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Assigned for all Purposes

Judge Peter Wilson

CX-102

Attorneys for Plaintiff Zainul Arfin Campbell, on a Representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ZAINUL ARFIN CAMPBELL, individually,  
on a representative basis, and on behalf of all  
others similarly situated;

Plaintiff,

vs.

JIM'S TOWING SERVICE, INC., a  
California Corporation; JTS TRUCK  
REPAIR, a California Corporation;  
RANDALL S. HARDEN, an individual,  
LISA M. HARDEN, an individual; TYLER S.  
HARDEN, an individual; and DOES 1  
through 10, inclusive;

Defendants.

Case No.: 30-2020-01175911-CU-OE-CXC

**FIRST CLASS ACTION COMPLAINT**

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Pay for Rest and Recovery  
Periods Under Labor Code § 226.2;
- (5) Failure to Provide Rest Breaks;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized  
Wage Statements;
- (8) Unfair and Unlawful Competition

**PAGA CLAIMS**

- (9) PAGA Assessment for Failure to Pay  
Minimum Wages;
- (10) PAGA Assessment for Failure to Pay  
Overtime Wages;
- (11) PAGA Assessment for Failure to  
Provide Meal Periods;
- (12) PAGA Assessment for Failure to  
Provide Rest and Recovery Periods  
Under Labor Code § 226.2;
- (13) PAGA Assessment for Failure to  
Provide Rest Breaks;
- (14) PAGA Assessment for Failure to

- Timely Pay Wages Each Period;  
(15) PAGA Assessment for Failure to  
Provide Accurate Itemized Wage  
Statements;  
(16) PAGA Assessment for Failure to  
Provide Safe and Healthful Working  
Conditions

Complaint filed: 12/23/2020

Plaintiff Zainul Arfin Campbell (“Plaintiff”), on behalf of himself, on a representative basis, and on behalf of others similarly situated, complains and alleges as follows.

**I. INTRODUCTION AND GENERAL ALLEGATIONS**

1. Plaintiff brings this action against his employers, Defendant Jim’s Towing Service, Inc., JTS Truck Repair, Randall S. Harden, Lisa M. Harden, Tyler S. Harden, and DOES 1 through 10, (collectively, the “Defendants”) on behalf of all current and former non-exempt employees employed by Defendants in California (hereinafter, the “Class” or “Represented Employees”), for California Labor Code violations stemming from Defendants’ failure to pay all wages owed, including minimum, regular, overtime wages, unlawful deduction of wages, failure to provide meal periods, failure to pay for rest and recovery periods and other nonproductive time under Labor Code § 226.2, failure to provide rest breaks, failure to timely pay wages each pay period and at separation of employment, failure to provide accurate itemized wage statements, and failure to provide safe and healthful working conditions.

2. Plaintiff has been employed as a mobile mechanic by the Company as a purportedly salary exempt employee since approximately January 2018. Although Defendants deemed Plaintiff as a salary exempt employee, Plaintiff’s duties did not involve any executive, administrative, or professional duties that would classify him as exempt. Further, commissions that the Plaintiff earns do not equal more than half of his income.

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

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1           4.       At all relevant times, Plaintiff was a non-exempt employee within the meaning of  
2 the California Labor Code and IWC Wage Orders because he does not qualify for any applicable  
3 exemptions under California law. Plaintiff was paid on and salary plus commission basis. As a  
4 result of the misclassification, at all relevant times, Plaintiff and the Represented Employees  
5 were not provided proper minimum, regular, and overtime wages due to the Defendants' failure  
6 to accurately record and compensate for all hours worked. For instance, Defendants only paid  
7 the Plaintiff and Represented Employees a "salary" for a set schedule of time despite the  
8 employees working significant additional time outside of their normally scheduled hours which  
9 resulted in unpaid minimum and overtime wages. Further, Defendants failed to keep accurate  
10 account of Plaintiff's hours and did not pay Plaintiff or Represented Employees for any time past  
11 5:00 p.m. despite employees regularly working overtime hours. Additionally, the employees are  
12 expected to work a mandatory unpaid 6<sup>th</sup> day during the week.

