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Superior Court of California
County of Sonoma
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Arlene D. Junior, Clerk of the Court
By: Melisa Galindo Silva, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

HEATHER BAGGETT, individually,
and on behalf of the general public,

Plaintiff,

vs.

WINEBOOKINGS.COM, LLC, dba
AUTHENTIC VACATIONS, TOUR
PARTNER GROUP LIMITED, and
DOES 1 through 10 inclusive,

Defendants.

CASE NO.: SCV-267920

UNLIMITED CIVIL CASE

COMPLAINT FOR DAMAGES,
RESTITUTION, & INJUNCTIVE RELIEF

- (1) Failure to Provide Reimbursement of Business Expenses in Violation of Lab. Code § 2802 & IWC Wage Ord. No. 4-2001;
- (2) Failure to Pay Overtime in Violation of Lab. Code §§ 510, 558, 1194, 1198, *et seq.* & IWC Wage Order No. 4-2001;
- (3) Failure to Provide Meal Periods in Violation of Lab. Code §§ 226.7, 512 & IWC Wage Order No. 4-2001;
- (4) Failure to Provide Rest Periods in Violation of Lab. Code §§ 226.7, 1194 & IWC Wage Order No. 4-2001;
- (5) Failure to Provide Timely, Accurate, Itemized Wage Statements in Violation of Lab. Code §§ 226, 1174 and IWC Wage Order No. 4-2001;
- (6) Failure to Pay Earned Wages Upon Discharge, and Waiting Time Penalties in Violation of Lab. Code §§ 201-203;
- (7) Retaliation In Violation of Lab. Code § 1102.5;
- (8) Wrongful Termination in Violation of Public Policy;
- (9) Failure to Provide Personnel File In Violation of Lab. Code § 1198.5;
- (10) Violations of the Unfair Competition Law, Business & Professions Code §§ 17200-17209.
- (11) Representative Action Pursuant to Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Heather Baggett (“Plaintiff”) on behalf of herself and the general public,
2 alleges against Defendant WINEBOOKINGS.COM, LLC dba Authentic Vacations
3 (hereinafter “Authentic Vacations”) and Defendant Tour Partner Group Limited (hereinafter
4 “Tour Partner Group,” and collectively, “Defendants”), as well as DOES 1 through 10,
5 inclusive, as follows:

6 **PRELIMINARY STATEMENT**

7 1. In 2019, after Plaintiff made wage and hour complaints, a manager told another
8 employee that Plaintiff was “poisoning the well” at Authentic Vacations. In late 2020, after
9 Plaintiff again complained to management, this time about both pay and reimbursement
10 practices which she reasonably believed were in violation of wage and hour laws, Authentic
11 Vacations wrongfully terminated her.

12 2. Defendants should have classified Plaintiff and other aggrieved Sales Agents as
13 employees, non-exempt from California’s overtime and break laws. Instead, Defendants
14 misclassified Plaintiff and other aggrieved Sales Agents as employees exempt from overtime.
15 By misclassifying Plaintiff and other aggrieved Sales Agents, Defendants failed to provide them
16 overtime compensation, meal breaks, rest breaks, premium compensation for missed meal and
17 rest breaks, accurate itemized wage statements, and timely payment of wages consistent with
18 the requirements of California wage and hour laws. Additionally, Defendants failed to
19 reimburse Plaintiff and other aggrieved Sales Agents for all necessary costs of carrying out their
20 sales duties.

21 3. Plaintiff seeks remedies for violations against her individually dating back from
22 her start date in September 2017, through the date of her wrongful termination in November
23 2020, as well as for Defendants’ ongoing failure to reinstate her employment. During the time
24 periods Defendants employed Plaintiff, Defendants failed to pay appropriate compensation to
25 Plaintiff as required by state law. Plaintiff seeks relief for herself pursuant to applicable state
26 law, rules, regulations, and Wage Order No. 4-2001 of the Industrial Welfare Commission
27 (“IWC”) to remedy Defendants’ failure to reimburse expenses, failure to pay overtime
28 compensation, failure to provide or authorize meal and rest periods or pay missed break period

1 premiums, failure to maintain accurate time records, and failure to timely pay wages due, and to
2 remedy Defendants' retaliation against her, as well as to obtain restitution, interest, statutory
3 penalties, injunctive, and declaratory relief.

4 4. In addition to her individual claims, Plaintiff brings a representative action under
5 the Labor Code Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.*
6 ("PAGA"). Plaintiff seeks to recover civil penalties on behalf of herself and other of
7 Defendants' current and former aggrieved Sales Agents, Travel Experts, Destination Experts,
8 and other individuals performing sales work for Defendants in the State of California from
9 December 22, 2019 to the present (referred to herein collectively as "Sales Agents") for
10 Defendants' violations of Labor Code sections 201, 202, 203, 204, 210, 223, 226, 226.3, 226.7,
11 256, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1198, 1198.5, 2802, and IWC Wage Order
12 4-2001. Attached hereto as **Exhibit 1** is a true and correct copy of the PAGA Notice that
13 Plaintiff submitted to the LWDA on December 22, 2020.

14 **THE PARTIES**

15 5. Plaintiff Heather Baggett worked for Defendants from roughly September 25,
16 2017 until November 12, 2020 when Authentic Vacations wrongfully terminated her
17 employment. During most of that time-period, Plaintiff performed her work out of Authentic
18 Vacations' office in the City of Santa Rosa, in Sonoma County, in the State of California
19 ("Santa Rosa office").

20 6. Defendant WINEBOOKINGS.COM, LLC is a limited liability company that
21 sells travel packages to consumers. WINEBOOKINGS.COM, LLC does business as Authentic
22 Vacations (and is referred to throughout this Complaint as "Authentic Vacations"). For most of
23 the relevant period, Authentic Vacations' principal place of business was in Sonoma County
24 California, but, on information and belief, Authentic Vacation's principal place of business is
25 now in Arizona. Authentic Vacations was a registered limited liability company in the State of
26 California until late-September 2020. Although, Authentic Vacations continues to do business
27 in the State of California, on September 25, 2020, the company filed a Certificate of Conversion
28 with the California Secretary of State to become a limited liability company in the State of

1 Arizona. Plaintiff continued to receive paystubs listing the Santa Rosa office as Authentic
2 Vacations' address until her employment ended. At the time of the filing of the original
3 complaint in this matter, Authentic Vacations continued to employ Sales Agents in the State of
4 California to sell travel packages to consumers.

5 7. Defendant Tour Partner Group Limited is a foreign corporation based in Harrow,
6 England. Tour Partner Group is the holding company for Authentic Vacations. Tour Partner
7 Group solicits business in California. During Plaintiff's employment, her and other employees'
8 electronic-mail ("email") signature lines advertised both Authentic Vacations and Tour Partner
9 Group to the public. Similarly, Tour Partner Group has advertised the address of Authentic
10 Vacation's Santa Rosa office as one of Tour Partner Group's business locations. The walls of
11 the Santa Rosa office were decorated with Tour Partner Group media. Tour Partner Group is
12 Plaintiff's joint employer.

