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Assigned for All Purposes

Judge William Claster

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

CX-104

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

GARRETT SILVA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

ESTILO HACIENDA, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 30-2021-01179980-CU-OE-CXC

COMPLAINT

CLASS ACTION CLAIMS

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

PAGA CLAIMS

- (9) Failure to Pay Minimum Wages;
- (10) Failure to Pay Overtime Wages;
- (11) Failure to Provide Meal Periods;
- (12) Failure to Provide Rest Breaks;
- (13) Unlawful Deduction of Gratuities;
- (14) Failure to Timely Pay Wages Each Period;
- (15) Failure to Timely Pay Final Wages; and
- (16) Failure to Provide Accurate Itemized Wage Statements

JURY TRIAL DEMANDED

Plaintiff Garrett Silva (“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 employer(s), Defendants Estilo Hacienda, Inc., and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all current and former nonexempt employees employed by Defendants in California (the “Class” or “Represented Employees”)¹, for Labor Code violations stemming from Defendants’ failure to pay all wages owed, including minimum, regular, and overtime wages, failure to provide meal periods, failure to provide rest breaks, unlawful deduction of gratuities, failure to timely pay wages, and failure to provide accurate itemized wage statements.

2. Plaintiff was employed by Defendants from approximately October 2019 through May 2020.

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

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

5. At all relevant times, Defendants paid Plaintiff and the Represented Employees on an hourly basis but Plaintiff and the Represented Employees also received additional compensation in the form of gratuities paid by the patrons and left for Plaintiff and/or the Represented Employees. Plaintiff alleges on information and belief that Defendants deducted credit card processing fees and costs from gratuities paid by patrons to Plaintiff and the Represented Employees, despite Plaintiff and the Represented Employees being entitled to the gratuity without any amounts being deducted or taken by Defendants (as the employer).

6. Furthermore, Plaintiff and the Represented Employees were denied 30-minute off-duty meal periods, as mandated by California law. As a result of Defendants’ policies and

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

practices, the Represented Employees were subjected to meal period violations when they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal periods while 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.

7. Defendants also failed to provide Plaintiff 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, Plaintiff and the Represented Employees were not permitted to leave the premises for rest breaks, in violation of California law. Furthermore, on occasions when Plaintiff 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.

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

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

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

11. At all material times, Defendants and DOES 1 through 20 were and/or are the Represented Employees' employers or persons acting on behalf of the Represented Employees' employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating

hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under California law.

12. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and monetary relief against Defendants and each of them, on behalf of himself and the Represented Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees, penalties, costs and expenses pursuant to California 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 possibly other sections inadvertently omitted. Plaintiff also reserves the right to name additional representatives throughout the State of California.

13. Pursuant to Labor Code § 2699.3(a), on November 16, 2020, Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff is currently complying with the procedures for bringing suit specified in California Labor Code § 2699.3, and this Complaint will be deemed amended to include the PAGA allegations enumerated below when more than sixty-five (65) days have passed since the Notice was mailed to Defendants and the LWDA chooses not to investigate the allegations herein.

II. JURISDICTION

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

III. VENUE

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

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1 **IV. PARTIES**

2 **Plaintiff**

3 16. Plaintiff and Class Representative Garrett Silva was employed by Defendants
4 from approximately October 2019 through May 2020 and performed work for Defendants in
5 Orange County.

6 **Defendants**

7 17. Plaintiff is informed and believes and thereon alleges that Defendant Estilo
8 Hacienda, Inc., is a California corporation authorized to and doing business in Orange County,
9 California, and is and/or was the legal employer of Plaintiff and the Represented Employees
10 during the applicable statutory periods.

11 18. 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 20,
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 19. Plaintiff is informed and believes and thereon alleges that he and the Represented
19 Employees worked under the joint direction and control of Defendants and that Defendants, and
20 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
21 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
22 each Defendant are legally attributable to the other Defendants. On information and belief, a
23 unity of interest and ownership between each Defendant exists such that all Defendants acted as
24 a single employer of Plaintiff and other Represented Employees.