13           5.       As a result of the Defendant's practices and policies discussed above, at all  
14 relevant times, Plaintiff and the Represented Employees were not provided proper minimum,  
15 regular, and overtime wages due to the Defendants' failure to accurately record and compensate  
16 for all hours worked. Moreover, Plaintiff and Represented Employees were paid a commission  
17 in addition to their normal hourly wages for flag hours that met a certain criterion. However, on  
18 occasions where the commissions were earned and overtime was worked in the same pay period,  
19 the commission were not properly included in the overtime calculation.

20           6.       Plaintiff was also not provided 30-minute off-duty meal periods, as mandated by  
21 California law, during employment with Defendants. As a result of the Defendants' policies and  
22 practices, Plaintiff was subjected to meal period violations when Plaintiff was: (1) unable to take  
23 a meal period due to workload, (2) forced to take an on-duty meal period while under the control  
24 of Defendants, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a  
25 mandated second meal period on occasions for shifts in excess of 10 hours.

26           7.       Defendants also failed to provide Plaintiff and Represented Employees with 10  
27 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated  
28 by California law. Defendants did not schedule Plaintiff's rest breaks and Plaintiff was often not

1 authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic  
2 workload and due to Defendants' policy and practice of not providing a second mandated rest  
3 break. Furthermore, on occasions when Plaintiff worked in excess of 10 hours in a shift,  
4 Defendants failed to authorize and/or permit a third mandated rest break. Additionally, due to  
5 Defendants' policy and practice of misclassifying its mechanics as salary exempt and paying  
6 certain wages at flag rate, Defendants failed to separately pay for rest and recovery periods at the  
7 employees' average hourly rate of pay for the workweek according to Labor Code § 226.2.

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

12 9. Plaintiff also alleges that he and the Represented Employees did not receive  
13 accurate itemized wage statements that fully complied with the requirements of Labor Code §  
14 226(a) due to violations including: failure to accurately state gross wages earned; failure to  
15 accurately state total hours worked; failure to accurately state all deductions; failure to accurately  
16 state net wages earned; and, failure to state all applicable hourly rates in effect during the pay  
17 period and the corresponding number of hours worked at each hourly rate by the employee.

18 10. Plaintiff alleges that he and the Represented Employees were subject to unsafe  
19 and unhealthful working conditions. For example, workshops where the mechanics were access  
20 were used to store new and used motor oil but lacked proper ventilation to render the location  
21 safe.

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

26 12. At all material times, Defendants and DOES 1 through 10 were and/or are  
27 Represented Employees' employers or persons acting on behalf of Represented Employees'  
28 employer, within the meaning of California Labor Code § 558, who violated or caused to be

1 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating  
2 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are  
3 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under  
4 California law, including *Thurman v. Bayshore Transit Management, Inc.* (2012) 203  
5 Cal.App.4th 1112.

6 13. Plaintiff bring this lawsuit seeking declaratory, injunctive, equitable, and  
7 monetary relief against Defendants and each of them, on behalf of himself and the Represented  
8 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,  
9 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,  
10 210, 218.6, 221-223, 226, 226.2, 226.3, 226.7, 256, 510, 512, 1194, 1194.2, and 1197 among  
11 possibly other sections inadvertently omitted. Plaintiff also reserves the right to name additional  
12 representatives throughout the State of California.

13 14. Pursuant to Labor Code § 2699.3(a), on December 18, 2020, Plaintiff gave written  
14 notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by  
15 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been  
16 violated, including the facts and theories to support the alleged violations. The waiting period  
17 imposed by Labor Code § 2699.3(a)(2)(A) has not yet elapsed. In accordance with Labor Code §  
18 2699(g)(1), Plaintiff reserves the right to amend this complaint or bring a separate complaint  
19 within 60 days of: 1) receipt of notice from the LWDA that it does not intend to investigate the  
20 alleged violation, or 2) if no notice is provided by the LWDA. Pursuant to Labor Code §  
21 2699.3(a)(2)(C), "[n]otwithstanding any other provision of law, a plaintiff may as a matter of  
22 right amend an existing complaint to add a cause of action arising under this part at any time  
23 within 60 days of the time periods specified in this part."

