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and the general public*

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Superior Court of California
County of Sonoma
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Arlene D. Junior, Clerk of the Court
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

HEATHER BAGGETT, JOCOYA FOX-
JONES, PATRICIA AUGELLO
individually, and on behalf of the general
public,

Plaintiff,

vs.

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

Defendants.

CASE NO.: SCV-267920

UNLIMITED CIVIL CASE

**SECOND AMENDED 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 Term. 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 Plaintiffs Heather Baggett, Jocoya Fox-Jones, and Amanda Augello (“Plaintiffs”) on
2 behalf of themselves, individually, and Plaintiff Baggett on behalf of the general public, allege
3 against Defendant WINEBOOKINGS.COM, LLC dba Authentic Vacations (hereinafter
4 “Authentic Vacations”), Defendant Tour Partner Group Limited (hereinafter “Tour Partner
5 Group”), Allegra Lynch, and Mark Lynch (collectively, “Defendants”), as well as DOES 1
6 through 10, inclusive, as follows:

7 **PRELIMINARY STATEMENT**

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

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

22 3. Plaintiff Baggett seeks remedies for violations against her individually dating
23 back from her start date in September 2017, through the date of her wrongful termination in
24 November 2020, as well as for Defendants’ ongoing failure to reinstate her employment.
25 Plaintiff Fox-Jones seeks remedies for wage and hour violations relating to her employment by
26 Defendants from April 2017 through roughly June 2020. Plaintiff Augello seeks remedies for
27 wage and hour violations related to her employment by Defendants from November 2017
28 through April 2021. During the time periods Defendants employed Plaintiffs, Defendants failed

1 to pay appropriate compensation to Plaintiffs as required by state law. Plaintiffs seek relief for
2 themselves pursuant to applicable state law, rules, regulations, and Wage Order No. 4-2001 of
3 the Industrial Welfare Commission (“IWC”) to remedy Defendants’ failure to reimburse
4 expenses, failure to pay overtime compensation, failure to provide or authorize meal and rest
5 periods or pay missed break period premiums, failure to maintain accurate time records, and
6 failure to timely pay wages due, as well as to obtain restitution, interest, statutory penalties,
7 injunctive, and declaratory relief. Plaintiff Baggett also seeks remedies for Defendants’
8 retaliation against her.

9 4. In addition to her individual claims, Plaintiff Baggett brings a representative
10 action under the Labor Code Private Attorneys General Act of 2004, Labor Code section 2698,
11 *et seq.* (“PAGA”). Plaintiff seeks to recover civil penalties on behalf of herself and other of
12 Defendants’ current and former aggrieved Sales Agents, Travel Experts, Destination Experts,
13 and other individuals performing sales work for Defendants in the State of California from
14 December 22, 2019 to the present (referred to herein collectively as “Sales Agents”) for
15 Defendants’ violations of Labor Code sections 201, 202, 203, 204, 210, 223, 226, 226.3, 226.7,
16 256, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1198, 1198.5, 2802, and IWC Wage Order
17 4-2001. Attached hereto as **Exhibit 1** is a true and correct copy of the PAGA Notice that
18 Plaintiff submitted to the LWDA on December 22, 2020.

19 **THE PARTIES**

20 5. Plaintiff Heather Baggett worked for Defendants from roughly September 25,
21 2017 until November 12, 2020 when Authentic Vacations wrongfully terminated her
22 employment. During most of that time-period, Plaintiff Baggett performed her work out of
23 Authentic Vacations’ office in the City of Santa Rosa, in Sonoma County, in the State of
24 California (“Santa Rosa office”).

25 6. Plaintiff Jocoya Fox-Jones worked for Defendants from roughly April 24, 2017
26 until June 12, 2020. During most of that time-period, Plaintiff Fox-Jones performed her work
27 out of the Santa Rosa office.
28

1 7. Plaintiff Patricia Augello (who went by her middle name at work, “Amanda”),
2 worked for Defendants from roughly November 27, 2017 until April 24, 2021. During most of
3 that time-period, Plaintiff Augello performed her work out of the Santa Rosa office.

