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ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
4/26/2021 6:47 PM
Arlene D. Junior, Clerk of the Court
By: Lorena Deloza, 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,
ALLEGRA LYNCH, MARK LYNCH,
and DOES 1 through 10 inclusive,

Defendants.

CASE NO.: SCV-267920

UNLIMITED CIVIL CASE

**FIRST AMENDED COMPLAINT FOR
DAMAGES, RESTITUTION, INJUNCTIVE,
& DECLARATORY 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”), Defendant Tour Partner Group Limited (hereinafter
4 “Tour Partner Group”), Allegra Lynch, and Mark Lynch (collectively, “Defendants”), as well
5 as DOES 1 through 10, inclusive, as follows:

6 **PRELIMINARY STATEMENT**

7 1. In 2019, after Plaintiff made wage and hour complaints to her employer
8 Authentic Vacations, a manager told another employee that Plaintiff was “poisoning the well.”
9 In late 2020, after Plaintiff again complained to management, this time about both pay and
10 reimbursement practices which she reasonably believed were in violation of wage and hour
11 laws, Authentic 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. Defendant Allegra Lynch is the President of Authentic Vacations ("President
14 Lynch), and, on information and belief, a board member of Tour Partner Group Limited. When
15 Plaintiff began her employment with Authentic Vacations, Ms. Lynch lived in California, but
16 she now lives in Arizona.

17 9. Defendant Mark Lynch is the Chief Financial Officers of Authentic Vacations.
18 When Plaintiff began her employment with Authentic Vacations, Mr. Lynch lived in California,
19 but he now lives in Arizona.

20 10. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their
21 true names and capacities are unknown to Plaintiff. When their true names and capacities are
22 ascertained, Plaintiff will amend this complaint by inserting their true names and capacities
23 herein. Plaintiff is informed and believes and thereupon alleges that each of the fictitiously-
24 named Defendants is responsible in some manner for the occurrences herein alleged, and that
25 the damages of Plaintiff's and the putative class herein alleged were proximately caused by
26 such Defendants.

27 11. Plaintiff is informed, believes, and thereon alleges that each of the Defendants
28 herein was at all times relevant to this action the agent, employee, representative partner, and/or

1 joint venture of the remaining Defendants and was acting within the course and scope of the
2 relationship. Plaintiff is further informed, believes, and thereon alleges that each of the
3 Defendants herein gave consent to, ratified and authorized the acts alleged herein to the
4 remaining Defendants.

5 **JURISDICTION & VENUE**

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

9 13. Plaintiff's employment contract with Authentic Vacations states that the
10 employment agreement "shall be governed by the laws of the state of California."

11 14. Plaintiff seeks damages and penalties in this case in an amount exceeding the
12 jurisdictional minimum of this Court.

13 15. Venue in Sonoma County is proper under California Code of Civil Procedure
14 section 395.5 because the unlawful conduct at issue in this case occurred in part in Sonoma
15 County. In addition, Defendants conducted and, at the time this First Amended Complaint was
16 filed in this case, continued to conduct substantial business in this County and their liability
17 arose, in part, in this County.

18 **FACTUAL ALLEGATIONS**

19 16. Authentic Vacations is a travel agency.

20 17. Plaintiff and other individuals performing the same or similar job duties have
21 held different job titles including Sales Agent, Travel Expert, and Destination Expert; however,
22 their job duties have remained largely the same.

23 18. Plaintiff and other aggrieved Sales Agents' job duties included contacting
24 prospective clients, booking travel reservations for clients, selling and marketing company
25 products and services, and customer service.

26 19. Plaintiff and other aggrieved Sales Agents were paid a fixed salary plus
27 commissions. The commissions never approached half of Plaintiff's annual earnings. Plaintiff
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1 and other aggrieved Sales Agents' commissions typically did not exceed half of their earnings
2 in a pay period.

3 20. Plaintiff's monthly salary was typically less than twice the state minimum wage
4 equivalent for full-time work. On information and belief, the same was true of other aggrieved
5 Sales Agents.

6 21. The work performed by Plaintiff and other aggrieved Sales Agents was
7 supervised by a manager. Plaintiff did not supervise other employees, and on information and
8 belief the same was true of other aggrieved Sales Agents.