25 20. Furthermore, Plaintiff is informed and believes and thereon alleges that
26 Defendants, and each of them, are an integrated enterprise and should be treated as a single
27 employer because these entities share an interrelation of operations, with common human
28 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. Plaintiff is informed and believes and thereon alleges that, in conducting themselves in the manner described herein, Defendants, and each of them, were acting in active concert with one another such that the acts of each were and are fully attributable to the others in all material respects. Plaintiff is further informed and believes that at all relevant times Defendants and each of them are now, and at all material times herein mentioned were, the agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of their remaining co-Defendants.

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

V. CLASS ACTION ALLEGATIONS

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 period beginning four years prior to the filing of this action until class certification (the “Relevant Time Period”).

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 nonexempt employees employed by Defendants in 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.

Gratuities Subclass

All Represented Employees who received gratuities left by patrons, but had amounts deducted from said gratuities by 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 and ending when final judgment is entered.

Wage Statement Penalties Subclass

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

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

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

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

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

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

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

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

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

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

26 v. Whether Defendants violated the California Labor Code and applicable
27 IWC Wage Order by deducting any fees or costs from and/or receiving any part of any gratuities,
28 or any part thereof, that was paid or left for Plaintiff and the Gratuities Subclass;

vi. Whether Defendants violated the California Labor Code by failing to timely 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 the 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, failure to provide mandated paid rest breaks, failure to provide mandated meal periods, and failure to timely pay final wages; and

ix. 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 Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest breaks, unlawful deduction of wages or gratuities, 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 conflict with those of the Class. Class Representative's counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

35. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Represented Employees is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Represented Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies and practices set forth above. Class action

1 treatment will allow those similarly situated persons to litigate their claims in the manner that is
2 most efficient and economical for the parties and the judicial system.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

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

6 *Plaintiff and the Represented Employees Against All Defendants*

7 36. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
8 alleged herein.

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

12 38. Plaintiff and the Represented Employees were not provided proper minimum and
13 regular wages due to Defendants' failure to accurately record and compensate for all hours
14 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
15 required to perform off-the-clock work that Defendants either knew or should have known they
16 were performing.

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

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

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

27 42. At all material times, Defendants DOES 1 through 20 were and/or are the
28 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said

1 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
2 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
3 Labor Code regulating hours and days of work respectively.

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

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

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

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PAY OVERTIME WAGES**

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

15 *Plaintiff and the Represented Employees Against All Defendants*

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

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

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

26 49. At all relevant times, Plaintiff and the Represented Employees were required by
27 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
28 Defendants' failure to accurately record and compensate for all hours worked and/or the non-

1 neutral rounding policy described herein, Plaintiff and the Represented Employees did not
2 receive proper overtime compensation.

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

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

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

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

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

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

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

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THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

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

Plaintiff and the Meal Break Subclass Against All Defendants

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

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

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

60. 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.

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

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

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

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

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

66. By their failure to provide Plaintiff and the Meal Break Subclass with meal 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.

67. 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)

Plaintiff and the Rest Break Subclass Against All Defendants

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

69. Plaintiff 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.

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

71. 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.

72. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, Defendants shall pay Plaintiff 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.

73. At all relevant times, Defendants also failed to provide Plaintiff 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, Plaintiff 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 Plaintiff 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.

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

75. At all relevant times herein, Defendants failed to provide Plaintiff 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.

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

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

10 **FIFTH CAUSE OF ACTION**

11 **UNLAWFUL DEDUCTION OF GRATUITIES**

12 (Labor Code §§ 200, 221, 350-356)

13 *Plaintiff and the Gratuities Subclass against All Defendants*

14 78. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
15 alleged herein.

16 79. Plaintiff and the Gratuities Subclass are and/or were employees of Defendants
17 who did not receive proper protections and benefits of the laws governing gratuities paid by
18 patrons to employees.

19 80. Labor Code § 200 defines wages to include "all amounts for labor performed by
20 employees of every description, whether the amount is fixed or ascertained by the standard of
21 time, task, piece, commission basis, or other method of calculation." Labor Code § 221 states
22 that "[i]t shall be unlawful for any employer to collect or receive from an employee any part of
23 wages theretofore paid by said employer to said employee."

