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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 28 2021

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

SANTOS CARRILLO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

BLUSKY RESTORATION
CONTRACTORS LLC, a Delaware Limited
Liability Company; HAR-BRO, LLC, a
California Limited Liability Company; HAR-
BRO, INC., a California Corporation; and
DOES 3 through 20, inclusive;

Defendants.

Case No.: CIVSB 2105793
[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Pay Vested Vacation;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Failure to Pay Minimum Wages;
- (10) Failure to Pay Overtime Wages;
- (11) Failure to Provide Meal Periods;
- (12) Failure to Provide Rest Breaks;
- (13) Failure to Pay Vested Vacation;
- (14) Failure to Timely Pay Wages Each Period;
- (15) Failure to Timely Pay Final Wages; and
- (16) Failure to Provide Accurate Itemized Wage Statements;

JURY TRIAL DEMANDED

Complaint filed: 2/11/2021

Lauby, Mankin & Lauby LLP
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FILED BY FAX

1 Plaintiff Santos Carrillo (“Plaintiff”) on behalf of himself, on a representative basis, and
2 on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), Defendants BluSky
5 Restoration Contractors, LLC, Har-Bro, LLC, Har-Bro, Inc., and DOES 3 through 20, inclusive,
6 (collectively, “Defendants”) on behalf of all current and former nonexempt employees employed
7 by Defendants in California (the “Class” or “Represented Employees”), for Labor Code
8 violations stemming from Defendants’ failure to pay all wages owed, including minimum,
9 regular, and overtime wages, failure to provide meal periods, failure to provide rest breaks,
10 failure to pay vested vacation, failure to timely pay wages, and failure to provide accurate
11 itemized wage statements.

12 2. Plaintiff was employed by Defendants from approximately 2019 through 2020.

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

16 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
17 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
18 worked.

19 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
20 Represented Employees. For example, Defendants paid Plaintiff and the Represented
21 Employees on an hourly basis but also paid additional earned nondiscretionary compensation
22 and/or bonuses. However, during workweeks where the Represented Employees worked
23 overtime hours and earned additional nondiscretionary compensation and/or bonuses, Defendants
24 failed to include that compensation in the calculations for the regular rate of pay and instead paid
25 overtime at only 1.5 times the base rate of pay – violating the well-established rule that overtime
26 must always be paid at time and one-half the regular rate of pay.

27 6. Plaintiff and the Represented Employees were also denied 30-minute off-duty
28 meal periods, as mandated by California law. As a result of Defendants’ policies and practices,

1 the Represented Employees were subjected to meal period violations when they were: (1) unable
2 to take meal periods due to workload, (2) forced to take on-duty meal periods while under
3 Defendants' control, (3) forced to take meal periods, if such a meal occurred, after the 5th hour
4 of work, (4) not provided a mandated first meal period for shifts in excess of 6 hours, and (5) not
5 provided mandated second meal periods for shifts over 10 hours.

6 7. Defendants also failed to provide Plaintiff and the Represented Employees with
7 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
8 mandated by California law. Defendants did not schedule rest breaks and the Represented
9 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
10 overwhelmed by their hectic workload. Additionally, Plaintiff and the Represented Employees
11 were not permitted to leave the premises for rest breaks, in violation of California law.
12 Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of
13 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

14 8. Also, at all relevant times, Defendants utilized a policy and practice through
15 which Plaintiff and the Represented Employees accrued vacation and/or PTO hours (collectively,
16 "vacation hours"). However, on occasions when Plaintiff and the Represented Employees had
17 accrued but unused vacation hours upon separation of employment, Defendants failed to pay
18 these wages and, further, failed to pay them at the "final rate" required by Labor Code § 227.3.

19 9. Plaintiff also alleges that he and the Represented Employees were not paid all
20 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
21 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
22 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
23 Employees at the time their employment ended with Defendants, including, but not limited to
24 minimum, regular, and overtime wages, wage premiums, among others.

25 10. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
26 statements that fully complied with the requirements of Labor Code § 226(a), discussed below.