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

13 23. During much of her employment, Plaintiff regularly worked more than eight (8)
14 hours a day and forty (40) hours per week. Prior to March 2020, Plaintiff regularly worked
15 overtime hours at the Santa Rosa office, and then worked additional overtime hours from home
16 in the evenings. Authentic Vacations recorded many of the overtime hours worked by Plaintiff
17 and Sales Agents. For example, between February 20, 2018 and February 24, 2018 records
18 show Plaintiff worked more than ten (10) hours of overtime. For example, between February
19 10, 2020 and February 13, 2020 records, records show Plaintiff worked five (5) hours of
20 overtime.

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

26 25. Management was aware that Plaintiff and other aggrieved Sales Agents worked
27 overtime. During most of her employment, Authentic Vacations had Plaintiff and other Sales
28 Agents maintain records of overtime worked in software applications including "When I Work"

1 and “ADP.” Plaintiff worked many of her overtime hours at the Santa Rosa office, where
2 managers and other employees could observe her working. Further, in a March 26, 2019 email,
3 and other communications, Plaintiff informed Chief Financial Officer, Mark Lynch, that Sales
4 Agents were working overtime and were not receiving overtime compensation. As a result of
5 Authentic Vacations’ misclassifying Sales Agents as exempt employees, Authentic Vacations
6 implemented no policy to provide uninterrupted, thirty (30) minute meal periods to Plaintiff and
7 other aggrieved Sales Agents who worked more than five (5) hours in a day. Authentic
8 Vacations lacked a policy to provide a second meal period to Plaintiff and other Sales Agents
9 for work periods lasting more than ten (10) hours. Due to the press of work, Plaintiff often ate
10 lunch at her desk, and observed other Sales Agents eating at their desks.

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

18 27. Authentic Vacations’ failed to pay a single missed-meal or missed-rest-period
19 premium to Plaintiff or, on information and belief, any other Sales Agent, as required under
20 Labor Code section 226.7 and IWC Wage Order 4-2001.

21 28. Plaintiff and other Sales Agents never signed valid meal period waivers.

22 29. As a result of Authentic Vacations’ misclassifying Plaintiff and other Sales
23 Agents as exempt employees, Authentic Vacations’ willfully failed to provide Plaintiff and
24 other Sales Agents with paystubs that, *inter alia*, itemized rates of pay, total hours worked,
25 overtime hours, and missed breaks.

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

3 31. At no time did Authentic Vacations reimburse Plaintiff for her phone plan or
4 home internet plan, which she used in performing her work for the company. On information
5 and belief, Authentic Vacations failed to reimburse other aggrieved Sales Agents who used their
6 personal cell phone plans and home internet plans to perform work for Authentic Vacations,
7 even after Sales Agents began working from home due to the pandemic.

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

13 33. In February 2019 and March of 2019, Plaintiff complained to Defendants'
14 management and Mr. Lynch, about the company's compliance with California wage laws
15 including overtime laws. Many of these complaints were captured via email. At the time of the
16 complaints Plaintiff reasonably believed she was complaining of violations of state wage laws.
17 Mr. Lynch and Ms. Lynch each emailed Plaintiff that the company was classifying her as
18 "exempt." In response to Plaintiff's 2019 complaints, a manager told another employee that
19 Plaintiff was "poisoning the well."

20 34. In late 2020, Plaintiff was denied a promotion.

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

25 36. After Plaintiff complained to Defendants about the failure to properly
26 compensate and reimburse Sales Agents, Defendants retaliated against Plaintiff. Defendants –
27 who, on information and belief had received over \$434,000 in funds through the federal
28 government's Paycheck Protection Program – demanded that Plaintiff either resign or take a

1 leave of absence. Plaintiff refused to resign. Defendants placed her on leave, purporting to
2 investigate her job performance. On November 12, 2020, Ms. Lynch terminated Plaintiff's
3 employment for pretextual reasons.

4 **FIRST CAUSE OF ACTION**

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

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

7 **(ON BEHALF OF PLAINTIFF AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

23 43. Plaintiff requests relief as described below.