24 81. Labor Code § 350(e) states that " 'Gratuity' includes any tip, gratuity, money, or
25 part thereof that has been paid or given to or left for an employee by a patron of a business over
26 and above the actual amount due the business for services rendered or for goods, food, drink, or
27 articles sold or served to the patron. Any amounts paid directly by a patron to a dancer employed
28 by an employer subject to Industrial Welfare Commission Order No. 5 or 10 shall be deemed a

1 gratuity.”

2 82. Pursuant to Labor Code § 351, Defendants shall not “shall collect, take, or receive
3 any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct
4 any amount from wages due an employee on account of a gratuity, or require an employee to
5 credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the
6 employee from the employer. Every gratuity is hereby declared to be the sole property of the
7 employee or employees to whom it was paid, given, or left for. An employer that permits patrons
8 to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the
9 patron indicated on the credit card slip, without any deductions for any credit card payment
10 processing fees or costs that may be charged to the employer by the credit card company.
11 Payment of gratuities made by patrons using credit cards shall be made to the employees not
12 later than the next regular payday following the date the patron authorized the credit card
13 payment.”

14 83. At all relevant times, Defendants deducted credit card processing fees from
15 Plaintiff’s and the Gratuities Subclass’ gratuities left for them by patrons, in violation of
16 California law. Additionally, Plaintiff and the Gratuities Subclass were often not permitted to
17 leave the premises for rest breaks, in violation of California law.

18 84. Defendants violated Labor Code §§ 221 and 351, every pay period because
19 Plaintiff and the Gratuities Subclass were not provided with all gratuities left for them by
20 patrons.

21 85. At all relevant times herein, Defendants deducted credit card processing fees and
22 costs from gratuities received by Plaintiff and the Gratuities Subclass, thereby receiving an
23 economic benefit.

24 86. By their willful deduction of credit card processing fees and costs from the
25 gratuities received by Plaintiff and the Gratuities Subclass, Defendants willfully violated Labor
26 Code §§ 221, 350-356. As a result of the Defendants’ wrongful conduct, Plaintiff and the
27 Represented Employees have been damaged in amounts to be proven at trial.

28 / / /

1 87. Also, as a direct result of Defendants' violations of Labor Code §§ 350-356,
2 Defendants, and each of them, are liable to Plaintiff and the Gratuities Subclass for unlawful
3 deduction of gratuities, penalties, costs, and interest.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO TIMELY PAY FINAL WAGES**

6 (Labor Code §§ 201 – 203)

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

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

10 89. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
11 Defendants who did not receive proper protections and benefits of the laws governing the timing
12 and payment of wages.

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

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

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

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

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

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

7 **SEVENTH CAUSE OF ACTION**

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

9 (Labor Code § 226)

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

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

13 97. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
14 Defendants who did not receive proper protections and benefits of the laws governing the
15 provision of accurate itemized wage statements.

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

22 99. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
23 and the Wage Statement Penalties Subclass because Defendants failed to provide a wage
24 statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
25 requirements of Labor Code § 226(a).

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

1 wages earned.

2 101. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
3 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
4 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
5 requirements of Labor Code § 226(a).

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

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

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

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

7 **EIGHTH CAUSE OF ACTION**

8 **UNFAIR AND UNLAWFUL COMPETITION**

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

10 *Plaintiff and the Represented Employees against All Defendants*

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

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

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

19 109. As alleged herein, Defendants engaged in conduct that violated California's wage
20 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
21 mandated meal periods and rest breaks, and failure to timely pay final wages, all to decrease their
22 costs and increase their profits.

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

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

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

5 113. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
6 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
7 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
8 of Civil Procedure § 1021.5.

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

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

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

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

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

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

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

20 120. Pursuant to Labor Code § 2699.3(a), on November 16, 2020, Plaintiff gave
21 written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and
22 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
23 violated, including the facts and theories to support the alleged violations.

24 121. Therefore, once more than sixty-five (65) days have passed since that date,
25 Plaintiff will have fully satisfied the administrative prerequisites to suit under the PAGA and this
26 Complaint will be deemed amended to include the PAGA allegations enumerated below. Once
27 this occurs, Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
28 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by

PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

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

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

127. 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 §§ 221-223, 1194 and 1197.