13 8. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their
14 true names and capacities are unknown to Plaintiff. When their true names and capacities are
15 ascertained, Plaintiff will amend this complaint by inserting their true names and capacities
16 herein. Plaintiff is informed and believes and thereupon alleges that each of the fictitiously-
17 named Defendants is responsible in some manner for the occurrences herein alleged, and that
18 the damages of Plaintiff's and the putative class herein alleged were proximately caused by
19 such Defendants.

20 9. Plaintiff is informed, believes, and thereon alleges that each of the Defendants
21 herein was at all times relevant to this action the agent, employee, representative partner, and/or
22 joint venture of the remaining Defendants and was acting within the course and scope of the
23 relationship. Plaintiff is further informed, believes, and thereon alleges that each of the
24 Defendants herein gave consent to, ratified and authorized the acts alleged herein to the
25 remaining Defendants.

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1 19. The work performed by Plaintiff and other aggrieved Sales Agents was
2 supervised by a manager. Plaintiff did not supervise other employees, and on information and
3 belief the same was true of other aggrieved Sales Agents.

4 20. Authentic Vacations' misclassified Sales Agents as exempt from overtime.
5 Based on their job duties and pay structure, Plaintiff and other aggrieved employees should
6 have received hourly pay including overtime compensation as well as meal and rest breaks.
7 Authentic Vacation's misclassification of Sales Agents as exempt employees was willful.

8 21. During much of her employment, Plaintiff regularly worked more than eight (8)
9 hours a day and forty (40) hours per week. Prior to March 2020, Plaintiff regularly worked
10 overtime hours at the Santa Rosa office, and then worked additional overtime hours from home
11 in the evenings. Authentic Vacations recorded many of the overtime hours worked by Plaintiff
12 and Sales Agents. For example, between February 20, 2018 and February 24, 2018 records
13 show Plaintiff worked more than ten (10) hours of overtime. For example, between February
14 10, 2020 and February 13, 2020 records, records show Plaintiff worked five (5) hours of
15 overtime.

16 22. As a result of Authentic Vacations' misclassifying Sales Agents as exempt
17 employees, and the hours Sales Agents worked, Defendants failed to pay overtime
18 compensation to Plaintiff and other aggrieved Sales Agents for hours they worked in excess of
19 eight (8) hours per day and forty (40) hours per week. Authentic Vacations' failure to pay
20 overtime to Plaintiff and other Sales Agents was willful and knowing.

21 23. Management was aware that Plaintiff and other aggrieved Sales Agents worked
22 overtime. During most of her employment, Authentic Vacations had Plaintiff and other Sales
23 Agents maintain records of overtime worked in software applications including "When I Work"
24 and "ADP." Plaintiff worked many of her overtime hours at the Santa Rosa office, where
25 managers and other employees could observe her working. Further, in a March 26, 2019 email,
26 Plaintiff informed Chief Financial Officer, Mark Lynch, that Sales Agents were working
27 overtime.
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1 24. As a result of Authentic Vacations' misclassifying Sales Agents as exempt
2 employees, Authentic Vacations implemented no policy to provide uninterrupted, thirty (30)
3 minute meal periods to Plaintiff and other aggrieved Sales Agents who worked more than five
4 (5) hours in a day. Authentic Vacations lacked a policy to provide a second meal period to
5 Plaintiff and other Sales Agents for work periods lasting more than ten (10) hours. Due to the
6 press of work, Plaintiff often ate lunch at her desk, and observed other Sales Agents eating at
7 their desks.

8 25. As a result of Authentic Vacations' misclassifying Plaintiff and other Sales
9 Agents as exempt employees, Authentic Vacations implemented no policy to make available a
10 ten (10) minute rest period to Plaintiff and other Sales Agents who worked shifts lasting more
11 than three and a half (3.5) hours. Further Authentic Vacations' lacked a policy to make
12 available to Plaintiff and other Sales Agents a second ten (10) minute break during shifts lasting
13 more than six (6) hours, or a third ten (10) minute break during shifts lasting more than ten (10)
14 hours.

15 26. Authentic Vacations' failed to pay a single missed-meal or missed-rest-period
16 premium to Plaintiff or, on information and belief, any other Sales Agent, as required under
17 Labor Code section 226.7 and IWC Wage Order 4-2001.

18 27. Plaintiff and other Sales Agents never signed valid meal period waivers.

19 28. As a result of Authentic Vacations' misclassifying Plaintiff and other Sales
20 Agents as exempt employees, Authentic Vacations' willfully failed to provide Plaintiff and
21 other Sales Agents with paystubs that, *inter alia*, itemized rates of pay, total hours worked,
22 overtime hours, and missed breaks.

23 29. Until mid-March 2020, Authentic Vacations expected Plaintiff and other
24 aggrieved Sales Agents to perform the vast majority of their job duties from the Santa Rosa
25 office. Starting in March 2020, Plaintiff and other aggrieved employees began working out of
26 their homes because of the COVID-19 pandemic.

27 30. At no time did Authentic Vacations reimburse Plaintiff for her phone plan or
28 home internet plan, which she used in performing her work for the company. On information

1 and belief, Authentic Vacations failed to reimburse other aggrieved Sales Agents who used their
2 personal cell phone plans and home internet plans to perform work for Authentic Vacations,
3 even after Sales Agents began working from home due to the pandemic.

4 31. As a result of Authentic Vacations' misclassifying Plaintiff and other Sales
5 Agents as exempt employees, Authentic Vacations willfully and knowingly failed to pay
6 Plaintiff and other Sales Agents timely during their employment and upon termination, all
7 accrued compensation, including overtime pay, missed meal and rest period compensation, and
8 reimbursement for work-related expenses.

9 32. In February 2019 and March of 2019, Plaintiff complained to Defendants'
10 management and the company's Chief Financial Officer ("CFO"), Mark Lynch, about the
11 company's compliance with California wage laws including overtime laws. Many of these
12 complaints were captured via email. At the time of the complaints Plaintiff reasonably believed
13 she was complaining of violations of state wage laws. CFO Lynch and Authentic Vacation's
14 President Allegra Lynch each emailed Plaintiff that the company would continue to classify her
15 as "exempt." In response to Plaintiff's 2019 complaints, a manager told another employee that
16 Plaintiff was "poisoning the well."

17 33. In late 2020, Plaintiff was denied a promotion.

18 34. On or around October 5, 2020, Plaintiff again complained to Defendants, this
19 time about both pay and reimbursement practices that Plaintiff reasonably believed were in
20 violation of state laws. In an October 22, 2020 email, one of Defendants' managers responded
21 that Plaintiff's reimbursement complaints would be "addressed in the 2021 budget talks."