## 24 **II. JURISDICTION**

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

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1 **III. VENUE**

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

7 **IV. PARTIES**

8 **Plaintiff**

9 17. Plaintiff and Class Representative Zainul Arfin Campbell was employed by  
10 Defendants as a non-exempt employee from approximately 2018 through the present and  
11 performed work for Defendants in Orange County.

12 **Defendants**

13 18. Plaintiff is informed and believes and thereon alleges that Defendant Jim's  
14 Towing Service, Inc. is a California corporation authorized to and doing business in Orange  
15 County, California, and is and/or was the legal employer of Plaintiff and the Represented  
16 Employees during the applicable statutory periods.

17 19. Plaintiff is informed and believes and thereon alleges that Defendant JTS Truck  
18 Repair is a California corporation authorized to and doing business in Orange County,  
19 California, and is and/or was the legal employer of Plaintiff and the Represented Employees  
20 during the applicable statutory periods.

21 20. Plaintiff is informed and believes and thereon alleges that Defendant Randall S.  
22 Harden is individual authorized to and doing business in Orange County, California, and is  
23 and/or was the legal employer of Plaintiff and the Represented Employees during the applicable  
24 statutory periods.

25 21. Plaintiff is informed and believes and thereon alleges that Defendant Lisa M.  
26 Harden is individual authorized to and doing business in Orange County, California, and is  
27 and/or was the legal employer of Plaintiff and the Represented Employees during the applicable  
28 statutory periods.

22. Plaintiff is informed and believes and thereon alleges that Defendant Tyer S. Harden is individual authorized to and doing business in Orange County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

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

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

#### **V. CLASS ACTION ALLEGATIONS**

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

26. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to Code of Civil Procedure § 382.

27. The relevant time period for this class action is defined as the time period beginning four years prior to the filing of this action until class certification (the "Relevant Time Period").

28. The Class, also referred to as the "Represented Employees," that Plaintiff seeks to represent is defined as follows:

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**California Class**

All current and former employees employed by Defendants as mobile mechanics in the State of California during the Relevant Time Period.

29. Plaintiffs also seek to represent the following subclasses:

**Unpaid Wage Subclass**

All Represented Employees who did not receive compensation for all hours worked on at least one occasion during the Relevant Time Period.

**Overtime Subclass**

All Represented Employees worked overtime hours during on at least one occasion during the Relevant Time Period.

**Meal Break Subclass**

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

**Rest Break Subclass**

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

**Waiting Time Penalties Subclass**

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

**Wage Statement Penalties Subclass**

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

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

1           31. Plaintiff, as Class Representative, is a member of the class and subclasses that  
2 they seek to represent.

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

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

11           34. **Commonality:** There are questions of law and fact common to the class which  
12 predominate over any questions affecting only individual members of the class, including  
13 without limitation:

14                   i. Whether Defendants violated the California Labor Code and applicable  
15 IWC Wage Order by failing to pay wages to Plaintiff and the Unpaid Wage Subclass for all  
16 hours worked;

17                   ii. Whether Defendants violated the California Labor Code and applicable  
18 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Overtime  
19 Subclass;

20                   iii. Whether Defendants violated the California Labor Code by failing to  
21 provide meal periods and meal period premiums to Plaintiff and the Meal Period Subclass;

22                   iv. Whether Defendants violated the California Labor Code by failing to  
23 provide rest breaks and rest period premiums to Plaintiff and the Rest Period Subclass;

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

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

statements;

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

viii. Whether Defendants violated § 17200 *et seq.* of the California Business and Professions Code and, without limitation, California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 1194, 1194.2, and 1197 among possibly other sections inadvertently omitted, and the applicable IWC Wage Order, which violations constitute false, fraudulent, unlawful, unfair and deceptive business practices; and

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

35. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, including minimum, regular, overtime wages, failure to provide meal periods and meal period premiums, failure to provide rest breaks and rest break premiums, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

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

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

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

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

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

6 (*Plaintiff and the Unpaid Wage Subclass Against All Defendants*)

7 38. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
8 as if fully alleged herein.