128. 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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1 **TENTH CAUSE OF ACTION**

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

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 129. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 130. Plaintiff and the Aggrieved Employees were “nonexempt” employees of
8 Defendants who did not receive proper protections and benefits of the laws governing payment
9 of overtime wages.

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

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

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

26 134. Plaintiff is informed and believes and thereon alleges that Defendants
27 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
28 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.

ELEVENTH 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.

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

141. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when

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

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

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

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

19 **TWELFTH CAUSE OF ACTION**

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

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

22 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

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

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

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

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1 **THIRTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR UNLAWFUL DEDUCTION OF GRATUITIES**

3 (Labor Code §§ 200, 221, 350-356)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

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

7 154. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing gratuities paid by
9 patrons to employees.

10 155. Labor Code § 200 defines wages to include “all amounts for labor performed by
11 employees of every description, whether the amount is fixed or ascertained by the standard of
12 time, task, piece, commission basis, or other method of calculation.” Labor Code § 221 states
13 that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of
14 wages theretofore paid by said employer to said employee.”

15 156. Labor Code § 350(e) states that “ ‘Gratuity’ includes any tip, gratuity, money, or
16 part thereof that has been paid or given to or left for an employee by a patron of a business over
17 and above the actual amount due the business for services rendered or for goods, food, drink, or
18 articles sold or served to the patron. Any amounts paid directly by a patron to a dancer employed
19 by an employer subject to Industrial Welfare Commission Order No. 5 or 10 shall be deemed a
20 gratuity.”

21 157. Pursuant to Labor Code § 351, Defendants shall not “shall collect, take, or receive
22 any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct
23 any amount from wages due an employee on account of a gratuity, or require an employee to
24 credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the
25 employee from the employer. Every gratuity is hereby declared to be the sole property of the
26 employee or employees to whom it was paid, given, or left for. An employer that permits patrons
27 to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the
28 patron indicated on the credit card slip, without any deductions for any credit card payment

1 processing fees or costs that may be charged to the employer by the credit card company.
2 Payment of gratuities made by patrons using credit cards shall be made to the employees not
3 later than the next regular payday following the date the patron authorized the credit card
4 payment.”

5 158. At all relevant times, Defendants deducted credit card processing fees from
6 Plaintiff’s and the Aggrieved Employees’ gratuities left for them by patrons, in violation of
7 California law. Additionally, Plaintiff and the Aggrieved Employees were often not permitted to
8 leave the premises for rest breaks, in violation of California law.

9 159. Defendants violated Labor Code §§ 221 and 351, every pay period because
10 Plaintiff and the Aggrieved Employees were not provided with all gratuities left for them by
11 patrons.

12 160. At all relevant times herein, Defendants deducted credit card processing fees and
13 costs from gratuities received by Plaintiff and the Aggrieved Employees, thereby receiving an
14 economic benefit.

15 161. By their willful deduction of credit card processing fees and costs from the
16 gratuities received by Plaintiff and the Aggrieved Employees, Defendants willfully violated
17 Labor Code §§ 221, 350-356. As a result of the Defendants’ wrongful conduct, Plaintiff and the
18 Represented Employees have been damaged in amounts to be proven at trial.

19 162. Also, as a direct result of Defendants’ violations of Labor Code §§ 350-356,
20 Defendants, and each of them, are liable to Plaintiff and the Gratuities Subclass for unlawful
21 deduction of gratuities, penalties, costs, and interest.

22 163. 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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FOURTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

Plaintiff and the Aggrieved Employees against All Defendants

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

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

166. 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.

167. 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.”

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

169. 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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FIFTEENTH 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

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

171. 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.

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

173. 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.

174. 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.

175. 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.

176. 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.

177. 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.

SIXTEENTH CAUSE OF ACTION

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

(Labor Code § 226)

Plaintiff and the Aggrieved Employees against All Defendants

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

179. 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.

180. 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.

181. 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).

182. 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.

183. 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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184. 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 himself, 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 Ninth through Sixteenth 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 Eighth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Eighth 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 himself and all others similarly situated, hereby
5 demands a jury trial as to the First through Sixteenth Causes of Action pled herein.

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7 Dated: January 20, 2021

FERNANDEZ & LAUBY LLP

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