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

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

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

48. Plaintiff requests relief as described below.

FAILURE TO PROVIDE MEAL PERIODS

(ON BEHALF OF PLAINTIFF AGAINST ALL DEFENDANTS)

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

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

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

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

7 54. By violating Labor Code sections 226.7 and 512, and IWC Wage Order 4-2001,
8 Defendants are also liable for penalties, interest, reasonable attorneys' fees and costs under
9 Labor Code §§ 218.5, 226.7(b) and 1194.

10 55. Plaintiff requests relief as described below.

11 **FOURTH CAUSE OF ACTION**
12 **FAILURE TO PROVIDE REST PERIODS**
13 **(Labor Code §§ 226.7, 558.1, 1194, IWC Wage Order 4-2001)**
14 **(ON BEHALF OF PLAINTIFF AGAINST ALL DEFENDANTS)**

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

17 57. Plaintiff regularly worked more than three-and-one-half (3.5) hours in a day
18 without being authorized and permitted to take one (1), ten (10) minute rest period in which she
19 was relieved of all duties; regularly worked more than six (6) hours in a day without being
20 authorized and permitted to take two (2), ten (10) minute rest periods in which she was relieved
21 of all duties; worked more than ten (10) hours in a day without being authorized and permitted
22 to take three (3), ten (10) minute rest periods in which she was relieved of all duties, as required
23 under Labor Code section 226.7 and IWC Wage Order 4-2001.

24 58. Because Defendants failed to make available proper rest periods, Defendants are
25 liable to Plaintiff for one hour of additional pay at the regular rate of compensation for each
26 workday that the proper rest periods were not provided, pursuant to Labor Code section
27 226.7(b) and IWC Wage Order 4-2001.
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59. Plaintiff was not paid for all hours worked, and Defendants maintained no system for the recording rest periods.

60. 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.

61. 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.

62. Plaintiff requests 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 PLAINTIFF AGAINST ALL DEFENDANTS)

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

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

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

66. Defendants violated Labor Code section 1174 and IWC Wage Order 4-2001 by willfully failing to keep required payroll records showing the actual hours worked each day by

1 Plaintiff. As a direct and proximate result of Defendants' failure to maintain payroll records,
2 Plaintiff suffered actual economic harm as she was precluded from accurately monitoring the
3 number of hours worked and thus seeking all accrued overtime pay.

4 67. Further, in 2020, Plaintiff requested her employer provide her with her wage
5 statements. As of the date of filing this action, Defendants have not furnished these items.

6 68. Plaintiff now brings an action to enjoin Defendants to comply with Labor Code
7 section 226(f).

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

11 70. Plaintiff requests relief as described below.

12 **SIXTH CAUSE OF ACTION**

13 **FAILURE TO PAY EARNED WAGES UPON DISCHARGE**

14 **AND WAITING TIME PENALTIES**

15 **(Labor Code §§ 201-203, 558.1)**

16 **(ON BEHALF OF PLAINTIFF AGAINST ALL DEFENDANTS)**

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

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

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

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

75. 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.

76. Plaintiff requests relief as described below.

SEVENTH CAUSE OF ACTION

RETALIATION

(Labor Code § 1102.5)

(ON BEHALF OF PLAINTIFF AGAINST ALL DEFENDANTS)

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

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

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

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

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

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

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

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

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

1 86. In addition to general damages, special damages, punitive damages, and interest
2 there on, Plaintiff will be entitled to attorney's fees, including under Labor Code section
3 1102.5(j) and costs.

4 87. Plaintiff requests relief as described below.

5 **EIGHTH CAUSE OF ACTION**

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

7 **(ON BEHALF OF PLAINTIFF AGAINST ALL DEFENDANTS)**

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

10 89. Defendants terminated Plaintiff's employment in violation of various
11 fundamental public policies. Specifically, Defendants terminated Plaintiff because she made
12 complaints about violations of the Labor Code and IWC Wage Orders.

13 90. As a proximate result of Defendants' wrongful termination of Plaintiff's
14 employment in violation of fundamental public policies, Plaintiff suffered general damages
15 including emotional distress damages in a sum according to proof.

