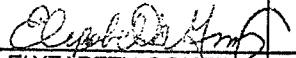


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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 23 2020

BY 
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

DAVID RUSSELL, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DIGNITY HEALTH, a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVDS 2021522
[Assigned to Hon. David Cohn, Dept S26, for
all purposes]

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Vested Vacation;
- (2) Failure to Timely Pay Final Wages;
- (3) Unfair and Unlawful Competition;

PAGA CLAIMS

- (4) PAGA Assessment for Failure to Pay
Vested Vacation; and
- (5) PAGA Assessment for Failure to
Timely Pay Final Wages

Complaint filed: 10/2/2020

Plaintiff David Russell ("Plaintiff"), on behalf of himself, on a representative basis, and
on behalf of others similarly situated, complains and alleges as follows.

I. INTRODUCTION AND GENERAL ALLEGATIONS

1. Plaintiff brings this action against his former employers, Defendants Dignity
Health and/or DOES 1 through 20, inclusive, (collectively, "Defendants") on behalf of himself

1 and all other similarly situated former non-exempt employees that were employed by Defendants
2 in the State of California that (a) received shift differential pay, (b) had vested vacation owed
3 upon separation of employment, and (c) upon separation of employment, were paid for vested
4 vacation at a rate that did not include the shift differential pay (hereinafter, the “Class” or
5 “Represented Employees”).

6 2. Plaintiff alleges that the Represented Employees were subjected to violations of
7 the Labor Code stemming from Defendants’ failure to pay vested vacation at the “final rate” of
8 pay pursuant to Labor Code § 227.3, as well as the corresponding failure to timely pay all wages
9 due and owing upon separation of employment pursuant to Labor Code §§ 201 – 203.

10 3. Plaintiff was employed by Defendants from approximately 2014 through October
11 2019.

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

15 5. At all relevant times, Defendants utilized a policy and practice through which
16 Plaintiff and the Represented Employees accrued vacation and/or PTO hours (collectively,
17 “vacation hours”). Plaintiff also alleges that a contract existed between Plaintiff, the
18 Represented Employees, and Defendants, under which vacation hours were to be paid at the base
19 rate of pay *plus* any applicable shift differentials.

20 6. However, on the occasions when Plaintiff and the Represented Employees had
21 accrued but unused vacation hours upon separation of employment, Defendants failed to pay for
22 these earned wages at the “final rate” including applicable shift differentials, as required by
23 Labor Code § 227.3.

24 7. To illustrate, at the time of (and leading up to) Plaintiff’s termination, he was paid
25 a base hourly rate plus additional hourly compensation in the form of shift differential pay.
26 However, despite that Plaintiff’s “final rate” for purposes of vacation payout at the time of his
27 termination was comprised of his base hourly rate plus the shift differential, Defendants paid
28 Plaintiff’s accrued and unused vacation at only the base hourly rate.

1 8. Additionally, because of the failure to pay vacation at the proper rate *during*
2 employment, Defendants failed to properly account for (and pay) all accrued and vested vacation
3 owed upon separation of employment.

4 9. As a result, Plaintiff and the Represented Employees did not receive
5 compensation for all accrued but unused vacation hours at the “final rate” upon separation of
6 employment – in violation of Labor Code § 227.3.

7 10. Furthermore, because Defendants failed to properly pay all vested vacation hours
8 due upon separation of employment, Defendants failed to pay all wages due and owing to
9 Plaintiff and the Represented Employees upon separation of employment, in violation of Labor
10 Code §§ 201 – 203.

11 11. Plaintiff brings this lawsuit seeking declaratory, injunctive, and monetary relief
12 against Defendants and each of them, on behalf of himself and the Represented Employees to
13 recover, among other things, all unpaid wages, statutory penalties, attorneys’ fees and costs
14 pursuant to California Labor Code §§ 201 – 203 and 227.3, among possibly other sections
15 inadvertently omitted. Plaintiff also reserves the right to name additional representatives
16 throughout the State of California.