22 35. After Plaintiff complained to Defendants about the failure to properly
23 compensate and reimburse Sales Agents, Defendants retaliated against Plaintiff by, among other
24 actions, placing her on leave, purporting to investigate her job performance, and then
25 terminating her employment on November 12, 2020.

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FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REIMBURSEMENT OF BUSINESS EXPENSES

(Labor Code § 2802 and IWC Wage Order 4-2001)

(ON BEHALF OF PLAINTIFF AGAINST DEFENDANTS)

36. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

37. While acting on the direct instruction of Defendants and discharging her duties for Defendants, Plaintiff incurred work-related expenses. Such expenses include payments for her cell phone plan as well as payments for her home internet plan.

38. Defendants failed to properly indemnify Plaintiff for these expenditures. By requiring Plaintiff to pay expenses she incurred in direct consequence of the discharge of her duties for Defendants and in obedience of Defendants' direction without properly compensating her, Defendants violated Labor Code section 2802 and IWC Wage Order 4-2001.

39. Defendants' actions were willful, in bad faith, and in knowing violation of the Labor Code.

40. By unlawfully failing to reimburse Plaintiff for necessary expenditures or losses, Defendants caused Plaintiff to suffer losses in an amount to be determined at trial.

41. By unlawfully failing to pay Plaintiff, Defendants are also liable for reasonable attorneys' fees and costs under Labor Code sections 218.5 and 2802.

42. Plaintiff requests relief as described below.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Labor Code §§ 510, 558, 1194, 1198, et seq.; IWC Wage Order 4-2001)

(ON BEHALF OF PLAINTIFF AGAINST DEFENDANTS)

43. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

44. By failing to pay overtime compensation to Plaintiff, as alleged above, Defendants violated Labor Code section 510 and IWC Wage Order 4-2001, which require

1 overtime compensation for non-exempt employees. The number of overtime hours will be
2 proven at trial.

3 45. By failing to maintain adequate time records as required by Labor Code section
4 1174(d) and IWC Wage Order 4-2001, Defendants made it difficult to calculate the overtime
5 due to Plaintiff.

6 46. As a result of Defendants' unlawful acts, Plaintiff has been deprived of overtime
7 compensation in an amount to be determined at trial, and is entitled to recovery of such
8 amounts, plus interest thereon, and attorneys' fees and costs, under Labor Code section 1194.

9 47. Plaintiff requests relief as described below.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

12 **(Labor Code §§ 226.7, 512, IWC Wage Order 4-2001)**

13 **(ON BEHALF OF PLAINTIFF AGAINST DEFENDANTS)**

14 48. Plaintiff incorporates by reference in this cause of action each allegation of the
15 preceding paragraphs as though fully set forth herein.

16 49. Plaintiff regularly worked in excess of five (5) hours a day without being
17 afforded at least a half-hour uninterrupted meal period in which she was relieved of all duties,
18 as required by Labor Code sections 226.7 and 512 and IWC Wage Order 4-2001.

19 50. Plaintiff regularly worked in excess of ten (10) hours a day without being
20 afforded a second, half-hour, uninterrupted meal period in which she was relieved of all duties,
21 as required by Labor Code sections 226.7 and 512 and IWC Wage Order 4-2001.

22 51. Because Defendants failed to afford proper meal periods, Defendants are liable
23 to Plaintiff for one hour of additional pay at the regular rate of compensation for each workday
24 that the proper meal periods were not provided, pursuant to Labor Code section 226.7 and IWC
25 Wage Order 4-2001.

26 52. Defendants failure to pay meal-period premiums was done willfully, in bad faith,
27 in knowing violation of the Labor Code and the IWC Wage Order 4-2001.
28

68. Plaintiff may recover damages and penalties provided for under Labor Code section 226(e), a \$750 statutory penalty under section 226(f), plus interest thereon, reasonable attorneys' fees under section 226(h), and costs.

69. Plaintiff requests relief as described below.

SIXTH CAUSE OF ACTION
FAILURE TO PAY EARNED WAGES UPON DISCHARGE
AND WAITING TIME PENALTIES
(Labor Code §§ 201-203)
(ON BEHALF OF PLAINTIFF AGAINST DEFENDANTS)

70. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

71. Labor Code sections 201 and 202 require an employer to pay its employees all wages due within the time specified by law. Labor Code section 203 provides that if an employer willfully fails to pay such wages, the employer must continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

72. Plaintiff ceased performing work for Defendants on November 12, 2020, and is entitled to unpaid compensation, but as of the filing of this lawsuit, has not received such compensation, more than 72 hours after the cessation of her employment.

73. Defendants failed to pay the earned and unpaid wages of Plaintiff within 30 days from the time such wages should have been paid under Labor Code sections 201 and 202.

74. Defendants willfully failed to timely compensate Plaintiff for all hours worked. As a result, Defendants are liable to Plaintiff for waiting time penalties, together with interest thereon and reasonable attorneys' fees and costs under Labor Code section 203.

75. Plaintiff requests relief as described below.

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1 **SEVENTH CAUSE OF ACTION**

2 **RETALIATION**

3 **(Labor Code § 1102.5)**

4 **(ON BEHALF OF PLAINTIFF AGAINST DEFENDANTS)**

5 76. Plaintiff incorporates by reference in this cause of action each allegation of the
6 preceding paragraphs as though fully set forth herein.

7 77. At all times applicable to this action, the provisions of Labor Code section
8 1102.5 were in full force and effect.

9 78. Labor Code section 1102.5 prohibits retaliation against an employee who makes
10 a complaint about a violation of law or what the employee reasonably believes constitutes a
11 violation to an employee with authority to investigate, discovery, or correct the violation.

12 79. As alleged herein, Plaintiff was passed up for a promotion, on information and
13 belief, in retaliation for her 2019 wage and hour complaints.

14 80. As alleged herein, after she made wage and hour as well as reimbursement
15 complaints in 2020, Plaintiff was placed on leave, investigated, and terminated.

16 81. Defendants subjected Plaintiff to adverse employment actions arising from
17 Plaintiff's reports of unlawful activity.

18 82. As a proximate result of Defendants' adverse actions, Plaintiff suffered general
19 damages including emotional distress damages in sums according to proof.

20 83. As a result of these violations of her rights, Plaintiff has also suffered special
21 damages in sums according to proof.

22 84. Defendants' misconduct was committed intentionally, in a malicious, oppressive,
23 fraudulent manner, entitling plaintiff to punitive damages against defendants.

24 85. In addition to general damages, special damages, punitive damages, and interest
25 there on, Plaintiff will be entitled to attorney's fees, including under Labor Code section
26 1102.5(j) and costs.

27 86. Plaintiff requests relief as described below.

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1 **EIGHTH CAUSE OF ACTION**

2 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

3 **(ON BEHALF OF PLAINTIFF AGAINST DEFENDANTS)**

4 87. Plaintiff incorporates by reference in this cause of action each allegation of the
5 preceding paragraphs as though fully set forth herein.