27 11. Plaintiff alleges that Defendants' violations of the wage and hour components of
28 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their

1 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
2 its competitors.

3 12. At all material times, Defendants and DOES 3 through 20 were and/or are the
4 Represented Employees' employers or persons acting on behalf of the Represented Employees'
5 employer, within the meaning of California Labor Code § 558, who violated or caused to be
6 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
7 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
8 underpaid employee as set forth in Labor Code § 558 and under California law.

9 13. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
10 monetary relief against Defendants and each of them, on behalf of himself and the Represented
11 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
12 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
13 210, 218.6, 226, 226.3, 226.7, 117.3, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,
14 among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name
15 additional representatives throughout the State of California.

16 **II. JURISDICTION**

17 14. This Court has jurisdiction over the claims for relief of Plaintiff and the
18 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

19 **III. VENUE**

20 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
21 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
22 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
23 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented
24 Employees in San Bernardino County.

25 **IV. PARTIES**

26 **Plaintiff**

27 16. Plaintiff and Class Representative Santos Carrillo was employed by Defendants
28 from 2019 through 2020 and performed work for Defendants in San Bernardino County.

Defendants

17. Plaintiff is informed and believes and thereon alleges that Defendant BluSky Restoration Contractors, LLC, is a Delaware Limited Liability Company authorized to and doing business in San Bernardino County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

18. Plaintiff is informed and believes and thereon alleges that Defendant Har-Bro, LLC, is a California Limited Liability Company authorized to and doing business in San Bernardino County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

19. Plaintiff is informed and believes and thereon alleges that Defendant Har-Bro, Inc, is a California Corporation authorized to and doing business in San Bernardino County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

20. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged, of Defendants sued herein as DOES 3 through 20, inclusive, but on information and belief alleges 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.

21. Plaintiff is informed and believes and thereon alleges that he and the Represented Employees worked under the joint direction and control of Defendants and 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 Represented Employees.

22. Furthermore, Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are an integrated enterprise and should be treated as a single employer because these entities share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Additionally, Defendants also have a shared website, common management, a centralized control of labor operations, and common ownership or financial control.

23. Plaintiff is informed and believes and thereon alleges that, in conducting themselves in the manner described herein, Defendants, and each of them, were acting in active concert with one another such that the acts of each were and are fully attributable to the others in all material respects. Plaintiff is further informed and believes that at all relevant times Defendants and each of them are now, and at all material times herein mentioned were, the agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of their remaining co-Defendants.

24. Plaintiff is further informed and believes that at all relevant times, Defendants have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Defendants should be imposed jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the separate existence of these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

V. CLASS ACTION ALLEGATIONS

25. Plaintiff incorporates the preceding paragraphs of the First Amended 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.

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

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

5 **California Class**

6 All current and former nonexempt employees employed by
7 Defendants in California during the Relevant Time Period.

8 29. Plaintiff also seeks to represent the following subclasses:

9 **Meal Break Subclass**

10 All Represented Employees who worked a shift in excess of
11 5 hours during the Relevant Time Period.

12 **Rest Break Subclass**

13 All Represented Employees who worked a shift of at least
14 3.5 hours during the Relevant Time Period.

15 **Vested Vacation Subclass**

16 All Represented Employees who had accrued but unused
17 vacation upon separation of employment during the period
18 three years before the filing of this action and ending when
19 class certification is granted.

20 **Waiting Time Penalties Subclass**

21 All Represented Employees who separated from their
22 employment with Defendants during the period three years
23 before the filing of this action and ending when class
24 certification is granted.

25 **Wage Statement Penalties Subclass**

26 All Represented Employees during the period one year
27 before the filing of this action and ending when class
28 certification is granted.

1 30. Plaintiff reserves the right to amend or modify the class description with greater
2 specificity or further division into subclasses or limitation to particular issues as appropriate.

3 31. Plaintiff, as Class Representative, is a member of the class and subclasses that he
4 seeks to represent.