4 8. Defendant WINEBOOKINGS.COM, LLC is a limited liability company that
5 sells travel packages to consumers. WINEBOOKINGS.COM, LLC does business as Authentic
6 Vacations (and is referred to throughout this Complaint as “Authentic Vacations”). For most of
7 the relevant period, Authentic Vacations’ principal place of business was in Sonoma County
8 California, but, on information and belief, Authentic Vacation’s principal place of business is
9 now in Arizona. Authentic Vacations was a registered limited liability company in the State of
10 California until late-September 2020. Although, Authentic Vacations continues to do business
11 in the State of California, on September 25, 2020, the company filed a Certificate of Conversion
12 with the California Secretary of State to become a limited liability company in the State of
13 Arizona. Plaintiff Baggett continued to receive paystubs listing the Santa Rosa office as
14 Authentic Vacations’ address until her employment ended. At the time of the filing of the First
15 Amended complaint in this matter, Authentic Vacations continued to employ Sales Agents in
16 the State of California to sell travel packages to consumers.

17 9. Defendant Tour Partner Group Limited is a foreign corporation based in Harrow,
18 England. Tour Partner Group is the holding company for Authentic Vacations. Tour Partner
19 Group solicits business in California. During Plaintiff Baggett’s employment, her and other
20 employees’ electronic-mail (“email”) signature lines advertised both Authentic Vacations and
21 Tour Partner Group to the public. Similarly, Tour Partner Group has advertised the address of
22 the Santa Rosa office as one of Tour Partner Group’s business locations. The walls of the Santa
23 Rosa office were decorated with Tour Partner Group media. Tour Partner Group is Plaintiffs’
24 joint employer.

25 10. Defendant Allegra Lynch is the President of Authentic Vacations, and, on
26 information and belief, a board member of Tour Partner Group Limited. When Plaintiffs began
27 their employment with Authentic Vacations, Ms. Lynch lived in California, but she now lives in
28 Arizona.

11. Defendant Mark Lynch is the Chief Financial Officer of Authentic Vacations. When Plaintiffs began their employment with Authentic Vacations, Mr. Lynch lived in California, but he now lives in Arizona.

12. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiffs. When their true names and capacities are ascertained, Plaintiffs will amend this complaint by inserting their true names and capacities herein. Plaintiffs are informed and believe and thereupon allege that each of the fictitiously-named Defendants is responsible in some manner for the occurrences herein alleged, and that the damages to Plaintiffs' and the aggrieved employees herein alleged were proximately caused by such Defendants.

13. Plaintiffs are informed, believe, and thereon allege that each of the Defendants herein was at all times relevant to this action the agent, employee, representative partner, and/or joint venture of the remaining Defendants and was acting within the course and scope of the relationship. Plaintiffs are further informed, believe, and thereon allege that each of the Defendants herein gave consent to, ratified and authorized the acts alleged herein to the remaining Defendants.

JURISDICTION & VENUE

14. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all cases except those given to other trial courts.

15. Plaintiffs' employment contracts with Authentic Vacations state that the employment agreement is governed by the laws of the state of California.

16. Plaintiffs seek damages and penalties in this case in an amount exceeding the jurisdictional minimum of this Court.

17. Venue in Sonoma County is proper under California Code of Civil Procedure section 395.5 because the unlawful conduct at issue in this case occurred in part in Sonoma County. In addition, Defendants conducted and, at the time the First Amended Complaint was

1 filed in this case, continued to conduct substantial business in this County and their liability
2 arose, in part, in this County.

3 **FACTUAL ALLEGATIONS**

4 18. Authentic Vacations is a travel agency.

5 19. Plaintiffs and other individuals performing the same or similar job duties have
6 held different job titles including Sales Agent, Travel Expert, and Destination Expert; however,
7 their job duties have remained largely the same.

8 20. Plaintiffs and other aggrieved Sales Agents' job duties included contacting
9 prospective clients, booking travel reservations for clients, selling and marketing company
10 products and services, and customer service.

11 21. Plaintiffs and other aggrieved Sales Agents were paid a fixed salary plus
12 commissions. The commissions never approached half of Plaintiff Baggett's annual earnings.
13 Plaintiffs and other aggrieved Sales Agents' commissions typically did not exceed half of their
14 earnings in a pay period.

15 22. At times during the relevant period, Plaintiffs' monthly salary was less than
16 twice the minimum wage equivalent for full-time work. On information and belief, the same
17 was true of other aggrieved Sales Agents.

18 23. The work performed by Plaintiffs and other aggrieved Sales Agents was
19 supervised by a manager. Plaintiffs did not supervise other employees, and on information and
20 belief the same was true of other aggrieved Sales Agents.