6 88. Defendants terminated Plaintiff's employment in violation of various
7 fundamental public policies. Specifically, Defendants terminated Plaintiff because she made
8 complaints about violations of the Labor Code and IWC Wage Orders.

9 89. As a proximate result of Defendants' wrongful termination of Plaintiff's
10 employment in violation of fundamental public policies, Plaintiff suffered general damages
11 including emotional distress damages in a sum according to proof.

12 90. As a result of Defendant's wrongful termination of her employment, Plaintiff has
13 suffered special damages in sums according to proof.

14 91. Defendants' wrongful termination of Plaintiff's employment was done
15 intentionally, in a malicious, fraudulent, and oppressive manner, entitling Plaintiff to punitive
16 damages.

17 92. In addition to general damages, special damages, punitive damages, and interest
18 there on, Plaintiff will be entitled to attorney's fees under Code of Civil Procedure sections
19 1021.5 and 1032, *et seq.* and costs.

20 93. Plaintiff requests relief as described below.

21 **NINTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE PERSONNEL FILE**

23 **(Labor Code § 1198.5)**

24 **(ON BEHALF OF PLAINTIFF AGAINST DEFENDANTS)**

25 94. Plaintiff incorporates by reference in this cause of action each allegation of the
26 preceding paragraphs as though fully set forth herein.

27 95. Labor Code section 1198.5 provides that an "employer shall make the contents
28 of [an employee's] personnel records available for inspection to the current or former employee,

1 or his or her representative, at reasonable intervals and at reasonable times, but not later than 30
2 calendar days from the date the employer receives a written request.”

3 96. In 2020, Plaintiff made a written request for access to her personnel records.

4 97. At the time of filing this lawsuit, Defendants have not provided her with a copy
5 of or access to her personnel records.

6 98. Plaintiff now brings an action to enjoin Defendants to comply with Labor Code
7 section 1198.5.

8 99. Plaintiff will be entitled to an injunction, a penalty of \$750, attorney’s fees under
9 Code of Civil Procedure sections 1198.5(l) and costs.

10 100. Plaintiff requests relief as described below.

11 **TENTH CAUSE OF ACTION**

12 **VIOLATIONS OF THE UNFAIR COMPETITION LAW (“UCL”)**

13 **(Business & Professions Code §§ 17200-17208)**

14 **(ON BEHALF OF PLAINTIFF AGAINST DEFENDANTS)**

15 101. Plaintiff incorporates by reference in this cause of action each allegation of the
16 preceding paragraphs as though fully set forth herein.

17 102. Defendants improperly, fraudulently, and unlawfully classified Plaintiff as an
18 exempt employee and thereby committed unlawful, unfair and/or fraudulent business acts and
19 practices as defined by Business & Professions Code section 17200, by engaging in the
20 following:

21 (a) Failing to reimburse Plaintiff for employment-related business expenses and
22 losses (see Lab. Code § 2802; IWC Wage Ord. No. 4-2001);

23 (b) Failing to pay overtime compensation to Plaintiff (see Lab. Code §§ 510, 558,
24 1194, 1198, *et seq.*; IWC Wage Ord. No. 4-2001);

25 (c) Requiring Plaintiff to work for periods of five or more consecutive hours without
26 having at least a one half-hour, off-duty break for meals (see Lab. Code §§ 226.7,
27 512; IWC Wage Order No. 4-2001);
28

- (d) Requiring Plaintiff to work for periods of three and a half or more consecutive hours without having at least one half-hour, off-duty rest break (see Lab. Code §§ 226.7, 1194; IWC Wage Order No. 4-2001);
- (e) Failing to pay Plaintiff premium wages earned while working without the legally mandated meal and rest breaks and failing to separately compensate Plaintiff for rest breaks (see above);
- (f) Failing to provide accurate itemized wage statements to Plaintiff (Lab. Code §§ 226, 1174; IWC Wage Order No. 4-2001);
- (g) Failing to maintain accurate payroll records showing the actual hours worked each day by Plaintiff (Lab. Code § 1174) ;
- (h) Retaliating against and wrongfully terminating Plaintiff after she complained about wage and hour violations (Lab. Code § 1102.5); and

103. Plaintiff lost money and property as a result of Defendants' unlawful business practices described above.

104. Pursuant to the UCL, Plaintiff is entitled to restitution of money or property acquired by Defendants by means of such unlawful business practices, in amounts not yet known, but to be ascertained at trial.

105. Pursuant to the UCL, Plaintiff is entitled to injunctive relief against Defendants' ongoing unlawful business practices. If an injunction does not issue enjoining Defendants from engaging in the unlawful business practices described above, Plaintiff and the general public will be irreparably injured.

106. Plaintiff has no plain, speedy, and adequate remedy at law. Defendants, if not enjoined by this Court, will continue to engage in the unlawful business practices described above in violation of the UCL, in derogation of the rights of its Plaintiff, Sales Agents, and the general public.

107. Plaintiff's success in this action will result in the enforcement of important rights affecting the public interest by conferring a significant benefit upon the general public.

108. Defendants' numerous violations of local and California law, as well as the other statutory and regulatory violations alleged herein, constitute unlawful business actions and practices in violation of Business and Professions Code section 17200, *et seq.*

109. Pursuant to Business and Professions Code section 17200, *et seq.*, Plaintiff is entitled to restitution of all fees, wages, and compensation alleged herein that Defendants collected, withheld, and retained during the period commencing four years preceding the filing of this action and a declaration that Defendants' business practices are unfair within the meaning of the statute, in addition to an award of attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5 and other applicable law, and costs. All remedies are cumulative pursuant to Business & Professions Code section 17205.

110. Plaintiff requests relief as described below.

ELEVENTH CAUSE OF ACTION
REPRESENTATIVE ACTION PURSUANT TO THE
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE § 2698, *ET SEQ.*)
(BY PLAINTIFF ON BEHALF OF THE LABOR COMMISSIONER
AGAINST DEFENDANTS)

111. Plaintiff also intends to bring a claim under Labor Codes section 2698 *et seq.* in a representative capacity on behalf of Defendants' current and former Sales Agents who were subjected to the unlawful wage and hour practices alleged herein and below.

112. The Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698 *et seq.*, grants California employees the right to bring a civil action for the violation of any provision of the Labor Code on behalf of themselves and other current or former aggrieved employees in order to recover civil penalties. PAGA is intended to assist in the achievement of maximum compliance with state labor laws by empowering aggrieved employees to act as private attorneys general in order to recover civil penalties for Labor Code violations that would otherwise be prosecuted by the state. (*See Arias v. Super. Ct.* (2009) 46 Cal. 4th 969, 980).

1 113. On December 22, 2020 pursuant to Labor Code section 2699.3, Plaintiff sent
2 notice to the Labor and Workforce Development Agency (“LWDA”) via the LWDA’s online
3 filing system for PAGA letters of the specific provisions of the Labor Code that Plaintiff alleges
4 Defendants violated, including the facts and theories to support the violations, and subsequently
5 sent copies of the notice via certified mail to Defendants. **(Exhibit 1)** The LWDA received
6 Plaintiff’s notice that same day. The sixty-five-day time limit for the agency to respond has now
7 expired, and as such Plaintiff has exhausted her administrative remedies.