17 **II. JURISDICTION**

18 12. This Court has jurisdiction over the claims for relief of Plaintiff and the
19 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

20 **III. VENUE**

21 13. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil
22 Procedure § 395(a) and 395.5. Defendants transact business in San Bernardino County and the
23 unlawful acts alleged herein have a direct effect on Plaintiff and the Represented Employees in
24 San Bernardino County. Furthermore, Defendants employed or employ Plaintiff and
25 Represented Employees in San Bernardino County.

26 ///

27 ///

28 ///

1 **IV. PARTIES**

2 **Plaintiff**

3 14. Plaintiff and Class Representative David Russell was employed by Defendants
4 from approximately 2014 through October 2019, and performed work for Defendants in San
5 Bernardino County, California.

6 **Defendants**

7 15. Plaintiff is informed and believes and thereon alleges that Defendant Dignity
8 Health is a California Corporation authorized to and doing business in San Bernardino County,
9 California, and is and/or was the legal employer of Plaintiff and the Represented Employees
10 during the applicable statutory periods.

11 16. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
12 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 10,
13 inclusive, but on information and belief alleges that those Defendants are legally responsible for
14 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
15 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
16 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
17 Defendants when ascertained.

18 17. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
19 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
20 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
21 each Defendant are legally attributable to the other Defendants. On information and belief, a
22 unity of interest and ownership between each Defendant exists such that all Defendants acted as
23 a single employer of Plaintiff and other similarly situated employees.

24 **V. CLASS ACTION ALLEGATIONS**

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

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

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

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

6 All former non-exempt employees that were employed by
7 Defendants in the State of California that, during the Relevant Time
8 Period, (a) received shift differential pay, (b) had vested vacation
9 owed upon separation of employment, and (c) upon separation of
10 employment, were paid for vested vacation at a rate that did not
11 include the shift differential pay.

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

14 23. Plaintiff, as Class Representative, is a member of the class that he seeks to
15 represent.

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

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

24 26. **Commonality:** There are questions of law and fact common to the class which
25 predominate over any questions affecting only individual members of the class, including
26 without limitation:
27
28

1 i. Whether Defendants violated the California Labor Code by failing to
2 compensate Plaintiff and the Represented Employees for all accrued but unused vacation hours
3 at the “final rate” of pay upon separation of employment;

4 ii. Whether Defendants violated the California Labor Code by failing to pay
5 all wages due upon separation of employment between Defendants and the Represented
6 Employees, whether such separation was voluntary or involuntary

7 iii. Whether Defendants violated California Business & Professions Code §§
8 17200 *et seq.* due to the failure to pay vested vacation upon separation of employment and
9 failure to pay all wages owed upon separation of employment;

10 iv. Whether Defendants violated § 17200 *et seq.* of the California Business
11 and Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, and
12 227.3, among possibly other sections inadvertently omitted, and the applicable IWC Wage
13 Order, which violations constitute false, fraudulent, unlawful, unfair and deceptive business
14 practices; and

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

17 27. **Typicality:** Plaintiff’s claims, as the Class Representative, are typical of the
18 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants’
19 ongoing Labor Code and Wage Order violations including those pertaining to the failure to pay
20 vested vacation and failure to pay all wages owed upon separation of employment, and Plaintiff
21 further seeks the same types of damages, penalties, and other relief on the same theories and
22 legal grounds as the members of the Class that he seeks to represent.

23 28. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
24 and adequately represent and protect the interests of the Class. Plaintiff’s interests are not in
25 conflict with those of the Class. Class Representatives’ counsel are competent and experienced in
26 litigating large employment class actions and other complex litigation matters, including cases
27 like this case.
28

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

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY VESTED VACATION ON SEPARATION OF EMPLOYMENT**

11 (Labor Code § 227.3)

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

14 31. Plaintiff and the Represented Employees were employees of Defendants who did
15 not receive proper protections and benefits of the laws governing the payment of vested vacation
16 time and/or paid time off upon separation of employment.

17 32. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
18 vacation, paid time off, or compensated time off policy must, upon an employee's separation
19 from employment, pay to the employee all vested but unused vacation and/or paid time off at his
20 final rate of pay.