21 24. Authentic Vacations' misclassified Sales Agents as exempt from overtime.
22 Based on their job duties and pay structure, Plaintiffs and other aggrieved employees should
23 have received hourly pay including overtime compensation as well as meal and rest breaks.
24 Authentic Vacation's misclassification of Sales Agents as exempt employees was willful.

25 25. During much of their employment, Plaintiffs regularly worked more than eight
26 (8) hours a day and forty (40) hours per week. Authentic Vacations recorded many of the
27 overtime hours worked by Plaintiffs and Sales Agents. Prior to March 2020, Plaintiff Baggett
28 regularly worked overtime hours at the Santa Rosa office, and then worked additional

1 unrecorded overtime hours from home in the evenings. For example, between February 20,
2 2018 and February 24, 2018 records show Plaintiff Baggett worked more than ten (10) hours of
3 overtime. For example, between February 10, 2020 and February 13, 2020 records, records
4 show Plaintiff Baggett worked five (5) hours of overtime. Plaintiffs Jocoya Fox-Jones and
5 Augello also worked significant overtime.

6 26. As a result of Authentic Vacations' misclassifying Sales Agents as exempt
7 employees, and the hours Sales Agents worked, Defendants failed to pay overtime
8 compensation to Plaintiffs and other aggrieved Sales Agents for hours they worked in excess of
9 eight (8) hours per day and forty (40) hours per week. Authentic Vacations' failure to pay
10 overtime to Plaintiff and other Sales Agents was willful and knowing.

11 27. Management was aware that Plaintiffs and other aggrieved Sales Agents worked
12 overtime. During most of their employment, Authentic Vacations had Plaintiffs and other Sales
13 Agents maintain records of overtime worked in software applications including "When I Work"
14 and "ADP." Plaintiffs worked many of their overtime hours at the Santa Rosa office, where
15 managers and other employees could observe them working. Further, in a March 26, 2019
16 email, and other communications, Plaintiff Baggett informed Chief Financial Officer, Mark
17 Lynch, that Sales Agents were working overtime and were not receiving overtime
18 compensation. As a result of Authentic Vacations' misclassifying Sales Agents as exempt
19 employees, Authentic Vacations implemented no policy to provide uninterrupted, thirty (30)
20 minute meal periods to Plaintiffs and other aggrieved Sales Agents who worked more than five
21 (5) hours in a day. Authentic Vacations lacked a policy to provide a second meal period to
22 Plaintiffs and other Sales Agents for work periods lasting more than ten (10) hours. Due to the
23 press of work, Plaintiffs often ate lunch at their desks, and observed other Sales Agents eating at
24 their desks.

25 28. As a result of Authentic Vacations' misclassifying Plaintiffs and other Sales
26 Agents as exempt employees, Authentic Vacations implemented no policy to make available a
27 ten (10) minute rest period to Plaintiffs and other Sales Agents who worked shifts lasting more
28 than three and a half (3.5) hours. Further, Authentic Vacations' lacked a policy to make

1 available to Plaintiffs and other Sales Agents a second ten (10) minute break during shifts
2 lasting more than six (6) hours, or a third ten (10) minute break during shifts lasting more than
3 ten (10) hours.

4 29. Authentic Vacations failed to pay a single missed-meal or missed-rest-period
5 premium to Plaintiffs or, on information and belief, any other Sales Agent, as required under
6 Labor Code section 226.7 and IWC Wage Order 4-2001.

7 30. Plaintiffs and other Sales Agents never signed valid meal period waivers.

8 31. As a result of Authentic Vacations' misclassifying Plaintiffs and other Sales
9 Agents as exempt employees, Authentic Vacations willfully failed to provide Plaintiffs and
10 other Sales Agents with paystubs that, *inter alia*, itemized rates of pay, total hours worked,
11 overtime hours, and missed breaks.

12 32. Until mid-March 2020, Authentic Vacations expected Plaintiffs and other
13 aggrieved Sales Agents to perform the vast majority of their job duties from the Santa Rosa
14 office. Starting in March 2020, Plaintiffs and other aggrieved employees began working out of
15 their homes because of the COVID-19 pandemic.

16 33. At no time did Authentic Vacations reimburse Plaintiff Baggett or Plaintiff Fox-
17 Jones for their personal phone plans or home internet plans, which they used in performing their
18 work for the company. On information and belief, Authentic Vacations failed to reimburse, or
19 fully reimburse, Plaintiff Augello and other aggrieved Sales Agents who used their personal cell
20 phone plans and home internet plans to perform work for Authentic Vacations, even after Sales
21 Agents began working from home due to the pandemic.

