Business and Professions Code and, without limitation, California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 227.3, 256, 510, 1194, 1194.2, and 1197 among possibly other sections inadvertently omitted, and the applicable IWC Wage Order, which violations constitute false, fraudulent, unlawful, unfair and deceptive business practices; and

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

33. **Typicality:** Plaintiff's claims, as the Class Representatives, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, including minimum, regular, overtime wages, unlawfully deducting wages, failure to pay vested vacation at final rate of pay, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

34. **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

1 conflict with those of the Class. Class Representatives' counsel are competent and experienced in
2 litigating large employment class actions and other complex litigation matters, including cases
3 like this case.

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

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

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

15 (*Plaintiff and the Represented Employees Against All Defendants*)

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

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

21 38. At all relevant times, Plaintiff and the Represented Employees were not provided
22 proper minimum wages due to Defendants' failure to accurately record and compensate for all
23 hours worked. Therefore, this resulted in unpaid minimum wages on each such occasion.

24 39. In addition, Defendants utilized a rounding policy and practice that routinely
25 undercompensated the Represented Employees and resulted in a net benefit to Defendants. In
26 other words, Defendants' rounding policy is not neutral and systematically undercompensates
27 Plaintiff and the Represented Employees, leading to a failure to pay proper minimum wages.

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

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

7 42. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
8 Represented Employees were entitled to be paid wages throughout the statutory period for each
9 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
10 accordance thereto.

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

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

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

20 46. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
21 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of
22 suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven
23 at trial.

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SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

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

(Plaintiff and the Represented Employees Against All Defendants)

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

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

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

50. At all relevant times, Plaintiff and the Represented Employees were required by Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to Defendants' failure to accurately record and compensate for all hours worked, as well as the non-neutral rounding policy described herein, Plaintiff and the Represented Employees did not receive proper overtime compensation.

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

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

53. Defendants' conduct was willful, as Defendants knew that Plaintiff and the Represented Employees were entitled to be paid proper overtime wages throughout the statutory

1 period, yet Defendants chose not to pay them in accordance thereto.

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

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

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

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

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

18 58. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
19 alleged herein.

20 59. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
21 who did not receive proper protections and benefits of the laws governing mandatory meal
22 periods.

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

25 61. Labor Code § 512(a), in part, provides that employers, including Defendants, may
26 not employ an employee for a work period of more than five hours per day without providing an
27 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
28 except that if the total work period per day of the employee is no more than six hours, the meal

1 period may be waived by mutual consent of both the employer and the employee. Employers
2 may not employ an employee for a work period more than 10 hours per day without providing
3 the employee with a second meal period of not less than 30 minutes.

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

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

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

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

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

27 67. By their failure to provide Plaintiff and the Meal Break Subclass with meal
28 periods as required by California law, and failing to pay one hour of additional wages in lieu of

each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate of compensation for each work day that a meal period was not lawfully provided in an amount to be proven at time of trial.

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

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

Plaintiffs and the Rest Break Subclass Against All Defendants

69. Plaintiffs incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

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

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

74. At all relevant times, Defendants also failed to provide Plaintiffs and the Rest Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the

Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Additionally, Plaintiffs and the Rest Break Subclass were often not permitted to leave the premises for rest breaks, in violation of California law. Furthermore, on occasions when Plaintiffs and the Rest Break Subclass worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

(Plaintiff and the Unreimbursed Business Expense Subclass Against All Defendants)

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

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

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

7 82. At all relevant times herein mentioned, Plaintiff and the Aggrieved Employees
8 were required to incur necessary business-related expenses and costs without reimbursement,
9 including, but not limited to, substantial expenses related to the use of their personal phones and
10 related monthly data plan to communicate with Defendants via phone and text message.

11 83. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
12 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
13 consequence of Plaintiff's employment with Defendants and/or under the direction of
14 Defendants.

15 84. As a result of Defendants' violations of Labor Code § 2802, Plaintiffs and the
16 Represented Employees seek to recover the total amount of reimbursement for business
17 expenses, as well as penalties, interest, attorneys' fees, and costs as permitted under California
18 law.

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO TIMELY PAY WAGES EACH PERIOD**

21 (Labor Code § 204)

22 *(Plaintiff and the Represented Employees Against All Defendants)*

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

25 86. Plaintiff and the Represented Employees are and/or were "non-exempt"
26 employees of Defendants who did not receive proper protections and benefits of the laws
27 regarding the timing of payment of wages each period.

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1 87. Labor Code § 204(a) states that all wages earned by a person are due and payable
2 twice during each calendar month, and further states that wages earned during the first through
3 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
4 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
5 the following month.

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

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

13 90. As a result of Defendants’ violations of Labor Code § 204, Plaintiff and the
14 Represented Employees seek to recover all unpaid wages, as well as penalties, interest,
15 attorneys’ fees, and costs as permitted under California law.

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO TIMELY PAY FINAL WAGES**

18 (Labor Code § 201 – 203)

19 *(Plaintiff and the Waiting Time Penalties Subclass Against All Defendants)*

20 91. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
21 alleged herein.

22 92. Plaintiff, the Represented Employees and the Waiting Time Penalties Subclass are
23 and/or were “non-exempt” employees of Defendants who did not receive proper protections and
24 benefits of the laws governing the timing and payment of wages.

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

27 94. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
28 without abatement or reduction, no later than 72 hours of receiving an employee's notice of

1 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

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

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

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

15 **EIGHTH CAUSE OF ACTION**

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

17 (Labor Code § 226)

18 *(Plaintiff and the Wage Statement Penalties Subclass Against All Defendants)*

19 98. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
20 alleged herein.