21 33. At all relevant times, Defendants utilized a policy and practice through which
22 Plaintiff and the Represented Employees accrued vacation hours. Plaintiff also alleges that a
23 contract existed between Plaintiff, the Represented Employees, and Defendants, under which
24 vacation hours were to be paid at the base rate of pay *plus* any applicable shift differentials.

25 34. However, on the occasions when Plaintiff and the Represented Employees had
26 accrued but unused vacation hours upon separation of employment, Defendants failed to pay for
27 these earned wages at the "final rate" including applicable shift differentials, as required by
28 Labor Code § 227.3.

1 35. To illustrate, at the time of (and leading up to) Plaintiff's termination, he was paid
2 a base hourly rate plus additional hourly compensation in the form of shift differential pay.
3 However, despite that Plaintiff's "final rate" for purposes of vacation payout at the time of his
4 termination was comprised of his base hourly rate *plus* the shift differential, Defendants paid
5 Plaintiff's accrued and unused vacation at only the base hourly rate.

6 36. Additionally, because of the failure to pay vacation at the proper rate *during*
7 employment, Defendants failed to properly account for (and pay) all accrued and vested vacation
8 owed upon separation of employment.

9 37. As a result, Plaintiff and the Represented Employees did not receive
10 compensation for all accrued but unused vacation hours at the "final rate" upon separation of
11 employment – in violation of Labor Code § 227.3.

12 38. At all relevant times herein, Defendants failed to pay the Represented Employees,
13 including Plaintiff, all vested but unused vacation time and/or paid time off upon separation from
14 employment, thereby receiving an economic benefit.

15 39. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
16 them, knowingly refused to perform their obligations to compensate the Represented Employees
17 for all vested but unused vacation hours off upon separation from employment.

18 40. As a result of Defendants' violations of Labor Code § 227.3, Plaintiff and the
19 Represented Employees seek to recover the unpaid vacation hours, as well as penalties, interest,
20 attorneys' fees, and costs as permitted under California law.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY FINAL WAGES**

23 (Labor Code §§ 201 – 203)

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

26 42. Plaintiff and the Represented Employees are and/or were former employees of
27 Defendants who did not receive proper protections and benefits of the laws governing the timing
28 and payment of wages upon separation of employment.

44. 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.

45. 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.

46. At all relevant times, Defendants employed a policy and practice whereby, upon separation of employment, Plaintiff and the Represented Employees were not properly paid all accrued and unused vacation hours as required by Labor Code § 227.3. As a result, Defendants failed to pay all wages due and owing to Plaintiff and the Represented Employees upon separation of employment, in violation of Labor Code §§ 201 – 203.

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

THIRD CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

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

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

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

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

3 51. As alleged herein, Defendants engaged in conduct that violated California’s wage
4 and hour laws, including failure to pay vested vacation hours at the final rate of pay upon
5 separation of employment, as well as the failure to timely pay all wages owed upon separation of
6 employment, all to decrease their costs and increase their profits.

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

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

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

17 55. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
18 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
19 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
20 Code of Civil Procedure § 1021.5.

21 56. A violation of California Business & Professions Code § 17200, *et seq.* may be
22 predicated on the violation of any state or federal law. All of the acts described herein as
23 violations of, among other things, the California Labor Code and IWC Wage Orders, are
24 unlawful and in violation of public policy, and constitute unfair, unlawful and/or fraudulent
25 business practices in violation of California Business and Professions Code §§ 17200, *et seq.*

26 57. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
27 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
28 consequence of Defendants’ unfair, unlawful and/or fraudulent business practices. As a result of

1 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
2 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
3 harm unless Defendants, and each of them, are restrained from continuing to engage in said
4 unfair, unlawful and/or fraudulent business practices.

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

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

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

22 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**

23 **(Labor Code §§ 2698 – 2699.5)**

24 61. Plaintiff incorporates the preceding paragraph of the First Amended Complaint as
25 if fully alleged herein.

26 62. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
27 Defendants during the applicable statutory period and suffered one or more of the Labor Code
28 violations alleged herein.\ As such, Plaintiff may recover the remedies described herein in a civil

1 action filed on behalf of himself and all other similarly situated current and former aggrieved
2 employees in California against whom one or more of the alleged violations was committed
3 (hereinafter the “Aggrieved Employees”).