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

8 33. **Numerosity:** The potential members of the Class as defined are so numerous that
9 a joinder of all Represented Employees is impracticable. Although the exact number is currently
10 unknown to Plaintiff, this information is easily ascertainable from Defendants' 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 Represented Employees 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 Represented
19 Employees for hours above 8 and/or 12 per day and/or 40 per week;

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

25 iv. Whether Defendants violated the California Labor Code and applicable
26 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
27 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
28

1 with one additional hour of wages at the regular rate of pay for each instance when a paid rest
2 break was not provided;

3 v. Whether Defendants violated the California Labor Code by failing to
4 compensate Plaintiff and the Vested Vacation Subclass for all accrued but unused vacation hours
5 upon separation of employment;

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

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

12 viii. Whether Defendants violated California Business & Professions Code §§
13 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
14 breaks, failure to provide mandated meal periods, and failure to timely pay final wages; and

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

17 35. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
18 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
19 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
20 wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest
21 breaks, failure to pay vested vacation, failure to timely pay final wages, and failure to provide
22 accurate itemized wage statements.

23 36. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
24 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
25 conflict with those of the Class. Class Representative's counsel are competent and experienced in
26 litigating large employment class actions and other complex litigation matters, including cases
27 like this case.
28

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

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

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

12 *Plaintiff and the Represented Employees Against All Defendants*

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

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

18 40. Plaintiff and the Represented Employees were not provided proper minimum and
19 regular wages due to Defendants' failure to accurately record and compensate for all hours
20 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
21 required to perform off-the-clock work that Defendants either knew or should have known they
22 were performing.

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

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

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

44. At all material times, Defendants DOES 3 through 20 were and/or are the employer of Plaintiff and the Represented Employees or were persons acting on behalf of said employer(s), within the meaning of California Labor Code § 558, who violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and days of work respectively.

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

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

Plaintiff and the Represented Employees Against All Defendants

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

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

50. Labor Code § 204 requires that the employer timely pay all overtime wages to its employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in

any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12) in one workday shall be compensated at twice the regular rate of pay for an employee.

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

52. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the Represented Employees due to the failure to include all earned and nondiscretionary compensation in the calculation for the regular rate of pay and overtime rate.

53. At all relevant times, Defendants paid Plaintiff and the Represented Employees on an hourly basis but also paid additional earned nondiscretionary compensation and/or bonuses. However, during workweeks where the Represented Employees worked overtime hours and earned additional nondiscretionary compensation and/or bonuses, Defendants failed to include the bonuses in the calculations for the regular rate of pay and instead paid overtime at only 1.5 times the base rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay.

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

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

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

1 57. At all material times, Defendants DOES 3 through 20 were and/or are the
2 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
3 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
4 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
5 Labor Code regulating hours and days of work respectively.

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

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

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

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REST BREAKS**

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

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

11 72. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

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

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

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

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

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

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

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

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

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

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

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PAY VESTED VACATION**

23 (Labor Code § 227.3)

24 *Plaintiff and the Vested Vacation Subclass Against All Defendants*

25 82. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
26 as if fully alleged herein.
27
28

1 83. Plaintiff and the Vested Vacation Subclass were employees of Defendants who
2 did not receive proper protections and benefits of the laws governing the payment of vested
3 vacation time and/or paid time off upon separation of employment.

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

8 85. At all relevant times, Defendants utilized a policy and practice through which
9 Plaintiff and the Vested Vacation Subclass accrued vacation and/or PTO hours (collectively,
10 "vacation hours"). However, on occasions when Plaintiff and the Vested Vacation Subclass had
11 accrued but unused vacation hours upon separation of employment, Defendants failed to pay
12 these wages and, further, failed to pay them at the "final rate" required by Labor Code § 227.3.

13 86. As a result, Plaintiff and the Vested Vacation Subclass did not receive
14 compensation for all accrued but unused vacation hours as required by Labor Code § 227.3.

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

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

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

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SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203)

Plaintiff and the Waiting Time Penalties Subclass against All Defendants

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

91. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the timing and payment of wages.

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

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

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

95. At all relevant times, Defendants employed a policy and practice whereby Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon separation of employment within the time required by Labor Code §§ 201 and 202.