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

12 40. At all relevant times, Plaintiff and the Represented Employees were not provided  
13 proper minimum wages due to Defendants' misclassification of non-exempt employees and  
14 failure to accurately record and compensate for all hours worked. Therefore, this resulted in  
15 unpaid minimum wages on each such occasion.

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

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

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

26 44. At all material times, Defendants DOES 1 through 10 were and/or are the  
27 employer of Plaintiff and the Represented Employees, or were persons acting on behalf of said  
28 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be

1 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California  
2 Labor Code regulating hours and days of work respectively.

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

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

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

## 11 **SECOND CAUSE OF ACTION**

### 12 **FAILURE TO PAY OVERTIME WAGES**

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

14 (*Plaintiff and the Overtime Subclass Against All Defendants*)

15 48. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
16 as if fully alleged herein.

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

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

25 51. At all relevant times, Plaintiff and the Represented Employees were required by  
26 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to  
27 Defendants' misclassification of non-exempt employee and failure to accurately record and  
28 compensate for all hours worked, as well as neglecting to include commissions in overtime rate

1 calculation as described herein, Plaintiff and the Represented Employees did not receive proper  
2 overtime compensation.

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

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

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

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

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

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

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

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**THIRD CAUSE OF ACTION**

**FAILURE TO PROVIDE MEAL PERIODS**

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

*(Plaintiff and the Meal Period Subclass Against All Defendants)*

59. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

60. Plaintiff and members of the Meal Period Subclass are and/or were “non-exempt” employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory meal periods.

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

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

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

64. At all relevant times herein, Plaintiff and members of the Meal Period Subclass were denied the 30-minute meal periods to which they were entitled.

65. At all relevant times, at all relevant times, Plaintiff and the Meal Period Subclass were denied 30-minute off-duty meal periods, as mandated by California law, during their employment with Defendants. As a result of Defendants’ policies and practices, Plaintiff and the Meal Period Subclass were subjected to meal period violations when they were: (1) unable to take a meal period due to their workload, (2) forced to take their meal period after the 5th hour of

1 work, (3) not provided a mandated second meal period on occasions when they worked shifts in  
2 excess of 10 hours.

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

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

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

17 69. By their failure to provide Plaintiff and the Meal Period Subclass with meal  
18 periods as required by California law, and failing to pay one hour of additional wages in lieu of  
19 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and  
20 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at  
21 the employee's regular rate of compensation for each work day that a meal period was not  
22 lawfully provided in an amount to be proven at time of trial.

23 70. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,  
24 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal  
25 Period Subclass for unpaid wage premiums, penalties, costs, and interest.

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**FOURTH CAUSE OF ACTION**

**FAILURE TO PAY FOR REST AND RECOVERY PERIODS AND OTHER  
NONPRODUCTIVE TIME**

(Labor Code § 226.2)

*(Plaintiff and the Rest Period Subclass Against All Defendants)*

71. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

72. Plaintiff and the Represented Employees are and/or were employees of Defendants who were paid on a piece-rate basis.

73. Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no less than the higher of the applicable minimum wage or “an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.” Labor Code § 226.2(a)(3)(A).

74. Furthermore, Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no less than the applicable minimum wage. Labor Code § 226.2(a)(4).

75. At all relevant times herein, Defendants failed to compensate the Represented Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time separate from any piece-rate compensation at the rate required by Labor Code § 226.2. Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and each and every one of the Represented Employees.

76. As a result of Defendant’s violation of Labor Code § 226.2, Plaintiff and the Represented Employees seek to recover, in a civil action, the unpaid balance of the full amount of unpaid payments for rest and recovery periods and other nonproductive time, including interest thereon, reasonable attorneys’ fees, and costs of suit.