22 34. As a result of Authentic Vacations' misclassifying Plaintiffs and other Sales
23 Agents as exempt employees, Authentic Vacations willfully and knowingly failed to pay
24 Plaintiffs and other Sales Agents timely during their employment and upon termination, all
25 accrued compensation, including overtime pay, missed meal and rest period compensation, and
26 reimbursement for work-related expenses.

27 35. In February 2019 and March of 2019, Plaintiff Baggett complained to
28 Defendants' management and Mr. Lynch, about compliance with California wage laws

1 including overtime laws. Many of these complaints were captured via email. At the time of the
2 complaints Plaintiff Baggett reasonably believed she was complaining of violations of state
3 wage laws. Mr. Lynch and Ms. Lynch each emailed Plaintiff Baggett that the company was
4 classifying her as “exempt.”

5 36. In late 2020, Plaintiff Baggett was denied a promotion.

6 37. On or around October 5, 2020, Plaintiff Baggett again complained to
7 Defendants, this time about both pay and reimbursement practices that Plaintiff Baggett
8 reasonably believed were in violation of state laws. In an October 22, 2020 email, one of
9 Defendants’ managers responded that Plaintiff Baggett’s reimbursement complaints would be
10 “addressed in the 2021 budget talks.”

11 38. After Plaintiff Baggett complained to Defendants about the failure to properly
12 compensate and reimburse Sales Agents, Defendants retaliated against Plaintiff Baggett.
13 Defendants – who, on information and belief had received over \$434,000 in funds through the
14 federal government’s Paycheck Protection Program – demanded that Plaintiff Baggett either
15 resign or take a leave of absence. Plaintiff Baggett refused to resign. Defendants placed her on
16 leave, purporting to investigate her job performance. On November 12, 2020, Ms. Lynch
17 terminated Plaintiff Baggett’s employment for pretextual reasons.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REIMBURSEMENT OF BUSINESS EXPENSES**

20 **(Labor Code §§ 2802, 558.1, and IWC Wage Order 4-2001)**

21 **(ON BEHALF OF ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

22 39. Plaintiffs incorporate by reference in this cause of action each allegation of the
23 preceding paragraphs as though fully set forth herein.

24 40. While acting on the direct instruction of Defendants and discharging their duties
25 for Defendants, Plaintiffs incurred work-related expenses. Such expenses include payments for
26 their cell phone plans as well as payments for their home internet plans.

27 41. Defendants failed to properly indemnify Plaintiffs for these expenditures. By
28 requiring Plaintiffs to pay expenses they incurred in direct consequence of the discharge of their

1 duties for Defendants and in obedience of Defendants' direction without properly compensating
2 them, Defendants violated Labor Code section 2802 and IWC Wage Order 4-2001.

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

5 43. By unlawfully failing to reimburse Plaintiffs for necessary expenditures or
6 losses, Defendants caused Plaintiffs to suffer losses in an amount to be determined at trial.

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

9 45. Plaintiffs request relief as described below.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME**

12 **(Labor Code §§ 510, 558, 558.1, 1194, 1198, et seq.; IWC Wage Order 4-2001)**

13 **(ON BEHALF OF ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

14 46. Plaintiffs incorporate by reference in this cause of action each allegation of the
15 preceding paragraphs as though fully set forth herein.

16 47. By failing to pay overtime compensation to Plaintiffs, as alleged above,
17 Defendants violated Labor Code section 510 and IWC Wage Order 4-2001, which require
18 overtime compensation for non-exempt employees. The number of overtime hours will be
19 proven at trial.

20 48. By failing to maintain adequate time records as required by Labor Code section
21 1174(d) and IWC Wage Order 4-2001, Defendants made it difficult to calculate the precise
22 overtime due to Plaintiffs.

23 49. As a result of Defendants' unlawful acts, Plaintiffs have been deprived of
24 overtime compensation in an amount to be determined at trial, and are entitled to recovery of
25 such amounts, plus interest thereon, and attorneys' fees and costs, under Labor Code section
26 1194.

27 50. Plaintiffs request relief as described below.

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(Labor Code §§ 226.7, 512, 558.1, IWC Wage Order 4-2001)

(ON BEHALF OF ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

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59. Plaintiffs regularly worked more than three-and-one-half (3.5) hours in a day without being authorized and permitted to take one (1), ten (10) minute rest period in which they were relieved of all duties; regularly worked more than six (6) hours in a day without being authorized and permitted to take two (2), ten (10) minute rest periods in which they were relieved of all duties; worked more than ten (10) hours in a day without being authorized and permitted to take three (3), ten (10) minute rest periods in which they were relieved of all duties, as required under Labor Code section 226.7 and IWC Wage Order 4-2001.