8 114. PAGA permits an aggrieved employee to collect the civil penalty authorized by
9 law and normally collectible by the LWDA. To address violations for which no penalty has
10 been established, Section 2699(f) creates a private right of action for aggrieved employees and
11 unless otherwise specified, a default penalty in the amount of \$100 for each aggrieved
12 employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay
13 period for each subsequent violation. See Lab. Code § 2699(f).

14 115. Plaintiff will seek to collect appropriate civil penalties for Defendant’s Labor
15 Code violations under the following California Labor Code sections 201–203, 204, 210, 223,
16 226, 226.3, 226.7, 256, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1198, 1198.5, and
17 2802.

18 116. Plaintiff will seek penalties, including,

- 19 a. Under Labor Code § 2699(f)(2), described above, a civil penalty of one hundred
20 dollars (\$100) for Plaintiff and each aggrieved employee per pay period for the
21 initial violation of Labor Code § 2802, for failure to indemnify employees for
22 business expenses, and two hundred dollars (\$200) for Plaintiff and each
23 aggrieved employee per pay period for each subsequent violation of Labor Code
24 § 2802.
- 25 b. Under Labor Code § 558, civil penalties of fifty dollars (\$50) for Plaintiff and
26 each aggrieved employee per pay period for the initial violation of Labor Code §
27 558 where Plaintiff and aggrieved employees were not paid appropriate overtime
28 premiums under Labor Code § 510 in addition to an amount sufficient to recover

1 underpaid wages; and for each subsequent violation, one hundred dollars (\$100)
2 for each underpaid aggrieved employee for each pay period for which the
3 employee was underpaid under Labor Code § 510.

4 c. Under Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for
5 Plaintiff and each aggrieved employee per pay period for the initial violation of
6 Labor Code § 226.7 for failing to provide meal periods, and two hundred dollars
7 (\$200) for Plaintiff and each aggrieved employee per pay period for each
8 subsequent violation of Labor Code § 226.7 for failing to provide meal periods.

9 d. Under Labor Code § 558, Defendants are subject to a civil penalty of for an
10 initial violation, fifty dollars (\$50) for the Plaintiff and each aggrieved employee
11 for each pay period for which the employee was not provided a meal period
12 under Labor Code § 512; and for each subsequent violation, one hundred dollars
13 (\$100) for Plaintiff and each aggrieved employee for each pay period for which
14 the employee was underpaid under Labor Code § 512.

15 e. Under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of one
16 hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay period
17 for the initial violation of Labor Code § 226.7 for failing to provide rest period,
18 and two hundred dollars (\$200) for Plaintiff and each aggrieved employee per
19 pay period for each subsequent violation of Labor Code § 226.7 for failing to
20 provide rest periods.

21 f. Under Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for
22 Plaintiff and each aggrieved employee per pay period for the initial violation of
23 Labor Code §§ 201, 202, and 203 for their failure to pay earned wages upon
24 discharge, and two hundred dollars (\$200) for Plaintiff and each aggrieved
25 employee per pay period for each subsequent violation of Labor Code §§ 201
26 and 202.

27 g. Under Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for
28 Plaintiff and each aggrieved employee per pay period for the initial violation of

1 Labor Code §§ 204 for their failure to pay earned wages timely, and two hundred
2 dollars (\$200) for Plaintiff and each aggrieved employee per pay period for each
3 subsequent violation of Labor Code §§ 201 and 202.

4 h. Under Labor Code § 226.3, which provides for civil penalties for violations of
5 California Labor Code § 226(a), a civil penalty of two hundred fifty dollars
6 (\$250) for Plaintiff and each aggrieved employee for the first violation, and one
7 thousand dollars (\$1,000) for Plaintiff and each aggrieved employee for each
8 subsequent violation of Labor Code § 226(a) for failure to provide timely,
9 accurate, itemized wage statements.

10 i. Under Labor Code § 1102.5(f), a civil penalty of \$10,000 for Plaintiff and at
11 least one other aggrieved employee for retaliation based on wage and hour
12 complaints.

13 117. Specifically, Plaintiff alleges that while Defendants classified Plaintiff and
14 aggrieved employees as “exempt,” this designation was made voluntarily and knowingly to
15 circumvent the requirements of the Labor Code. There is no reasonable dispute that Sales
16 Agents are exempt employees under the Labor Code and the corresponding IWC Wage Order
17 No. 4-2001.

18 118. Plaintiff is an “aggrieved employee” as defined by PAGA and seeks to represent
19 all other Sales Agents in California who have personally performed sales work in California for
20 any of Defendants. Plaintiff contends that each of the Sales Agents was an employee of
21 Defendants, making Defendants also liable for the alleged PAGA penalties.

22 **PRAYER FOR RELIEF**

23 Based on the above allegations, Plaintiff respectfully requests entry of judgment against
24 Defendants, as follows:

25 1. A declaratory judgment that Defendants knowingly and intentionally violated the
26 following provisions of law:

27 a) Labor Code section 2802 and IWC Wage Order 4-2001, by failing to
28 indemnify Plaintiff for all necessarily incurred business expenses;

- 1 b) Labor Code sections 510, 1194 *et seq.*, 1198 and IWC Wage Order 4-
2 2001, by failing to pay overtime compensation to Plaintiff;
3 c) Labor Code sections 226.7 and 512, and IWC Wage Order 4-2001, by
4 failing to provide 30-minute, duty-free meal periods to Plaintiff;
5 d) California Labor Code section 226.7 and IWC Wage Order 4-2001 by
6 failing to provide 10-minute, paid, duty-free rest periods to Plaintiff;
7 e) Business & Professions Code section 17200, *et seq.*, by failing to
8 reimburse Plaintiff for necessary incurred business expenses, pay
9 Plaintiff overtime compensation, by failing to provide off-duty meal
10 periods and/or pay meal period compensation to Plaintiff, by failing to
11 provide Plaintiff with itemized wage statements showing all hours
12 worked, by failing to maintain payroll records that document all hours
13 worked by Plaintiff, and by willfully failing to pay all compensation
14 owed to Plaintiff timely including upon termination of employment;

15 2. A declaratory judgment that Defendants' violations as described above were
16 willful or knowing and intentional;

17 3. An award to Plaintiff of statutory penalties because of Defendants' failure to
18 provide Plaintiff with itemized wage statements that comply with the requirements of Labor Code
19 section 226, subject to proof at trial;

20 4. An award to Plaintiff of statutory penalties because of Defendants' failure to
21 provide Plaintiff with her personnel file in compliance with the requirements of Labor Code section
22 1198.5;

23 5. An award to Plaintiff of statutory penalties because of Defendants' failure to
24 timely pay Plaintiff all wages due, including upon her final paycheck pursuant to Labor Code
25 sections 201-203, subject to proof at trial;

26 6. An award to Plaintiff of damages in the amount of unpaid necessary business
27 expenses, overtime compensation, and meal and rest period compensation, including interest
28 thereon subject to proof at trial;

7. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff for Defendants' failure to reimburse for business expenses, failure to pay legally required overtime pay, meal and rest period pay, and interest thereon, in an amount according to proof, pursuant to Business & Professions Code section 17203;

8. An award to Plaintiff of reasonable attorneys' fees and costs, pursuant to California Code of Civil Procedure section 1021.5 and California Labor Code sections 218.5, 226, 1102.5, 1194, and 2802, and/or other applicable law;

9. For interest on all sums at the maximum legal rate; and

10. An award to Plaintiff of such other and further relief, in law or equity, as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Heather Baggett demands a jury trial on all issues.