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**FIFTH CAUSE OF ACTION**

**FAILURE TO PROVIDE REST BREAKS**

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

*(Plaintiff and the Rest Period Subclass Against All Defendants)*

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

78. Plaintiff and members of the Rest Break Subclass are and/or were “non-exempt” employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

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

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

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

82. At all relevant times herein, Plaintiff and the Rest Break Subclass were not provided with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and Plaintiff and the Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiffs and the Rest Break Subclass worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

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

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

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

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

### **SIXTH CAUSE OF ACTION**

#### **FAILURE TO TIMELY PAY FINAL WAGES**

(Labor Code § 201 – 203)

*(Plaintiff and the Waiting Time Penalties Subclass Against All Defendants)*

87. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

88. Plaintiff, the Represented Employees and the Waiting Time Penalties Subclass are and/or were "non-exempt" employees of Defendants who did not receive proper protections and benefits of the laws governing the timing and payment of wages.

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

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

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

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

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

17                           **SEVENTH CAUSE OF ACTION**

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

19                                           (Labor Code § 226)

20                           *(Plaintiff and the Wage Statement Penalties Subclass Against All Defendants)*

21           94. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
22 as if fully alleged herein.

23           95. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of  
24 Defendants who did not receive proper protections and benefits of the laws governing the  
25 provision of accurate itemized wage statements.

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

1 hourly rates in effect during the pay period and the corresponding number of hours worked at  
2 each hourly rate by the employee.

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

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

22 99. As a result of Defendants' knowing and intentional failure to comply with Labor  
23 Code § 226(a), Plaintiff, the Represented Employees and the Wage Statement Penalties Subclass  
24 have suffered an injury in that each was prevented from knowing, understanding and disputing  
25 the wage payments paid to them. Furthermore, Plaintiff, the Represented Employees and the  
26 Wage Statement Penalties Subclass have each suffered an injury in that the failure to show all  
27 wages earned on the itemized wage statements resulted in Plaintiff, the Represented Employees  
28 and the Wage Statement Penalties Subclass being denied all necessary deductions, payments, and

1 withholdings owed by the employer, including, but not limited to, the failure to make all  
2 necessary contributions for unemployment benefits, social security benefits, proper payment of  
3 taxes and withholdings, and other mandated state and federal benefits.

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

7 101. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages or fifty  
8 dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and one  
9 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus  
10 attorney's fees and costs, to Plaintiff, the Represented Employees and the Wage Statement  
11 Penalties Subclass who were injured by Defendants' failure to comply with Labor Code §  
12 226(a). The exact amount of the applicable penalty is all in an amount to be shown according to  
13 proof at trial.

#### 14 **EIGHTH CAUSE OF ACTION**

#### 15 **UNFAIR AND UNLAWFUL COMPETITION**

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

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

18 102. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
19 as if fully alleged herein.

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

24 104. Defendants, and each of them, are "persons" as defined under Business &  
25 Professions Code § 17021.

26 105. As alleged herein, Defendants engaged in conduct that violated California's wage  
27 and hour laws, including failure to pay minimum wages, regular wages, overtime wages,  
28 unlawful deduction of wages, failure to pay vested vacation at final rate of pay, and failure to

1 timely pay final wages, all in order to decrease their costs and increase their profits.

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

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

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

12 109. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
13 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.  
14 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of  
15 Code of Civil Procedure § 1021.5.

16 110. A violation of California Business & Professions Code § 17200, *et seq.* may be  
17 predicated on the violation of any state or federal law. All of the acts described herein as  
18 violations of, among other things, the California Labor Code and IWC Wage Orders, are  
19 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,  
20 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business  
21 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

22 111. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,  
23 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a  
24 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of  
25 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,  
26 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable  
27 harm unless Defendants, and each of them, are restrained from continuing to engage in said  
28 unfair, unlawful and/or fraudulent business practices.

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

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

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

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

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

116. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court

1 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor  
2 does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

3 117. Pursuant to Labor Code § 2699.3(a), on December 18, 2020, Plaintiff gave written  
4 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by  
5 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been  
6 violated, including the facts and theories to support the alleged violations.

