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

ELIZABETH MORENO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

J.J. KANE ASSOCIATES, INC., a New
Jersey Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: **CVRI2101236**

COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Pay Vested Vacation Upon Separation of Employment;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements; and
- (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) Failure to Pay Vested Vacation Upon Separation of Employment;
- (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

FILED
Superior Court of California
County of Riverside
3/9/2021
E. Escobedo
Electronically Filed

1 Plaintiff Elizabeth Moreno (“Plaintiff”), on behalf of herself, on a representative basis,
2 and on behalf of others similarly situated, complain and allege as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against her employer, Defendant J.J. Kane Associates,
5 Inc., and DOES 1 through 10, (collectively, the “Defendants”) on behalf of all current and
6 former non-exempt employees employed by Defendants in California (hereinafter, the “Class” or
7 “Represented Employees”), for California Labor Code violations stemming from Defendants’
8 failure to pay all wages owed, including minimum, regular, overtime wages, failure to provide
9 rest breaks, unlawful deduction of wages, failure to pay vested vacation upon separation of
10 employment, failure to timely pay wages, and failure to provide accurate itemized wage
11 statements.

12 2. Plaintiff was employed by Defendants as a non-exempt employee from
13 approximately February 2019 through September 2020.

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

17 4. At all relevant times, Plaintiff was not provided proper minimum and overtime
18 wages due to Defendants’ failure to accurately record and compensate for all hours worked.

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

25 6. Defendants also failed to provide Plaintiffs and the Represented Employees with
26 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
27 mandated by California law. Defendants did not schedule rest breaks and the Represented
28 Employees were often not authorized and/or permitted to take mandated rest breaks due to being

overwhelmed by their hectic workload. Additionally, Plaintiffs and the Represented Employees were not permitted to leave the premises for rest breaks, in violation of California law.

Furthermore, on occasions when Plaintiffs and the Represented Employees worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

7. Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, “vacation hours”). However, on the occasions when Claimant and the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, Defendants failed to pay for these earned wages at the “final rate” as required by Labor Code § 227.3. To illustrate, at the time of (and leading up to) Claimant’s termination, he was paid a base hourly rate of \$24.49. However, the Company paid Claimant’s accrued and unused vacation at something less than Claimant’s final rate. As a result, Claimant and the Company did not receive compensation for all accrued but unused vacation hours at the “final rate” – in violation of Labor Code § 227.3.

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

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

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

11. At all material times, Defendants and DOES 1 through 10 were and/or are Represented Employees' employers or persons acting on behalf of 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 any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under California law, including *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112.

12. Plaintiff bring this lawsuit seeking declaratory, injunctive, equitable, and monetary relief against Defendants and each of them, on behalf of herself 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, 226, 226.3, 227.3, 256, 510, 512, 1194, 1194.2, and 1197 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 2, 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. The waiting period imposed by Labor Code § 2699.3(a)(2)(A) has elapsed.

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). Defendants transact business in Riverside County and the unlawful acts alleged herein have a direct effect on Plaintiff and the Represented Employees in Riverside County. Furthermore, Defendants employed or employ Plaintiff and Represented Employees in

Riverside County.

IV. PARTIES

Plaintiff

16. Plaintiff and Class Representative was employed by Defendants as a non-exempt employee from approximately February 2019 through September 2020 and performed work for Defendants in Riverside County.

Defendants

17. Plaintiff is informed and believes and thereon alleges that Defendant J.J. Kane Associates, Inc. is a New Jersey corporation authorized to and doing business in Riverside County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

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

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

V. CLASS ACTION ALLEGATIONS

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

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

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

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

8 **California Class**

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

12 24. Plaintiff also seeks to represent the following subclasses:

13 **Meal Break Subclass**

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

16 **Rest Break Subclass**

17 All Represented Employees who worked a shift of at least
18 3.5 hours during the Relevant Time Period.

19 **Vested Vacation Subclass**

20 All Represented Employees who had vested vacation owed
21 upon separation of employment.

22 **Waiting Time Penalties Subclass**

23 All Represented Employees who separated from their
24 employment with Defendants during the period three years
25 before the filing of this action until class certification.

26 **Wage Statement Penalties Subclass**

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

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

4 26. Plaintiff, as Class Representative, is a member of the class and subclasses that
5 they seek to represent.