16 91. As a result of Defendant's wrongful termination of her employment, Plaintiff has
17 suffered special damages in sums according to proof.

18 92. Defendants' wrongful termination of Plaintiff's employment was done
19 intentionally, in a malicious, fraudulent, and oppressive manner, entitling Plaintiff to punitive
20 damages.

21 93. In addition to general damages, special damages, punitive damages, and interest
22 there on, Plaintiff will be entitled to attorney's fees under Code of Civil Procedure sections
23 1021.5 and 1032, *et seq.* and costs.

24 94. Plaintiff requests relief as described below.

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1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE PERSONNEL FILE**

3 **(Labor Code § 1198.5)**

4 **(ON BEHALF OF PLAINTIFF AGAINST DEFENDANTS AUTHENTIC VACATIONS**
5 **AND TOUR PARTNER GROUP)**

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

8 96. Labor Code section 1198.5 provides that an “employer shall make the contents
9 of [an employee’s] personnel records available for inspection to the current or former employee,
10 or his or her representative, at reasonable intervals and at reasonable times, but not later than 30
11 calendar days from the date the employer receives a written request.”

12 97. In 2020, Plaintiff made a written request for access to her personnel records.

13 98. At the time of filing this lawsuit, Defendants had not provided her with a copy of
14 or access to her personnel records.

15 99. Plaintiff now brings an action to enjoin Defendants to comply with Labor Code
16 section 1198.5.

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

19 101. Plaintiff requests relief as described below.

20 **TENTH CAUSE OF ACTION**

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

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

23 **(ON BEHALF OF PLAINTIFF AGAINST ALL DEFENDANTS)**

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

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

- (a) Failing to reimburse Plaintiff for employment-related business expenses and losses (see Lab. Code § 2802; IWC Wage Ord. No. 4-2001);
- (b) Failing to pay overtime compensation to Plaintiff (see Lab. Code §§ 510, 558, 1194, 1198, *et seq.*; IWC Wage Ord. No. 4-2001);
- (c) Requiring Plaintiff to work for periods of five or more consecutive hours without having at least a one half-hour, off-duty break for meals (see Lab. Code §§ 226.7, 512; IWC Wage Order No. 4-2001);
- (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

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

105. 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.

106. 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

1 engaging in the unlawful business practices described above, Plaintiff and the general public
2 will be irreparably injured.

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

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

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

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

19 111. Plaintiff requests relief as described below.

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

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

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

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

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

22 116. Plaintiff will seek to collect appropriate civil penalties for Defendant’s Labor
23 Code violations under the following California Labor Code sections 201–203, 204, 210, 223,
24 226, 226.3, 226.7, 256, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1198, 1198.5, and
25 2802.

26 117. Plaintiff will seek penalties, including,

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

1 initial violation of Labor Code § 2802, for failure to indemnify employees for
2 business expenses, and two hundred dollars (\$200) for Plaintiff and each
3 aggrieved employee per pay period for each subsequent violation of Labor Code
4 § 2802.

- 5 b. Under Labor Code § 558, civil penalties of fifty dollars (\$50) for Plaintiff and
6 each aggrieved employee per pay period for the initial violation of Labor Code §
7 558 where Plaintiff and aggrieved employees were not paid appropriate overtime
8 premiums under Labor Code § 510 in addition to an amount sufficient to recover
9 underpaid wages; and for each subsequent violation, one hundred dollars (\$100)
10 for each underpaid aggrieved employee for each pay period for which the
11 employee was underpaid under Labor Code § 510.
- 12 c. Under Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for
13 Plaintiff and each aggrieved employee per pay period for the initial violation of
14 Labor Code § 226.7 for failing to provide meal periods, and two hundred dollars
15 (\$200) for Plaintiff and each aggrieved employee per pay period for each
16 subsequent violation of Labor Code § 226.7 for failing to provide meal periods.
- 17 d. Under Labor Code § 558, Defendants are subject to a civil penalty of for an
18 initial violation, fifty dollars (\$50) for the Plaintiff and each aggrieved employee
19 for each pay period for which the employee was not provided a meal period
20 under Labor Code § 512; and for each subsequent violation, one hundred dollars
21 (\$100) for Plaintiff and each aggrieved employee for each pay period for which
22 the employee was underpaid under Labor Code § 512.
- 23 e. Under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of one
24 hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay period
25 for the initial violation of Labor Code § 226.7 for failing to provide rest period,
26 and two hundred dollars (\$200) for Plaintiff and each aggrieved employee per
27 pay period for each subsequent violation of Labor Code § 226.7 for failing to
28 provide rest periods.