7 118. Therefore, more than sixty-five (65) days have passed since the date of notice,  
8 Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA. Plaintiff  
9 seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as  
10 well as attorneys’ fees, costs, and/or other damages as permitted by PAGA through a  
11 representative action pursuant to the PAGA and the California Supreme Court in *Arias v.*  
12 *Superior Court* (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does she, seek class  
13 certification of the PAGA claims under Code of Civil Procedure § 382.

#### 14 **NINTH CAUSE OF ACTION**

##### 15 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGE**

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

17 119. Plaintiff realleges and incorporates the paragraphs 1-14 and 115-118 of the First  
18 Amended Complaint as if fully alleged herein.

19 120. Plaintiff and the Represented Employees were not exempt from the requirement  
20 to be paid at least the applicable California minimum wage throughout the statutory period for  
21 each hour worked.

22 121. At all relevant times herein, Plaintiff and the Represented Employees were  
23 illegally not paid proper minimum and/or regular wages when due to Defendants’  
24 misclassification of non-exempt employees and failure to accurately record and compensate for  
25 all hours worked. As a result, Plaintiff and the Represented Employees were deprived of  
26 minimum wages for each hour worked.

27 122. As a result of Defendants’ policy or practice described above, Plaintiff and the  
28 Represented Employees were required to perform off-the-clock work that Defendants either

1 knew or should have known they were performing.

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

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

8 **TENTH CAUSE OF ACTION**

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

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

11 125. Plaintiff realleges and incorporates the paragraphs 1-14 and 115-124 of the First  
12 Amended Complaint as if fully alleged herein.

13 126. Plaintiff and the Represented Employees were "non-exempt" employees of  
14 Defendants who did not receive proper protections and benefits of the laws governing payment  
15 of overtime wages.

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

22 128. At all relevant times, Plaintiff and the Represented Employees were required by  
23 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper  
24 overtime compensation. For instance, Plaintiff and Represented Employees were required to  
25 provide hospice nursing services to multiple clients each day. Because they were providing in  
26 home care to the clients at each location, and otherwise driving throughout large territories to  
27 multiple clients' homes each day, there wasn't enough time to complete all necessary and  
28 required charting during the home visits. As a result, Plaintiff and Represented Employees were

1 forced to work off-the-clock from home each night.

2 129. As a result of Defendants' failure to pay for off-the-clock work performed by the  
3 Represented Employees, Defendants violate Labor Code §§ 204 and 510 and the applicable  
4 IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Represented  
5 Employees because Defendants failed to pay Plaintiff and members of the Represented  
6 Employees for all hours worked, including overtime hours, and required Plaintiff and the  
7 Represented Employees to work without being properly compensated for all overtime wages  
8 earned.

9 130. Plaintiff is informed and believes and thereon alleges that Defendants  
10 intentionally, willfully, and improperly failed to pay minimum and overtime wages to Plaintiff  
11 and the Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and  
12 1197.

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

16 **ELEVENTH CAUSE OF ACTION**

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

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

19 132. Plaintiff realleges and incorporates the paragraphs 1-14 and 115-131 of the First  
20 Amended Complaint as if fully alleged herein.

21 133. Plaintiff and the Represented Employees are and/or were "non-exempt"  
22 employees of Defendants who did not receive proper protections and benefits of the laws  
23 governing mandatory meal periods.

24 134. Labor Code § 226.7 requires employers, including Defendants, to provide non-  
25 exempt employees with meal periods as mandated by the Industrial Welfare Commission.

26 135. Labor Code § 512(a), in part, provides that employers, including Defendants, may  
27 not employ an employee for a work period of more than five hours per day without providing an  
28 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,

1 except that if the total work period per day of the employee is no more than six hours, the meal  
2 period may be waived by mutual consent of both the employer and the employee. Employers  
3 may not employ an employee for a work period more than 10 hours per day without providing  
4 the employee with a second meal period of not less than 30 minutes.