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

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

14 29. **Commonality:** There are questions of law and fact common to the class which
15 predominate over any questions affecting only individual members of the class, including
16 without limitation:

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

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

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

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

v. Whether Defendants violated the California Labor Code by unlawfully deducting wages from Plaintiff and the Represented Employees;

vi. Whether Defendants violated the California Labor Code by failing to pay vested vacation to Plaintiff and the Vested Vacation Subclass at their final rate of pay;

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

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

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

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

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

30. **Typicality:** Plaintiff's claims, as the Class Representatives, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all

1 wages owed, including minimum, regular, overtime wages, unlawfully deducting wages, failure
2 to pay vested vacation at final rate of pay, failure to timely pay final wages, and failure to
3 provide accurate itemized wage statements.

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

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

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY MINIMUM WAGES**

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

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

21 33. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
22 alleged herein.

23 34. Plaintiff and the Represented Employees were not exempt from the requirement
24 to be paid at least the applicable California minimum wage throughout the statutory period for
25 each hour worked.

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

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

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

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

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

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

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

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

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SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

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

(Plaintiff and the Represented Employees Against All Defendants)

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

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

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

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

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

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

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

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

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

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

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

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

17 54. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
18 alleged herein.

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

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

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

1 may not employ an employee for a work period more than 10 hours per day without providing
2 the employee with a second meal period of not less than 30 minutes.

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

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

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

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

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

26 63. By their failure to provide Plaintiff and the Meal Break Subclass with meal
27 periods as required by California law, and failing to pay one hour of additional wages in lieu of
28 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and

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

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

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REST BREAKS**

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

10 *Plaintiffs and the Rest Break Subclass Against All Defendants*

11 65. Plaintiffs incorporates the preceding paragraphs of the Complaint as if fully
12 alleged herein.

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

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

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

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

25 70. At all relevant times, Defendants also failed to provide Plaintiffs and the Rest
26 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
27 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
28 Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due

1 to being overwhelmed by their hectic workload. Additionally, Plaintiffs and the Rest Break
2 Subclass were often not permitted to leave the premises for rest breaks, in violation of California
3 law. Furthermore, on occasions when Plaintiffs and the Rest Break Subclass worked in excess of
4 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

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

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 (Labor Code § 227.3)

24 (*Plaintiff, the Represented Employees, and the Vested Vacation Subclass Against All Defendants*)

25 75. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
26 alleged herein.

27 76. Plaintiff the Represented Employees and the Vested Vacation Subclass were
28 employees of Defendants who did not receive proper protections and benefits of the laws

governing the payment of vested vacation time and/or paid time off upon separation of employment.

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

78. At all relevant times, Defendants utilized a policy and practice through which Plaintiff the Represented Employees and the Vested Vacation Subclass accrued vacation hours. However, on the occasions when Plaintiff the Represented Employees and the Vested Vacation Subclass had accrued but unused vacation hours upon separation of employment, Defendants failed to pay for these earned wages at the "final rate" as required by Labor Code § 227.3.

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

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

81. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, knowingly refused to perform their obligations to compensate the Represented Employees and the Vested Vacation Subclass for all vested but unused vacation time and/or paid time off upon separation from employment.

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

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SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code § 201 – 203)

(Plaintiff, the Represented Employees and the Waiting Time Penalties Subclass Against All Defendants)

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

84. Plaintiff, the Represented Employees and the Waiting Time Penalties Subclass 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 wages.

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

86. 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.

87. 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.

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

89. 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 Waiting Time Penalties Subclass 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 Waiting Time Penalties Subclass 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.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

(Plaintiff, the Represented Employees, and the Wage Statement Penalties Subclass Against All Defendants)

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

91. Plaintiff and the Wage Statement Penalties Subclass 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.

92. Labor Code § 226(a) requires that employers furnish its employees with written itemized wage statements, semimonthly or at the time of each payment of wages, that show the gross wages earned, total hours worked, all deductions, net wages earned, 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.

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

94. Defendants' failure to provide the required writing deprived Plaintiff, the Represented Employees and the Wage Statement Penalties Subclass of the ability to know, understand, and question the calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiff, the Represented Employees and the Wage Statement Penalties Subclass had no way to dispute the resulting miscalculation of wages, all of which

1 resulted in an unjustified economic enrichment to said Defendants. As a direct result, Plaintiff,
2 the Represented Employees and the Wage Statement Penalties Subclass have suffered and
3 continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest
4 on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
5 perform its obligation under state law, all to their respective damages in amounts according to
6 proof at trial.