96. Also, at all relevant times, Defendants engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of employment, including, but not limited to, minimum, regular, and overtime wages, vested vacation, as well as meal and rest period premiums.

97. Additionally, at all relevant times, Defendants failed to pay all mandated sick wages owed to the Waiting Time Penalties Subclass at the proper rate of pay.

98. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same manner as the regular rate of pay for the workweek in which the

employee uses paid sick time, whether or not the employee actually works overtime in that workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

99. Here, Plaintiff and the Waiting Time Penalties Subclass were compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary bonuses. However, on the occasions that the Waiting Time Penalties Subclass took sick time and received paid sick leave, Defendants only paid sick time at the base rate of pay (not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2)), leading to unpaid wages at the time of separation of employment.

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

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Wage Statement Penalties Subclass against All Defendants

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

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

103. 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

1 Social Security number (or employee identification number), the name and address of the legal
2 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.

4 104. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
5 and the Wage Statement Penalties Subclass because Defendants failed to provide a wage
6 statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
7 requirements of Labor Code § 226(a).

8 105. Due to violations discussed herein, Defendants' wage statements failed to
9 accurately state total hours worked, the hours worked at each hourly rate, the accurate rates of
10 pay, and further failed to accurately state gross wages earned, all deductions, and net wages
11 earned.

12 106. Additionally, Defendants' wage statements frequently failed to state the accurate
13 overtime rate of pay.

14 107. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
15 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
16 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
17 requirements of Labor Code § 226(a).

18 108. Defendants' failure to provide the required writing deprived Plaintiff and the
19 Wage Statement Penalties Subclass of the ability to know, understand, and question the
20 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
21 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
22 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
23 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
24 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
25 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
26 perform its obligation under state law, all to their respective damages in amounts according to
27 proof at trial.
28

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

10 110. Plaintiff has also been injured as a result of having to bring this action to attempt
11 to obtain correct wage information following Defendants’ refusal to comply with many of the
12 mandates of California’s Labor Code and related laws and regulations.

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

19 **EIGHTH CAUSE OF ACTION**

20 **UNFAIR AND UNLAWFUL COMPETITION**

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

22 *Plaintiff and the Represented Employees against All Defendants*

23 112. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 113. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
26 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
27 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
28 due to the unfair and unlawful business practices of Defendants as alleged herein.

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

3 115. As alleged herein, Defendants engaged in conduct that violated California’s wage
4 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
5 mandated meal periods and rest breaks, failure to pay vested vacation, and failure to timely pay
6 final wages, all to decrease their costs and increase their profits.

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

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

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

17 119. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
18 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
19 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
20 of Civil Procedure § 1021.5.

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

27 121. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
28 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a

consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable harm unless Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

122. 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.

123. Plaintiff, individually, and on behalf of the Represented Employees, is further entitled to and do 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.

124. 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)

125. 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 himself 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”).

126. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

127. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

Plaintiff and the Aggrieved Employees against All Defendants

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

129. Plaintiff and the Aggrieved Employees were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the statutory period for each hour worked.

130. Plaintiff and the Aggrieved Employees were not provided proper minimum and regular wages due to Defendants’ failure to accurately record and compensate for all hours worked. As a result of this policy and practice, Plaintiff and the Aggrieved Employees were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

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

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

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

TENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

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

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

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

1 138. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
2 Aggrieved Employees due to the failure to include all earned and nondiscretionary compensation
3 in the calculation for the regular rate of pay and overtime rate.

4 139. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees on
5 an hourly basis but also paid additional earned nondiscretionary compensation and/or bonuses.
6 However, during workweeks where the Aggrieved Employees worked overtime hours and
7 earned additional nondiscretionary compensation and/or bonuses, Defendants failed to include
8 the bonuses in the calculations for the regular rate of pay and instead paid overtime at only 1.5
9 times the base rate of pay – violating the well-established rule that overtime must always be paid
10 at time and one-half the regular rate of pay.

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

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

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

21 **ELEVENTH CAUSE OF ACTION**

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

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

24 *Plaintiff and the Aggrieved Employees against All Defendants*

25 143. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
26 as if fully alleged herein.