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

8 137. At all relevant times herein, Plaintiff and the Represented Employees were denied  
9 the 30-minute meal periods to which they were entitled.

10 138. At all relevant times, Plaintiff and the Represented Employees were denied 30-  
11 minute off-duty meal periods, as mandated by California law, during their employment with  
12 Defendants. As such, Plaintiff and the Represented Employees were regularly not provided with  
13 uninterrupted meal periods of at least 30 minutes, as required by California law.

14 139. As a result of Defendants' policies and practices, Plaintiff and the Represented  
15 Employees were subjected to meal period violations when they were: (1) unable to take a meal  
16 period due to workload, (2) forced to take an on-duty meal period while under the control of  
17 Defendants, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a  
18 mandated second meal period on shifts in excess of 10 hours.

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

25 141. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage  
26 Order every pay period with respect to Plaintiff and the Represented Employees because  
27 Plaintiff and the Represented Employees were not provided with all mandatory meal and  
28 Defendants failed to pay Plaintiff and the Represented Employees one additional hour of

1 compensation in lieu thereof.

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

6 **TWELFTH CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR FAILURE TO PAY FOR REST AND RECOVERY**  
8 **PERIODS AND OTHER NONPRODUCTIVE TIME**

9 (Labor Code § 226.2)

10 *(Plaintiff and the Aggrieved Employees against All Defendants)*

11 143. Plaintiff realleges and incorporates the paragraphs 1-14 and 115-142 of the First  
12 Amended Complaint as if fully alleged herein.

13 144. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
14 who were paid on a piece-rate basis.

15 145. Labor Code § 226.2 requires employers that pay their employees on a piece-rate  
16 basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no  
17 less than the higher of the applicable minimum wage or "an average hourly rate determined by  
18 dividing the total compensation for the workweek, exclusive of compensation for rest and  
19 recovery periods and any premium compensation for overtime, by the total hours worked during  
20 the workweek, exclusive of rest and recovery periods." Labor Code § 226.2(a)(3)(A).

21 146. Furthermore, Labor Code § 226.2 requires employers that pay their employees on  
22 a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no  
23 less than the applicable minimum wage. Labor Code § 226.2(a)(4).

24 147. At all relevant times herein, Defendants failed to compensate the Aggrieved  
25 Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time  
26 separate from any piece-rate compensation at the rate required by Labor Code § 226.2.  
27 Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and  
28 each and every one of the Aggrieved Employees.

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

4                           **THIRTEENTH CAUSE OF ACTION**

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

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

7                           *(Plaintiff and the Aggrieved Employees against All Defendants)*

8           149. Plaintiff realleges and incorporates the paragraphs 1-14 and 115-148 of the First  
9 Amended Complaint as if fully alleged herein.

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

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

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

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

22          154. Defendants failed to provide Plaintiff and the Aggrieved Employees with 10  
23 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated  
24 by California law. Defendants did not schedule rest breaks and the Aggrieved Employees were  
25 often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by  
26 their hectic workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees  
27 worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third  
28 mandated rest break.

1           155. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage  
2 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff  
3 and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants  
4 failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu  
5 thereof.

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

9                           **FOURTEENTH CAUSE OF ACTION**

10           **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PAY PERIOD**  
11                           **AND FINAL WAGES**

12                                   (Labor Code §§ 201 – 204)

13                                   *(Plaintiff and the Aggrieved Employees against All Defendants)*

14           157. Plaintiff realleges and incorporates the paragraphs 1-14 and 115-156 of the First  
15 Amended Complaint as if fully alleged herein.

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

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

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

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

27           162. Labor Code § 204(a) states that all wages earned by a person are due and payable  
28 twice during each calendar month, and further states that wages earned during the first through

1 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that  
2 wages earned between the sixteenth and last day of the month must be paid by the tenth day of  
3 the following month.