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

11 **FOURTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION**

13 (Labor Code § 227.3)

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

16 65. Plaintiff and the Aggrieved Employees were employees of Defendants who did
17 not receive proper protections and benefits of the laws governing the payment of vested vacation
18 time and/or paid time off upon separation of employment.

19 66. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
20 vacation, paid time off, or compensated time off policy must, upon an employee’s separation
21 from employment, pay to the employee all vested but unused vacation and/or paid time off at his
22 final rate of pay.

23 67. At all relevant times, Defendants utilized a policy and practice through which
24 Plaintiff and the Aggrieved Employees accrued vacation hours. Plaintiff also alleges that a
25 contract existed between Plaintiff, the Represented Employees, and Defendants, under which
26 vacation hours were to be paid at the base rate of pay *plus* any applicable shift differentials.

27 68. However, on the occasions when Plaintiff and the Aggrieved Employees had
28 accrued but unused vacation hours upon separation of employment, Defendants failed to pay for

1 these earned wages at the “final rate” including applicable shift differentials, as required by
2 Labor Code § 227.3.

3 69. To illustrate, at the time of (and leading up to) Plaintiff’s termination, he was paid
4 a base hourly rate plus additional hourly compensation in the form of shift differential pay.
5 However, despite that Plaintiff’s “final rate” for purposes of vacation payout at the time of his
6 termination was comprised of his base hourly rate plus the shift differential, Defendants paid
7 Plaintiff’s accrued and unused vacation at only the base hourly rate.

8 70. As a result, Plaintiff and the Aggrieved Employees did not receive compensation
9 for all accrued but unused vacation hours at the “final rate” upon separation of employment – in
10 violation of Labor Code § 227.3.

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

14 **FIFTH CAUSE OF ACTION**

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

16 (Labor Code §§ 201 – 203)

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

19 73. Plaintiff and the Aggrieved Employees are and/or were former employees of
20 Defendants who did not receive proper protections and benefits of the laws governing the timing
21 and payment of wages upon separation of employment.

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

24 75. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
25 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
26 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.
27
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1 76. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
2 penalty from the due date thereof at the same rate until paid or until an action therefore is
3 commenced, but the wages shall not continue for more than thirty (30) days.

4 77. At all relevant times, Defendants employed a policy and practice whereby, upon
5 separation of employment, Plaintiff and the Aggrieved Employees were not properly paid all
6 accrued and unused vacation hours as required by Labor Code § 227.3. As a result, Defendants
7 failed to pay all wages due and owing to Plaintiff and the Aggrieved Employees upon separation
8 of employment, in violation of Labor Code §§ 201 – 203.

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

12 **VII. PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and on behalf of
14 the Represented Employees, prays for judgment and relief against Defendants, jointly and
15 severally, as follows:

16 1. As to the Fourth and Fifth Causes of Action, the assessment of all remedies and/pr
17 penalties available under PAGA;

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

19 3. That the First through Third Causes of Action be certified as a class action;

20 4. That Plaintiff be appointed as Class Representative;

21 5. That counsel for Plaintiff be appointed Class Counsel;

22 6. For all applicable statutory penalties recoverable under the First through Third
23 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
24 Orders of the Industrial Welfare Commission;

25 7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
26 law, including those pursuant to the Labor Code;

27 8. For injunctive relief and/or restitution as provided by the Labor Code and
28 Business and Professions Code § 17200, *et seq.*;

1 9. For a declaratory judgment that Defendants have violated Labor Code §§ 201,
2 202, 203, and 227.3, among other sections inadvertently omitted;

3 10. For an award of damages in the amount of unpaid compensation including, but
4 not limited to, unpaid vested vacation wages and penalties according to proof, including interest
5 thereon;

6 11. For pre- and post-judgment interest; and

7 12. For such other relief as the Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby
10 demands a jury trial as to the First through Fifth Causes of Action pled herein.

11
12 Dated: December 23, 2020

FERNANDEZ & LAUBY LLP

13
14 BY:



15 Brian J. Mankin, Esq.
16 Peter J. Carlson, Esq.
17 Attorneys for Plaintiff
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