27 144. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
28 who did not receive proper protections and benefits of the laws governing meal periods.

1 145. Labor Code § 226.7 requires employers, including Defendants, to provide
2 employees with meal periods as mandated by the Industrial Welfare Commission.

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

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

13 148. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
14 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
15 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
16 they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal
17 periods while under Defendants' control, (3) forced to take meal periods, if such a meal
18 occurred, after the 5th hour of work, (4) not provided a mandated first meal period for shifts in
19 excess of 6 hours, and (5) not provided mandated second meal periods for shifts over 10 hours.

20 149. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
21 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
22 all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
23 one additional hour of compensation at the regular rate of pay in lieu thereof.

24 150. On information and belief, Plaintiff and the Aggrieved Employees did not
25 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
26 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
27 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
28 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved

Employees to take meal periods in accordance with California law.

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

TWELFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS

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

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

154. 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.

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

156. At all relevant times, Defendants also failed to provide Plaintiff and the Aggrieved Employees 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 the Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Additionally, Plaintiff and the Aggrieved Employees were often not permitted to leave the premises for rest breaks, in violation of

1 California law. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked
2 in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated
3 rest break.

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

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

11 **THIRTEENTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION**

13 (Labor Code § 227.3)

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

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

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

23 162. At all relevant times, Defendants utilized a policy and practice through which
24 Plaintiff and the Aggrieved Employees accrued vacation hours. However, on occasions when
25 Plaintiff and the Aggrieved Employees had accrued but unused vacation hours upon separation
26 of employment, Defendants failed to pay these wages and, further, failed to pay them at the
27 "final rate" required by Labor Code § 227.3.
28

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

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

7 **FOURTEENTH CAUSE OF ACTION**

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

9 (Labor Code § 204)

10 *Plaintiff and the Aggrieved Employees against All Defendants*

11 165. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

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

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

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

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

1 at the proper rate, within the time specified by Labor Code § 204.

2 170. 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 PAGA.

5 **FIFTEENTH CAUSE OF ACTION**

6 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

7 (Labor Code §§ 201 – 203 and 256)

8 *Plaintiff and the Aggrieved Employees against All Defendants*

9 171. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
10 as if fully alleged herein.

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

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

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

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

22 176. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
23 Employees with all wages due and owing upon separation of employment, including, but not
24 limited to, minimum, regular, and overtime wages, vacation and sick pay at the proper rates, and
25 meal and rest period premiums, within the time specified by Labor Code §§ 201 – 203.

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

1 178. 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 **SIXTEENTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR**

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

7 (Labor Code § 226)

8 *Plaintiff and the Aggrieved Employees against All Defendants*

9 179. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
10 as if fully alleged herein.

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

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

20 182. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
21 and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff
22 and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

23 183. Due to violations discussed herein, Defendants' wage statements failed to
24 accurately state total hours worked, the hours worked at each hourly rate, the accurate rates of
25 pay, and further failed to accurately state gross wages earned, all deductions, and net wages
26 earned.

27 184. Additionally, Defendants' wage statements frequently failed to state the accurate
28 overtime rate of pay.

1 185. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
2 to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement
3 to Plaintiff and the Wage Statement Penalties Subclass that complied with the requirements of
4 Labor Code § 226(a).

5 186. As a result of the Defendants' violations of Labor Code §226(a)(9), 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 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section
9 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

10 **VIII. PRAYER FOR RELIEF**

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

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

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

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

18 4. That Plaintiff be appointed as Class Representative;

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

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

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

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

1 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
2 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194,
3 1197, 1198, 1199, among other sections inadvertently omitted;

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

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

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

9 **DEMAND FOR JURY TRIAL**

10 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby
11 demands a jury trial as to the First through Eighth Causes of Action pled herein.
12

13 Dated: May 27, 2021

LAUBY, MANKIN & LAUBY LLP

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15 BY:



16 Brian J. Mankin, Esq.
17 Peter J. Carlson, Esq.
18 Attorneys for Plaintiff
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