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

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

1 101. Defendants violates Labor Code § 226(a) every pay period with respect to
2 Plaintiff, the Represented Employees and the Wage Statement Penalties Subclass because
3 Defendants failed to provide a wage statement to Plaintiff, the Represented Employees and the
4 Wage Statement Penalties Subclass that complied with the requirements of Labor Code § 226(a)
5 by failing to accurately state gross wages earned, failure to accurately state total hours worked,
6 failure to accurately state all deductions, failure to accurately state net wages earned, and failure
7 to state all applicable hourly rates in effect during the pay period and the corresponding number
8 of hours at each hourly rate by the employee.

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

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

1 taxes and withholdings, and other mandated state and federal benefits.

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

5 105. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
6 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
7 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
8 attorney's fees and costs, to Plaintiff, the Represented Employees and the Wage Statement
9 Penalties Subclass who were injured by Defendants' failure to comply with Labor Code §
10 226(a). The exact amount of the applicable penalty is all in an amount to be shown according to
11 proof at trial.

12 **NINTH CAUSE OF ACTION**

13 **UNFAIR AND UNLAWFUL COMPETITION**

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

15 (*Plaintiff and the Represented Employees Against All Defendants*)

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

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

22 108. Defendants, and each of them, are "persons" as defined under Business &
23 Professions Code § 17021.

24 109. As alleged herein, Defendants engaged in conduct that violated California's wage
25 and hour laws, including failure to pay minimum wages, regular wages, overtime wages,
26 unlawful deduction of wages, failure to pay vested vacation at final rate of pay, and failure to
27 timely pay final wages, all in order to decrease their costs and increase their profits.

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

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

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

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

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

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

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

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

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

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

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

26 120. Pursuant to Labor Code § 2699.3(a), on October 29, 2020, Plaintiff gave written
27 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by
28 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been

1 violated, including the facts and theories to support the alleged violations.

2 121. More than sixty-five (65) days have passed since Plaintiff provided the written
3 notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims
4 alleged. Accordingly, Plaintiff has fully satisfied her administrative prerequisites to suit under
5 the PAGA and this Complaint includes the PAGA allegations enumerated below. Plaintiff seeks
6 to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well
7 as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative
8 action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court*
9 (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does she, seek class certification of the
10 PAGA claims under Code of Civil Procedure § 382.

11 **TENTH CAUSE OF ACTION**

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

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

14 *Plaintiff and the Aggrieved Employees against All Defendants*

15 122. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
16 alleged herein.

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

20 124. Plaintiff and the Aggrieved Employees were not provided proper minimum and
21 regular wages due to Defendants' failure to accurately record and compensate for hours worked
22 and the non-neutral rounding policy described herein.

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

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

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

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

7 **ELEVENTH CAUSE OF ACTION**

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

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

10 *Plaintiff and the Aggrieved Employees against All Defendants*

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

13 130. Plaintiff and the Aggrieved Employees were "nonexempt" employees of
14 Defendants who did not receive proper protections and benefits of the laws governing payment
15 of overtime wages.

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

22 132. At all relevant times, Plaintiff and the Aggrieved Employees were required by
23 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
24 Defendants' failure to accurately record and compensate for all hours worked and the non-
25 neutral rounding policy described herein, Plaintiff and the Aggrieved Employees did not receive
26 proper overtime compensation.

27 133. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
28 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because

Defendants failed to pay Plaintiff and the Aggrieved Employees for all overtime hours worked, and required Plaintiff and the Aggrieved Employees to work without being properly compensated for all overtime wages earned.

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

135. 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.

TWELFTH 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

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

137. 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.

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

139. 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.

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

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

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

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

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

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THIRTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS

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

Plaintiff and the Aggrieved Employees against All Defendants

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

146. 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 rest breaks.

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

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

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

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

151. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff

1 and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants
2 failed to pay the Aggrieved Employees one additional hour of compensation in lieu thereof.

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

6 **FOURTEENTH CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 (Labor Code §§ 2802)

9 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

18 156. At all relevant times herein mentioned, Plaintiff and the Aggrieved Employees
19 were required to incur necessary business-related expenses and costs without reimbursement,
20 including, but not limited to, substantial expenses related to the use of their personal phones and
21 related monthly data plan to communicate with Defendants via phone and text message.

22 157. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
23 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
24 consequence of Plaintiff's employment with Defendants and/or under the direction of
25 Defendants.

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

FIFTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

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 regarding the timing of payment of wages each period.

161. 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.

162. 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.”

163. At all relevant times herein, 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.

164. 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.

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SIXTEENTH 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

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

166. 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.

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

168. 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.

169. 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.

170. 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.

171. 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.

172. 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.

SEVENTEENTH CAUSE OF ACTION

**PAGA ASSESSMENT FOR
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

(Labor Code § 226)

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

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

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

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

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179. As a result of the Defendants' violations of Labor Code §226(a)(9), Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA. See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

VII. PRAYER FOR RELIEF

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

1. As to the Tenth through Seventeenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys' fees and costs as permitted under the PAGA;
3. That the First through Ninth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as the Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Ninth 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, 223, 226, 226.3, 226.7, 256, 351, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 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;

- 1 11. For pre- and post-judgment interest; and
2 12. For such other relief as the Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

4 WHEREFORE, Plaintiff, on behalf of herself, and all others similarly situated, hereby
5 demands a jury trial as to the First through Seventeenth Causes of Action pled herein.
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7 Dated: March 9, 2021

LAUBY, MANKIN & LAUBY. LLP

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9 BY:



10 Brian J. Mankin, Esq.
11 Misty M. Lauby, Esq.
12 Attorneys for Plaintiffs
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