60. Because Defendants failed to make available proper rest periods, Defendants are liable to Plaintiffs for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, pursuant to Labor Code section 226.7(b) and IWC Wage Order 4-2001.

61. Plaintiffs were not paid for all hours worked, and Defendants maintained no system for the recording rest periods.

62. Defendants' failure to pay rest period premiums was done willfully, in bad faith, in knowing violation of the Labor Code and the IWC Wage Order 4-2001.

63. By violating Labor Code sections 226.7 and IWC Wage Order 4-2001, Defendants are also liable for penalties, interest, reasonable attorneys' fees and costs under Labor Code 218.5, 226.7(b) and 1194.

64. Plaintiffs request relief as described below.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE TIMELY, ACCURATE, ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, 558.1, and 1174; IWC Wage Order 4-2001)

(ON BEHALF OF ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

65. Plaintiffs incorporate by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

66. Labor Code section 226(a) and IWC Wage Order 4-2001 require employers semi-monthly or at the time of each payment of wages to furnish each California employee with a statement itemizing, among other things, the total hours worked by the employee, and their

1 rates of pay. Labor Code section 226(b) provides that if an employer knowingly and
2 intentionally fails to provide a statement itemizing, among other things, the total hours worked
3 by the employee, or rates of pay, then the employee is entitled to recover the greater of all
4 actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for
5 each subsequent violation, up to four thousand dollars (\$4,000).

6 67. Defendants knowingly and intentionally failed to furnish Plaintiffs with timely,
7 itemized statements showing the total hours worked and rates of pay, as required by Labor Code
8 section 226(a) and IWC Wage Order 4-2001. As a result, Defendants are liable to Plaintiffs for
9 the amounts provided by Labor Code section 226(b).

10 68. Defendants violated Labor Code section 1174 and IWC Wage Order 4-2001 by
11 willfully failing to keep required payroll records showing the actual hours worked each day by
12 Plaintiffs. As a direct and proximate result of Defendants' failure to maintain payroll records,
13 Plaintiffs suffered actual economic harm as they were precluded from accurately monitoring the
14 number of hours worked and thus seeking all accrued overtime pay.

15 69. Further, in 2020, Plaintiff Baggett requested her employer provide her with her
16 wage statements. As of the date of filing this action, Defendants have not furnished these items.

17 70. Plaintiffs now bring an action to enjoin Defendants to comply with Labor Code
18 section 226(f).

19 71. Plaintiff Baggett may seek a \$750 statutory penalty under section 226(f).

20 72. Plaintiffs may recover damages and penalties provided for under Labor Code
21 section 226(e), plus interest thereon, reasonable attorneys' fees under section 226(h), and costs.

22 73. Plaintiffs request relief as described below.

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SIXTH CAUSE OF ACTION
FAILURE TO PAY EARNED WAGES UPON DISCHARGE
AND WAITING TIME PENALTIES

(Labor Code §§ 201-203, 558.1)

(ON BEHALF OF ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

74. Plaintiffs incorporate by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

75. 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.

76. Plaintiffs have ceased performing work for Defendants, and are entitled to unpaid compensation, but have not received such compensation, more than 72 hours after the cessation of their employment.

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

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

79. Plaintiffs request relief as described below.

SEVENTH CAUSE OF ACTION

RETALIATION

(Labor Code § 1102.5)

(ON BEHALF OF PLAINTIFF BAGGETT AGAINST ALL DEFENDANTS)

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

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

1 82. Labor Code section 1102.5 prohibits retaliation against an employee who makes
2 a complaint about a violation of law or what the employee reasonably believes constitutes a
3 violation to an employee with authority to investigate, discovery, or correct the violation.

4 83. As alleged herein, Plaintiff Baggett was passed up for a promotion in 2020, on
5 information and belief, in retaliation for her 2019 wage and hour complaints.

6 84. As alleged herein, after she made wage and hour as well as reimbursement
7 complaints in 2020, Plaintiff Baggett was placed on leave, investigated, and terminated.

8 85. Defendants subjected Plaintiff Baggett to adverse employment actions arising
9 from Plaintiff Baggett's reports of unlawful activity.