- 1 f. Under Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for
2 Plaintiff and each aggrieved employee per pay period for the initial violation of
3 Labor Code §§ 201, 202, and 203 for their failure to pay earned wages upon
4 discharge, and two hundred dollars (\$200) for Plaintiff and each aggrieved
5 employee per pay period for each subsequent violation of Labor Code §§ 201
6 and 202.
- 7 g. Under Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for
8 Plaintiff and each aggrieved employee per pay period for the initial violation of
9 Labor Code §§ 204 for their failure to pay earned wages timely, and two hundred
10 dollars (\$200) for Plaintiff and each aggrieved employee per pay period for each
11 subsequent violation of Labor Code §§ 201 and 202.
- 12 h. Under Labor Code § 226.3, which provides for civil penalties for violations of
13 California Labor Code § 226(a), a civil penalty of two hundred fifty dollars
14 (\$250) for Plaintiff and each aggrieved employee for the first violation, and one
15 thousand dollars (\$1,000) for Plaintiff and each aggrieved employee for each
16 subsequent violation of Labor Code § 226(a) for failure to provide timely,
17 accurate, itemized wage statements.
- 18 i. Under Labor Code § 1102.5(f), a civil penalty of \$10,000 for Plaintiff and at
19 least one other aggrieved employee for retaliation based on wage and hour
20 complaints.

21 118. Specifically, Plaintiff alleges that while Defendants classified Plaintiff and
22 aggrieved employees as “exempt,” this designation was made voluntarily and knowingly to
23 circumvent the requirements of the Labor Code. There is no reasonable dispute that Sales
24 Agents are exempt employees under the Labor Code and the corresponding IWC Wage Order
25 No. 4-2001.

26 119. Plaintiff is an “aggrieved employee” as defined by PAGA and seeks to represent
27 all other Sales Agents in California who have personally performed sales work in California for
28

1 any of Defendants. Plaintiff contends that each of the Sales Agents was an employee of
2 Defendants, making Defendants also liable for the alleged PAGA penalties.

3 **PRAYER FOR RELIEF**

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

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

- 8 a) Labor Code section 2802 and IWC Wage Order 4-2001, by failing to
9 indemnify Plaintiff for all necessarily incurred business expenses;
- 10 b) Labor Code sections 510, 1194 *et seq.*, 1198 and IWC Wage Order 4-
11 2001, by failing to pay overtime compensation to Plaintiff;
- 12 c) Labor Code sections 226.7 and 512, and IWC Wage Order 4-2001, by
13 failing to provide 30-minute, duty-free meal periods to Plaintiff;
- 14 d) California Labor Code section 226.7 and IWC Wage Order 4-2001 by
15 failing to provide 10-minute, paid, duty-free rest periods to Plaintiff;
- 16 e) Business & Professions Code section 17200, *et seq.*, by failing to
17 reimburse Plaintiff for necessary incurred business expenses, pay
18 Plaintiff overtime compensation, by failing to provide off-duty meal
19 periods and/or pay meal period compensation to Plaintiff, by failing to
20 provide Plaintiff with itemized wage statements showing all hours
21 worked, by failing to maintain payroll records that document all hours
22 worked by Plaintiff, and by willfully failing to pay all compensation
23 owed to Plaintiff timely including upon termination of employment;

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

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

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

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

6. An award to Plaintiff of damages in the amount of unpaid necessary business expenses, overtime compensation, and meal and rest period compensation, including interest 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: April 26, 2021

Respectfully submitted,

TERP LAW

By:

Rachel M. Terp, Esq.
ATTORNEY FOR PLAINTIFF

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues.

DATED: April 26, 2021

TERP LAW



By: _____

RACHEL TERP

Attorneys for Plaintiff Heather Baggett
and the general public.