Dated: February 25, 2021

Respectfully submitted,

TERP LAW

By:

RACHEL M. TERP
Attorney for Plaintiff Heather Baggett
and the general public

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues.

DATED: February 25, 2021

TERP LAW



RACHEL M. TERP
Attorney for Plaintiff Heather Baggett
and the general public

Exhibit 1

Terp Law

2831 Telegraph Ave., Oakland, CA 94609 • (510) 550-5103 • rachel@terplaw.com

VIA ELECTRONIC UPLOAD AND CERTIFIED MAIL

December 22, 2020

California Labor & Workforce Development Agency
800 Capitol Mall, Suite 5000, MIC-55
Sacramento, CA 95814
(916) 653-9900

Re: Baggett v. Authentic Vacations

Dear Sir or Madam:

I represent Heather Baggett (referred to herein as “Plaintiff”) who has individual legal claims under California law, including for wrongful termination, unreimbursed expenses, unpaid overtime compensation, denied meal and rest breaks, failure to provide timely, accurate, itemized wage statements, waiting time penalties, failure to pay restitution, statutory penalties, interest, attorneys fees, and costs against Authentic Vacations based on her prior employment relationship with that company. WINEBOOKINGS.COM, LLC, d/b/a Authentic Vacations, was formerly a California company but appears to have converted to a foreign corporation based in Arizona on or around September 25, 2020, and, on information and belief, its parent company is Tour Partner Group (referred to herein collectively as “Defendant”). Defendant continues to operate in California. Plaintiff and other individuals working in California were employed by Defendant as Sales Agents, Travel Experts, Destination Experts, and other similar positions in recent years (referred to herein as “Sales Agents”).

Ms. Baggett’s legal claims under the labor code against Authentic Vacations on behalf of herself and other aggrieved employees, include:

- Retaliation for making wage and hour complaints;
- Un-reimburse business expenses;
- Misclassification as exempt from overtime and meal and rest breaks;
- Failure to pay overtime;
- Failure to provide and authorize meal and rest breaks;
- Failure to pay missed meal and rest break premiums;
- Failure to provide accurate, itemized wage statements;
- Failure to timely pay all wages due; and
- Failure to provide personnel file, signed instruments, and pay records upon request.

I am writing this letter to the LWDA pursuant to the exhaustion requirements of Labor Code sections 2699 and 2699.3 because my client intends to file a lawsuit very soon and intends to add claims on behalf of herself and other aggrieved employees under the Private Attorney General Act (“PAGA”). The purpose of my letter is to find out whether the LWDA intends to investigate

my client's allegations of violations of Labor Code sections 201-204, 210 223, 226, 226.3, 226.7, 256, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1198, 1198.5, 2802, Industrial Welfare Commission Wage Order No. 4-2001, and Code of Civil Procedure section 1021.5. The following is a brief summary of my client's allegations against Defendant.

I. Defendant Fired Plaintiff in Retaliation for Engaging in Protected Wage and Hour Complaints.

A. Facts:

In February and March 2019, as well as October 2020, Ms. Baggett complained to Authentic Vacations that the company was not properly compensating Sales Agents as exempt employees. In her 2020 complaints, she also complained about Defendant's failure to reimburse Sales Agents for expenses related to working from home. Defendant responded by retaliating against Ms. Baggett and terminating her employment in November 2020. On information and belief, in mid-2020, Defendant terminated another employee who had supported Ms. Baggett's prior complaints about wage and hour violations.

B. Law:

Authentic Vacations violated Labor Code section 1102.5 by terminating Ms. Baggett after she complained about exemption and reimbursement violations. Section 1102.5 prohibits retaliation when an employee engages in a protected activity. Section 1102.5(b) states:

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information . . . to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation

To make a claim for a violation of Labor Code section 1102.5, "a plaintiff must show (1) she engaged in a protected activity, (2) her employer subjected her to an adverse employment action, and (3) there is a causal link between the two." *Mokler v. County of Orange*, 157 Cal.App.4th 121, 138 (2007). To engage in a protected activity, an employee need only "disclose 'reasonably based suspicions' of illegal activity." *Ross v. County of Riverside*, 36 Cal.App.5th 580, 592 (2019) (internal citations omitted).

Here, Ms. Baggett engaged in protected activity by complaining to management about misclassification and unpaid reimbursements. Ms. Baggett complained in 2019 and was subsequently denied a promotion. When she complained in October 2020, Authentic Vacations subjected her to heightened scrutiny by placing her on administrative leave auditing her October 2020 work, and firing her.

II. Defendant Misclassified Sales Agents as Salaried Employees.

A. Facts:

Authentic Vacations compensated Ms. Baggett and other aggrieved Sales Agents with a base salary paid out in fixed amounts plus commissions. The commissions rarely approached half of any aggrieved employee's earnings, whether measured by work week, pay period, year, or other measure. As a Sales Agents, Ms. Baggett's and other aggrieved employee's job duties involved customer service, calling prospective clients, booking travel reservations for clients, selling and marketing various products and services, and other projects. Their work was closely supervised by managers. On information and belief, roughly two dozen employees have served as Sales Agents in the Santa Rosa office over the last four years, and about a quarter of that number have performed those job duties in the last year.

B. Law:

The default rule under federal and California law is that employers must pay their employees on an hourly basis. California exempts several categories of job positions from the default overtime rule, including commissioned sales employees, outside sales employees, and administrative employees. Exempt employees are not entitled to hourly pay and may receive a fixed salary. Ms. Baggett and other Sales Agents were non-exempt employees under state law and should have been compensated accordingly.

California's commissioned pay exemption applies to "employee[s] whose earnings exceed one and one-half (1 1/2) times the minimum wage if more than half of that employee's compensation represents commissions." Industrial Welfare Commission, Wage Order No. 4, subd. 3(D) (emphasis added); *Peabody v. Time Warner Cable, Inc.*, 59 Cal. 4th 662, 667 (2014).