10 86. As a proximate result of Defendants' adverse actions, Plaintiff Baggett suffered
11 general damages including emotional distress damages in sums according to proof.

12 87. As a result of these violations of her rights, Plaintiff Baggett has also suffered
13 special damages in sums according to proof.

14 88. Defendants' misconduct was committed intentionally, in a malicious, oppressive,
15 fraudulent manner, entitling Plaintiff Baggett to punitive damages against Defendants.

16 89. In addition to general damages, special damages, punitive damages, and interest
17 there on, Plaintiff Baggett will be entitled to attorney's fees, including under Labor Code
18 section 1102.5(j) and costs.

19 90. Plaintiff Baggett requests relief as described below.

20 **EIGHTH CAUSE OF ACTION**

21 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
22 **(ON BEHALF OF PLAINTIFF BAGGETT AGAINST ALL DEFENDANTS)**

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

25 92. Defendants terminated Plaintiff Baggett's employment in violation of various
26 fundamental public policies. Specifically, Defendants terminated Plaintiff because she made
27 complaints about violations of the Labor Code and IWC Wage Orders.
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1 93. As a proximate result of Defendants' wrongful termination of Plaintiff Baggett's
2 employment in violation of fundamental public policies, Plaintiff Baggett suffered general
3 damages including emotional distress damages in a sum according to proof.

4 94. As a result of Defendant's wrongful termination of her employment, Plaintiff
5 Baggett has suffered special damages in sums according to proof.

6 95. Defendants' wrongful termination of Plaintiff Baggett's employment was done
7 intentionally, in a malicious, fraudulent, and oppressive manner, entitling Plaintiff Baggett to
8 punitive damages.

9 96. In addition to general damages, special damages, punitive damages, and interest
10 there on, Plaintiff Baggett will be entitled to attorney's fees under Code of Civil Procedure
11 sections 1021.5 and 1032, *et seq.* and costs.

12 97. Plaintiff Baggett requests relief as described below.

13 **NINTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE PERSONNEL FILE**

15 **(Labor Code § 1198.5)**

16 **(ON BEHALF OF PLAINTIFF BAGGETT AGAINST DEFENDANTS AUTHENTIC**
17 **VACATIONS AND TOUR PARTNER GROUP)**

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

20 99. Labor Code section 1198.5 provides that an "employer shall make the contents
21 of [an employee's] personnel records available for inspection to the current or former employee,
22 or his or her representative, at reasonable intervals and at reasonable times, but not later than 30
23 calendar days from the date the employer receives a written request."

24 100. In 2020, Plaintiff Baggett made a written request for access to her personnel
25 records.

26 101. At the time of filing this lawsuit, Defendants had not provided her with a copy of
27 or access to her personnel records.
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102. Plaintiff Baggett brings this action to enjoin Defendants to comply with Labor Code section 1198.5.

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

104. Plaintiff Baggett requests relief as described below.

TENTH CAUSE OF ACTION
VIOLATIONS OF THE UNFAIR COMPETITION LAW ("UCL")
(Business & Professions Code §§ 17200-17208)
(ON BEHALF OF ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

105. Plaintiffs incorporate by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

106. Defendants improperly, fraudulently, and unlawfully classified Plaintiffs as exempt employees and thereby committed unlawful, unfair and/or fraudulent business acts and practices as defined by Business & Professions Code section 17200, by engaging in the following:

- (a) Failing to reimburse Plaintiffs for all employment-related business expenses and losses (see Lab. Code § 2802; IWC Wage Ord. No. 4-2001);
- (b) Failing to pay overtime compensation to Plaintiffs (see Lab. Code §§ 510, 558, 1194, 1198, *et seq.*; IWC Wage Ord. No. 4-2001);
- (c) Requiring Plaintiffs to work for periods of five or more consecutive hours without having at least one half-hour, off-duty break for a meal (see Lab. Code §§ 226.7, 512; IWC Wage Order No. 4-2001);
- (d) Requiring Plaintiffs 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 Plaintiffs premium wages earned while working without the legally mandated meal and rest breaks and failing to separately compensate Plaintiffs for rest breaks;

1 (f) Failing to provide accurate itemized wage statements to Plaintiffs (Lab. Code §§
2 226, 1174; IWC Wage Order No. 4-2001);

3 (g) Failing to maintain accurate payroll records showing the actual hours worked
4 each day by Plaintiffs (Lab. Code § 1174);

5 (h) Retaliating against and wrongfully terminating Plaintiff Baggett after she
6 complained about wage and hour violations (Lab. Code § 1102.5); and

7 107. Plaintiffs lost money and property as a result of Defendants' unlawful business
8 practices described above.