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

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

20 97. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
21 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
22 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
23 attorney's fees and costs, to Plaintiff, the Represented Employees and the Wage Statement
24 Penalties Subclass who were injured by Defendants' failure to comply with Labor Code §
25 226(a). The exact amount of the applicable penalty is all in an amount to be shown according to
26 proof at trial.

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EIGHTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

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

(Plaintiff and the Represented Employees Against All Defendants)

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

99. 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.

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

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

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

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

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

105. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.

1 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
2 Code of Civil Procedure § 1021.5.

3 106. A violation of California Business & Professions Code § 17200, et seq. may be
4 predicated on the violation of any state or federal law. All of the acts described herein as
5 violations of, among other things, the California Labor Code and IWC Wage Orders, are
6 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
7 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
8 practices in violation of California Business and Professions Code §§ 17200, et seq.

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

16 108. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
17 and does seek such relief as may be necessary to disgorge the profits which Defendants have
18 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
19 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
20 Represented Employees are not obligated to establish individual knowledge of the unfair
21 practices of Defendants in order to recover restitution.

22 109. Plaintiff, individually, and on behalf of the Represented Employees, is further
23 entitled to and does seek a declaration that the above described business practices are unfair,
24 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
25 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
26 the future.

27 110. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
28 Represented Employees are entitled to restitution of the wages withheld and retained by

Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Represented Employees; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

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

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

112. Pursuant to Labor Code § 2699.3(a), on November 2, 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.

113. More than sixty-five (65) days have passed since Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied her administrative prerequisites to suit under the PAGA and this Complaint includes the PAGA allegations enumerated below. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to 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 she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

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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

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

115. 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.

116. 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.

117. 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.

118. 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).

119. 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.

120. 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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TENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

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

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

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

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

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

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

4 **ELEVENTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

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

7 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

25 133. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
26 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
27 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
28 they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal

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

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

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

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

18 **TWELFTH CAUSE OF ACTION**

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

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

21 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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1 140. 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.

6 141. 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 her regular rate of compensation for each day that the rest period is not provided.

9 142. 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.

17 143. 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.

21 144. 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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THIRTEENTH CAUSE OF ACTION

**PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION ON
SEPARATION OF EMPLOYMENT**

(Labor Code § 227.3)

Plaintiff and the Aggrieved Employees Against All Defendants

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

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

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

148. At all relevant times, Defendants utilized a policy and practice through which Plaintiff and the Aggrieved Employees accrued vacation hours. However, on the occasions when Plaintiff and the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, Defendants failed to pay for these earned wages at the "final rate" as required by Labor Code § 227.3.

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

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

151. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, knowingly refused to perform their obligations to compensate the Aggrieved Employees, including Plaintiff, for all vested but unused vacation time and/or paid time off upon separation

1 from employment.

2 152. As a result of Defendants' violations of Labor Code § 227.3, Plaintiff and the
3 Aggrieved Employees seek to recover the unpaid vacation hours, as well as penalties, interest,
4 attorneys' fees, and costs as permitted under California law. Plaintiff also seeks the assessment
5 of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to
6 recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

7 **FOURTEENTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

9 (Labor Code § 204)

10 *Plaintiff and the Aggrieved Employees against All Defendants*

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

13 154. Plaintiff and the Aggrieved Employees are and/or were "nonexempt" employees
14 of Defendants who did not receive proper protections and benefits of the laws regarding the
15 timing of payment of wages each period.

16 155. Labor Code § 204(a) states that all wages earned by a person are due and payable
17 twice during each calendar month, and further states that wages earned during the first through
18 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
19 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
20 the following month.

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

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

time specified by Labor Code § 204.

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

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

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

160. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees of Defendants who did not receive proper protections and benefits of the laws governing the timing and payment of final wages.

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

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

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

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

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

166. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code §§256 and 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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

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

168. 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.

169. 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.

170. 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).

171. 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.

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172. 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).

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

VII. PRAYER FOR RELIEF

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

1. As to the 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 the Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Ninth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 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;

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

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

DEMAND FOR JURY TRIAL

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

Dated: March 9, 2021

LAUBY, MANKIN & LAUBY. LLP

BY:



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