Ms. Baggett and other Sales Agent's commission structure was not designed to reasonably ensure that they received fifty percent (50%) or more of their annual compensation in commissions. Indeed, a review of Sales Agents' compensation will demonstrate that their commissions never, or rarely constituted more than half of their pay in even a single week or pay period. As salespeople earning less than half of their compensation in commissions, California's commissioned sales exemption was inapplicable, and Ms. Baggett and the Sales Agents were entitled to overtime pay.

California's outside sales exemption applies to employees who "customarily and regularly work more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities." Industrial Welfare Commission, Wage Order No. 4, subd. 2(M) (emphasis added). Employees engaged in outside sales historically have been exempt from overtime because "it's very difficult to control their hours They set their own time, and they're on the road, they call on their customers [R]arely do you know what they are doing on an hour-by-hour basis." DLSE Op. Ltr.1998.09.08 (quoting Trans. of IWC meeting 2/23/96, p. 148).

Ms. Baggett and other Sales Agent's sales duties were meant to be performed in-house (starting in March 2020, because of the pandemic, Sales Agents have performed their duties from home offices), and not away from the employer's place of business. Therefore, Ms. Baggett and the Sales Agents were not engaged in outside sales or exempt on that basis.

California's administrative exemption applies to employees who are primarily engaged in administrative duties, exercise discretion and independent judgment in carrying out those duties, and earn a monthly salary equivalent to two (2) times the state minimum wage. Lab. Code. § 515(a); Industrial Welfare Commission, Wage Order No. 4, subd. 1(A)(2).

At times, Ms. Baggett's and other Sales Agents' salaries were less than twice the state minimum wage during their employment, and therefore their compensation did not meet the salary threshold required for the administrative or any other white-collar exemption to apply.

Compensation aside, Ms. Baggett and other Sales Agents' job duties were not those of an administratively exempt employee. Administrative work typically involves the "performance of office or non-manual work directly related to the management policies or general business operations of his employer or his employer's customers." Industrial Welfare Commission, Wage Order No. 4, subd. 1(A)(2)(a)(i). Ms. Baggett and other Sales Agents did not manage any aspect of the business or any customer's business. Rather, she and other Sales Agents followed the company's directions in carrying out the same repetitive sales tasks.

Exempt employees customarily and regularly exercise discretion and independent judgment with respect to matters of significance to the company. *See* Wage Order No. 4, subd. 1(A)(2)(b); 29 C.F.R. § 541.202. An employee who merely applies her skills and knowledge in following proscribed procedures is not exercising "discretion" and "judgment" of the independent sort associated with administrative work. *Nordquist v. McGraw-Hill Broadcasting Co.*, 32 Cal. App. 4th 555, 572-574 (1995). Again, Sales Agents were travel-agents whose duties involved following directions. Ms. Baggett and other Sales Agents lacked decision-making authority with respect to the company's policies and operations.

III. Defendant failed to Pay Plaintiff and Aggrieved Employees Overtime.

A. Facts:

Because Authentic Vacations misclassified Sales Agents, the company failed to pay Ms. Baggett and other Sales Agents overtime. During her employment, Ms. Baggett worked more than eight (8) hours a day and forty (40) hours a week. Management was aware that she and other Sales Agents worked overtime. Further, in a March 26, 2019 email, Ms. Baggett informed Chief of Finance and Operations ("CFO"), Mark Lynch, that Sales Agents were working overtime.

B. Law:

In California, employees who work overtime hours are entitled to one-and-a-half (1.5) times their normal hourly pay, or "time-and-a-half" for each hour worked over eight (8) hours per day or forty (40) hours per week. Lab. Code § 510, subd. (a). Ms. Baggett and other Sales

Agents regularly worked about five (5) overtime hours per week for most of her employment with the company, but never received overtime pay because Authentic Vacations misclassified her and other Sales Agents as exempt.

IV. Defendant Failed to Provide, Authorize, or Make Available Duty-Free Meal and Rest Breaks to Plaintiff and Aggrieved Employees.

A. Facts:

Because Authentic Vacations misclassified Sales Agents, the company failed to provide Ms. Baggett with meal and rest breaks or pay her premiums for missed breaks.

Authentic Vacations had no policy to authorize or permit Sales Agents to take ten (10) minute duty-free rest breaks. Given the press of work and pressure to make commissioned sales Ms. Baggett and other Sales Agents were unable to take a ten (10) minute rest break for shifts lasting between three and one-half (3 ½) to six (6) hours, or a second meal break for shifts lasting more than six (6) hours and up to ten (10) hours, or a third break for shifts lasting more than ten (10) hours and lasting up to fourteen (14) hours, and so on.

Authentic Vacations had no policy for providing Sales Agents with meal breaks for every five (5) hours worked. Ms. Baggett and other Sales Agents often ate their lunches at their desks and did not receive half-hour uninterrupted breaks. Ms. Baggett's When-I-Work records will reflect that she took some half-hour meal breaks during the pandemic, when the company's policy required Sales Agents to report their breaks so as to ensure proper staffing. Even these breaks were on-duty because, the company's written "Minimum Expectations" guidance for working from home required Sales Agents to respond to any Slack and WhatsApp message "within ten mins [*sic*] of its posting."

B. Law regarding Meal Breaks:

Employees who work more than five (5) hours per day are entitled to a meal period of at least thirty (30) minutes; and a second meal period if they work more than ten (10) hours in a day. Labor Code § 512 subd. (a); *see Brinker Restaurant Corp. v. Sup.Ct.*, 53 Cal.4th 1004, 1041-1042 (2012). The employer may schedule the employee's meal period any time before the end of the fifth hour of work. *Id.* at 1037.

Employers need not "ensure" that no work is performed during a meal period. So long as the employer relieves the employee of all duties, the employer is not liable for a meal period premium if the employee chooses to work, *unless* the employer deters or discourages the employee from taking the meal period. If the employer knew or reasonably should have known the employee was working during the meal period, the employer will be liable for payment of the employee's regular wage for that time worked. *Id.* at 1034-1041.

Authentic Vacations had no policy or practice of providing Ms. Baggett or other Sales Agents with a thirty-minute meal break. As a result, Ms. Baggett and other Sales Agents regularly ate their lunch at their desks while working. Additionally, when the pandemic forced them to work

from home, they could not take thirty-minute off-duty breaks because they were expected to respond to WhatsApp and Slack messages within ten (10) minutes.

An employer who fails to provide a required meal period must pay the employee one additional hour of pay at the employee's regular rate of pay for each workday a meal period was not provided. Labor Code § 226.7 subd. (c); *See* Industrial Welfare Commission, Wage Order No. 4, subd. 11(B). Authentic Vacations has failed to pay Ms. Baggett and Sales Agents premiums for their missed meal breaks.