9 108. Pursuant to the UCL, Plaintiffs are entitled to restitution of money or property
10 acquired by Defendants by means of such unlawful business practices, in amounts not yet
11 known, but to be ascertained at trial.

12 109. Pursuant to the UCL, Plaintiffs are entitled to injunctive relief against
13 Defendants' ongoing unlawful business practices. If an injunction does not issue enjoining
14 Defendants from engaging in the unlawful business practices described above, Plaintiffs and the
15 general public will be irreparably injured.

16 110. Plaintiffs have no plain, speedy, and adequate remedy at law. Defendants, if not
17 enjoined by this Court, will continue to engage in the unlawful business practices described
18 above in violation of the UCL, in derogation of the rights of its Plaintiffs, Sales Agents, and the
19 general public.

20 111. Plaintiffs' success in this action will result in the enforcement of important rights
21 affecting the public interest by conferring a significant benefit upon the general public.

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

25 113. Pursuant to Business and Professions Code section 17200, *et seq.*, Plaintiffs are
26 entitled to restitution of all fees, wages, and compensation alleged herein that Defendants
27 collected, withheld, and retained during the period commencing four years preceding the filing
28 of this action and a declaration that Defendants' business practices are unfair within the

1 meaning of the statute, in addition to an award of attorneys' fees and costs pursuant to Code of
2 Civil Procedure section 1021.5 and other applicable law, and costs. All remedies are cumulative
3 pursuant to Business & Professions Code section 17205.

4 114. Plaintiffs request relief as described below.

5 **ELEVENTH CAUSE OF ACTION**
6 **REPRESENTATIVE ACTION PURSUANT TO THE**
7 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
8 **(LABOR CODE § 2698, *ET SEQ.*)**
9 **(BY PLAINTIFF BAGGETT ON BEHALF OF THE LABOR COMMISSIONER**
10 **AGAINST ALL DEFENDANTS)**

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

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

22 117. On December 22, 2020 pursuant to Labor Code section 2699.3, Plaintiff Baggett
23 sent notice to the Labor and Workforce Development Agency ("LWDA") via the LWDA's
24 online filing system for PAGA letters of the specific provisions of the Labor Code that Plaintiff
25 Baggett alleges Defendants violated, including the facts and theories to support the violations,
26 and subsequently sent copies of the notice via certified mail to Defendants. (**Exhibit 1**) The
27 LWDA received Plaintiff Baggett's notice that same day. The sixty-five-day time limit for the
28

1 agency to respond has now expired, and as such Plaintiff Baggett has exhausted her
2 administrative remedies.

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

9 119. Plaintiff Baggett will seek to collect appropriate civil penalties for Defendant's
10 Labor Code violations under the following California Labor Code sections 201–203, 204, 210,
11 223, 226, 226.3, 226.7, 256, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1198, 1198.5, and
12 2802.

13 120. Plaintiff Baggett will seek penalties, including,

- 14 a. Under Labor Code § 2699(f)(2), described above, a civil penalty of one hundred
15 dollars (\$100) for Plaintiff and each aggrieved employee per pay period for the
16 initial violation of Labor Code § 2802, for failure to indemnify employees for
17 business expenses, and two hundred dollars (\$200) for Plaintiff and each
18 aggrieved employee per pay period for each subsequent violation of Labor Code
19 § 2802.
- 20 b. Under Labor Code § 558, civil penalties of fifty dollars (\$50) for Plaintiff and
21 each aggrieved employee per pay period for the initial violation of Labor Code §
22 558 where Plaintiff and aggrieved employees were not paid appropriate overtime
23 premiums under Labor Code § 510 in addition to an amount sufficient to recover
24 underpaid wages; and for each subsequent violation, one hundred dollars (\$100)
25 for each underpaid aggrieved employee for each pay period for which the
26 employee was underpaid under Labor Code § 510.
- 27 c. 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 § 226.7 for failing to provide meal periods, and two hundred dollars
2 (\$200) for Plaintiff and each aggrieved employee per pay period for each
3 subsequent violation of Labor Code § 226.7 for failing to provide meal periods.

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

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

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

22 g. Under Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for
23 Plaintiff and each aggrieved employee per pay period for the initial violation of
24 Labor Code §§ 204 for their failure to pay earned wages timely, and two hundred
25 dollars (\$200) for Plaintiff and each aggrieved employee per pay period for each
26 subsequent violation of Labor Code §§ 201 and 202.