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

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

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

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

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

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**FIFTEENTH CAUSE OF ACTION**

**PAGA ASSESSMENT FOR**

**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

(Labor Code § 226)

*(Plaintiff and the Aggrieved Employees against All Defendants)*

168. Plaintiff realleges and incorporates the paragraphs 1-14 and 115-167 of the First Amended Complaint as if fully alleged herein.

169. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the provision of accurate itemized wage statements.

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

171. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a). Specifically, Defendants' wage statements failed to state hours worked at each rate, the overtime rate of pay, failed to state the applicable rate of pay for work, and failed to separately account for rest break pay. Additionally, the wage statements also failed to accurately state gross wages earned, total hours worked, all deductions, and net wages earned.

172. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants failed to provide complete and accurate wage statements to Plaintiff and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

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

6                                   **SIXTEENTH CAUSE OF ACTION**

7                                   **PAGA ASSESSMENT FOR**

8                                   **FAILURE TO PROVIDE SAFE AND HEALTHFUL WORKING CONDITIONS**

9                                   (Labor Code § 6400-6403)

10                                  *(Plaintiff and the Aggrieved Employees against All Defendants)*

11           174. Plaintiff realleges and incorporates the paragraphs 1-14 and 115-173 of the First  
12 Amended Complaint as if fully alleged herein.

13           175. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
14 who did not receive proper protections and benefits of the laws governing workplace health and  
15 safety.

16           176. Labor Code § 6400(a) requires "[e]very employer to furnish employment and a  
17 place of employment that is safe and healthful for the employees therein. Labor Code § 6401  
18 requires that "[e]very employer shall furnish and use safety devices and safeguards, and shall  
19 adopt and use practices, means, methods, operations, and processes which are reasonably  
20 adequate to render such employment and place of employment safe and healthful. Every  
21 employer shall do every other thing reasonably necessary to protect the life, safety, and health of  
22 employees." Labor Code § 6402 states that, "[n]o employer shall require, or permit any  
23 employee to go or be in any employment or place of employment which is not safe and  
24 healthful." Further, Labor Code § 6403 imposes a duty on employer, "(a) [t]o provide and use  
25 safety devices, and safeguards reasonably adequate to render the employment and place of  
26 employment safe; (b) [t]o adopt and use methods and processes reasonably adequate to render  
27 the employment and place of employment safe; and (c) [t]o do every other thing reasonably  
28 necessary to protect the life, safety, and health of employees."

1           177. Plaintiff alleges that at all relevant times, she and the Aggrieved Employees were  
2 not furnished safe and healthful place of employment and were not provided necessary safety  
3 devices to render the place of employment safe in accordance with Labor Code §§ 6400-6403.

4           178. As a result of the Defendants' violations of Labor Code §§ 6400-6403, Plaintiff  
5 seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code §  
6 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under  
7 PAGA.

8 **VI. PRAYER FOR RELIEF**

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

12           1. As to the Ninth through Sixteenth Causes of Action, the assessment of all  
13 applicable and available remedies under the PAGA;

14           2. For reasonable attorneys' fees and costs as permitted under the PAGA;

15           3. That the First through Eighth Causes of Action be certified as a class action;

16           4. That Plaintiff be appointed as Class Representative;

17           5. That counsel for Plaintiff be appointed Class Counsel;

18           6. For all applicable statutory penalties recoverable under the First through Seventh  
19 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and  
20 Orders of the Industrial Welfare Commission;

21           7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by  
22 law, including those pursuant to the Labor Code;

23           8. For injunctive relief and/or restitution as provided by the Labor Code and  
24 Business and Professions Code § 17200, *et seq.*;

25           9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,  
26 201, 202, 203, 204, 208, 210, 218.6, 221-223, 226, 226.2 226.3, 226.7, 256, 510, 512, 558, 1194  
27 and 1197, among other sections inadvertently omitted;

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1           10.     For an award of damages in the amount of unpaid compensation including, but  
2 not limited to, unpaid wages, benefits, and penalties according to proof, including interest  
3 thereon;

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

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

6  
7 Dated: April 13, 2021

LAUBY, MANKIN & LAUBY LLP

8  
9 BY:



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