C. Law regarding Rest Breaks:

Employers must provide non-exempt employees rest and recovery periods that “shall be counted as hours worked” and “for which there shall be no deduction from wages.” Lab. Code § 226.7 subd. (d). In general, “[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker*, 53 Cal. 4th at 1029. As with a meal period, during a rest period, the employer must relieve their employees of all duties and relinquish control over how the employee spends their time. *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260 (2016). Authentic Vacations had no policy or practice of authorizing or permitting rest breaks for Ms. Baggett and the Sales Agents and will be liable for their missed rest breaks.

An employer who fails to provide compliant rest periods must pay the employee an additional hour of pay at the employee's regular rate for each day a rest period was not provided. Lab. Code § 226.7 subd. (c). Authentic Vacations failed to pay Ms. Baggett and Sales Agents premiums for missed rest breaks.

V. Defendant Failed to Reimburse Plaintiff for the Personal Phone and Internet Plans She was Required to Use for Performing Her Job Duties.

A. Facts:

Authentic Vacations failed to reimburse Ms. Baggett and other Sales Agents for necessary business expenses, including their personal cell phone plans and home internet plans.

At the time she began her employment with Authentic Vacations, the company required Ms. Baggett to upload Slack onto her phone and use the application regularly for work. She also used the When-I-Work application from her phone throughout her employment. Authentic vacations did not reimburse her for the use of the personal cell phone plan.

On March 17, 2020, Ms. Baggett joined the staff in working from home due to the COVID-19 pandemic. This arrangement required the use of their personal cell phone and home internet plans. The company issued written “Minimum Expectations” for working from home that instructed Sales Agents to upload Whatsapp onto their phones, respond to Whatsapp and Slack messages within 10 minutes of posting, and use other applications, such as Hubspot and

Authentix, which required internet service. The company did not provide reimbursements for these necessary expenses.

B. Law:

California employers must indemnify employees “for all necessary expenditures or losses incurred . . . in direct consequence of the discharge of his . . . duties.” Lab. Code § 2802 subd. (a). The purpose of Section 2802 is “to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.* 42 Cal.4th 554, 562 (2007) (internal quotes omitted); *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). This obligation extends to internet and cell phone plans when employees are required to use their personal plans to work from home. *See, e.g., id.*

Ms. Baggett complained to Authentic Vacations about their failure to reimburse cell phone plan and internet expenses. Her manager responded, in writing, that the company would consider reimbursement within the 2021 budget but made no mention of retroactive compensation. Authentic vacations must reimburse Ms. Baggett and the Sales Agents for past work expenses.

VI. Defendant Failed to Provide Accurate Itemized Wage Statements and Timely Final Pay.

A. Facts:

Because Authentic Vacations misclassified Ms. Baggett and other Sales Agents, the company failed to provide these employees with accurate, itemized wage statements showing their rates of pay, hours worked, and the gross pay they should have received if they were paid overtime and meal and rest break premiums.

Ms. Baggett’s last day with the company was Thursday, November 12, 2020. Defendant delayed in getting her a final paycheck, and her final paycheck did not include back wages and reimbursements.

B. Law regarding Itemized Wage Statements:

Employers’ wage statements must include gross wages earned, total hours worked, and pay rates, among other things. Lab. Code § 226. Because Ms. Baggett was misclassified, and denied overtime pay and missed break premiums, her bi-weekly paystubs lack the requisite information to avoid liability under Labor Code sections 226.

C. Law regarding Untimely Payment of Wages:

Where Authentic Vacations fails to pay all wages at least twice during each calendar month on days designated in advance by the employer as the regular paydays, Authentic Vacations faces liability under Labor Code sections 204. Authentic Vacations did not pay all wages due in Ms. Baggett’s and other Sales Agents’ regular paychecks because she was misclassified and denied overtime as well as meal and rest breaks without receiving premiums.

Where an employer terminates an employee, payment of final wages is due immediately. Lab. Code § 201. Where an employer willfully violates this provision, Labor Code section 203 provides waiting time penalties up to 30 days, of one day's pay per day. *Id.* Authentic Vacations fired Ms. Baggett on November 12, 2020 but did not pay her until November 17, 2020. She has not received her final pay stub because the company locked her out of her corporate email which she normally uses to access her paystubs. Nor did her paycheck include, *inter alia*, her unreimbursed expenses, unpaid overtime, missed meal and rest breaks, or itemized wage statement penalties.

VII. Defendant Failed to Comply with Plaintiff's Document Requests.

On October 29, 2020, Ms. Baggett requested Authentic Vacations provide her with the contents of her personnel file, pay records, and signed documents. Authentic Vacations will be liable for penalties and attorney's fees if it fails to reply timely pursuant to Labor Code sections 226, 432, and 1198.5.

VIII. The LWDA Should Issue Penalties Against Authentic Vacation for the Wage Violations Discussed Above.

Based on the forgoing, Plaintiff alleges the following willful violations of California law by Defendant, that form the basis of her PAGA penalties claims:

1. Defendant's policies and procedures required Sales Agents to work in excess of eight hours per workday and in excess of forty hours per week, and Defendant unlawfully failed to pay Sales Agents the proper overtime compensation, in violation of IWC Wage Order No. 4-2001 and Labor Code sections 510, 558, 1194, 1198, 2689 *et seq.*;
2. Defendant failed to provide Sales Agents with lawful meal or rest periods, or to pay meal and rest break premiums, in violation of IWC Wage Order No. 4-2001 and Labor Code section 226.7, 512, 558, and 2698, *et seq.*;
3. Defendant failed to indemnify Plaintiff and other Sales Agents for all necessary expenditures incurred. Defendant did not reimburse Plaintiff and other aggrieved employees for the use of their cell phone plans and home internet plans for job related purposes, in violation of Labor Code sections 558, 2802, 2698, *et seq.*
4. Defendant failed to provide to Sales Agents timely, accurate, itemized wage statements including, *inter alia*, of rates of pay and hours worked, in violation of Labor Code sections 226, 226.3, and 2698 *et seq.*;
5. Defendant failed to keep payroll records showing total hours worked and wages paid to employees, in violation of Labor Code sections 1174(d), 1174.5, and 2698 *et seq.*;
6. Defendant failed to provide prompt payment of wages to Sales Agents upon termination and resignation in violation of Labor Code sections 201, 202, 203, 256, and 2698 *et seq.*;
7. Defendant failed to pay *all* wages at least twice during each calendar month on days designated in advance by the employer as the regular paydays in violation of Labor Code sections 204, 210, and 2698 *et seq.*;

8. Defendant retaliated against Plaintiff and, on information and belief, other aggrieved employees for making or supporting complaints regarding Defendant's wage and hour violations in violation of Labor Code section 1102.5; and

9. Defendant failed to timely provide, upon requests, personnel file documents, pay records, and documents bearing Plaintiff's signature in violation of Labor Code sections 226, 432, and 1198.5 *et seq.*

IX. Conclusion

Thank you for your assistance and cooperation in this matter. Please contact the undersigned if you have any questions. We look forward to your response at your earliest convenience.

Regards,



Rachel M. Terp, Esq.

CC'd by certified mail to:

LegalZoom.com, Inc.
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