27 h. Under Labor Code § 226.3, which provides for civil penalties for violations of
28 California Labor Code § 226(a), a civil penalty of two hundred fifty dollars

1 (\$250) for Plaintiff and each aggrieved employee for the first violation, and one
2 thousand dollars (\$1,000) for Plaintiff and each aggrieved employee for each
3 subsequent violation of Labor Code § 226(a) for failure to provide timely,
4 accurate, itemized wage statements.

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

8 121. Specifically, Plaintiff Baggett alleges that while Defendants classified Plaintiff
9 and aggrieved employees as “exempt,” this designation was made voluntarily and knowingly to
10 circumvent the requirements of the Labor Code. There is no reasonable dispute that Sales
11 Agents are exempt employees under the Labor Code and the corresponding IWC Wage Order
12 No. 4-2001.

13 122. Plaintiff Baggett is an “aggrieved employee” as defined by PAGA and seeks to
14 represent all other Sales Agents in California who have personally performed sales work in
15 California for any of Defendants. Plaintiff Baggett contends that each of the Sales Agents was
16 an employee of Defendants, making Defendants also liable for the alleged PAGA penalties.

17 **PRAYER FOR RELIEF**

18 Based on the above allegations, Plaintiffs respectfully request entry of judgment against
19 Defendants, as follows:

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

- 22 a) Labor Code section 2802 and IWC Wage Order 4-2001, by failing to
23 indemnify Plaintiffs for all necessarily incurred business expenses;
24 b) Labor Code sections 510, 1194 *et seq.*, 1198 and IWC Wage Order 4-
25 2001, by failing to pay overtime compensation to Plaintiffs;
26 c) Labor Code sections 226.7 and 512, and IWC Wage Order 4-2001, by
27 failing to provide 30-minute, duty-free meal periods to Plaintiffs;
28

1 d) California Labor Code section 226.7 and IWC Wage Order 4-2001 by
2 failing to provide 10-minute, paid, duty-free rest periods to Plaintiffs;
3 e) Business & Professions Code section 17200, *et seq.*, by failing to
4 reimburse Plaintiffs for all necessary business expenses incurred, pay
5 Plaintiffs overtime compensation, by failing to provide off-duty meal
6 periods and/or pay meal period compensation to Plaintiffs, by failing to
7 provide Plaintiffs with itemized wage statements showing all hours
8 worked, by failing to maintain payroll records that document all hours
9 worked by Plaintiffs, and by willfully failing to pay all compensation
10 owed to Plaintiffs timely including upon termination of employment;
11 2. A declaratory judgment that Defendants' violations as described above were
12 willful or knowing and intentional;
13 3. An award to Plaintiffs of statutory penalties because of Defendants' failure to
14 provide Plaintiffs with itemized wage statements that comply with the requirements of Labor Code
15 section 226, subject to proof at trial;
16 4. An award to Plaintiff Baggett of statutory penalties because of Defendants' failure
17 to provide Plaintiff with her personnel file in compliance with the requirements of Labor Code
18 section 1198.5;
19 5. An award to Plaintiffs of statutory penalties because of Defendants' failure to
20 timely pay Plaintiffs all wages due, including upon their final paycheck pursuant to Labor Code
21 sections 201-203, subject to proof at trial;
22 6. An award to Plaintiffs of damages in the amount of unpaid necessary business
23 expenses, overtime compensation, and meal and rest period compensation, including interest
24 thereon subject to proof at trial;
25 7. An order requiring Defendants to pay restitution of all amounts owed to Plaintiffs
26 for Defendants' failure to reimburse for business expenses, failure to pay legally required overtime
27 pay, meal and rest period pay, and interest thereon, in an amount according to proof, pursuant to
28 Business & Professions Code section 17203;

8. Award of civil penalties pursuant to the PAGA as described above;

9. 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;

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

11. 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: June 14, 2021

Respectfully submitted,

TERP LAW

By:

RACHEL TERP

Attorney for Plaintiffs Heather Baggett, Jocoya Fox-Jones, and Patricia Augello, and the general public

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all issues.

DATED: June 14, 2021

TERP LAW



By: _____

RACHEL TERP

*Attorney for Plaintiffs Heather Baggett, Jocoya
Fox-Jones, and Patricia Augello, and the general
public*

Exhibit 1 to SAC

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:

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