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Attorney for Plaintiffs and the Putative Class
KENIA VADO, JUNE PARKER DELGADILLO,
MARIO AGUIRRE, on behalf of themselves and
all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
STANLEY MOSK COURTHOUSE

KENIA VADO, JUNE PARKER
DELGADILLO, and MARIO AGUIRRE,

Plaintiffs,

v.

KEMPER CORPORATION,
MERASTAR INSURANCE COMPANY,
and DOES 1 through 50, inclusive,

Defendants.

Case No.: **23STCV05164**

CLASS ACTION COMPLAINT:

1. California WARN Act;
2. Failure to Pay Wages;
3. Failure to Furnish Itemized Wage Statements;
4. Unreimbursed Expenses;
5. Unfair Business Practices; and

REPRESENTATIVE ACTION COMPLAINT:

6. Private Attorneys General Act.

JURY TRIAL DEMANDED

PARTIES, JURISDICTION AND VENUE

1. At all times relevant herein, Plaintiff KENIA VADO (hereinafter “Ms. Vado”) was and is a resident of Los Angeles County, California. Ms. Vado was employed as Claims Adjuster at Kemper Corporation’s Cerritos operation. She was terminated without notice on October 26, 2022 during a mass layoff.

2. At all times relevant herein, Plaintiff JUNE PARKER DELGADILLO (hereinafter “Ms. Delgadillo”) was and is a resident of Orange County, California. Ms. Delgadillo was employed as Claims Adjuster at Kemper Corporation’s Cerritos operation. She was terminated without notice on October 26, 2022 during a mass layoff.

3. At all times relevant herein, Plaintiff MARIO AGUIRRE (hereinafter “Mr. Aguirre”) was and is a resident of Orange County, California. Mr. Aguirre was employed as Claims Adjuster out of Kemper Corporation’s Cerritos operation. He was terminated without notice on October 26, 2022 during a mass layoff.

4. VADO, DELGADILLO and AGUIRRE are collectively referred to as “Plaintiffs.”

5. At all times relevant herein, Defendant KEMPER CORPORATION (“Kemper”) was and is a corporation formed in Delaware with its principal place of business in Chicago, Illinois. Kemper is a joint employer of Plaintiffs. Kemper exercised substantial discretion and control over Plaintiffs and other similarly situated employees by identifying itself as the “employer,” making layoff decisions and conducting a mass layoff.

6. At all times relevant herein, MERASTAR INSURANCE COMPANY (“Merastar”) was and is a corporation formed in Indiana with its principal place of business in Chicago, Illinois. Merastar is a joint employer of Plaintiffs. Merastar is identified as the employer in a proposed severance agreement circulated after the mass layoff.

7. KEMPER CORPORATION and MERASTAR INSURANCE COMPANY are collectively referred to as Defendants.

8. Whenever appearing in this Complaint, each and every reference to “Defendants” or to any of them, is intended to be and shall be a reference to all Defendants collectively, and to each of them individually, named and unnamed, including all fictitiously named Defendants, unless

1 said reference is otherwise specifically qualified.

2 9. Plaintiff does not know the true names of Defendant DOES 1 through 50 and
3 therefore sues them by those fictitious names pursuant to Code of Civil Procedure §474. Plaintiff
4 is informed and believes, and on the basis of that information and belief alleges, that at all times
5 mentioned in this Complaint, each DOE Defendant was an “employer” of Plaintiff, or is otherwise
6 responsible for the harm complained of herein. Plaintiff agrees to amend this Complaint to allege
7 the true names and capacities of the DOE Defendants if and when such information is ascertained.

8 10. This Court has jurisdiction over this matter pursuant to California Code of Civil
9 Procedure section 410.10. Damages exceed the jurisdictional minimum.

10 11. Venue is proper in Los Angeles County pursuant to Code of Civil Procedure section
11 395 and 395.5 because Plaintiffs were employed here and Defendants liability arose here.

12 **STATEMENT OF FACTS**

13 12. Kemper Corporation is an American insurance provider that employs thousands of
14 employees and operates multiple subsidiaries, including Merastar Insurance Company. Kenia Vado,
15 June Delgadillo and Mario Aguirre were employed as Claims Adjusters at Kemper Insurance in
16 Cerritos, California. Merastar Insurance Company, a Kemper subsidiary, is identified as the
17 employer in particular employment documents. As joint employers, both of these entities are
18 referred to as the employer herein.

19 13. During employment, Kemper and Merastar required employees who worked
20 remotely to use their personal cell phone and home internet to do their jobs. These expenses were
21 never reimbursed.

22 14. After years of employing a workforce in the state of California, Kemper/Merastar
23 conducted a mass layoff of over 2500 people, which an estimated 500 of whom were California
24 employees.

25 15. Specifically, on October 26, 2022, Kemper/Merastar held a virtual meeting wherein
26 in excess of fifty (50) California employees were notified that they were being laid off immediately.

27 16. Employees were told their termination date was November 9, 2022, although
28 employees were told to stop working immediately and leave the building. Access to company

1 systems, including payroll records, was cut-off immediately. As such, employees were effectively
2 terminated on October 26, 2022.

3 17. Employees were told their termination date was November 9, 2022, although
4 employees were told to stop working immediately and leave the building. As such, Plaintiffs were
5 essentially terminated on October 26, 2022.

6 18. Prior to October 26, 2022, there was no notice of the mass layoff given to employees.

7 19. After the October 26, 2022 virtual meeting, employees were sent FedEx packages
8 that contained a layoff packet. Severance agreements were presented to some employees, but often
9 fell short of statutorily obligated payments that were required under the California Workers
10 Adjustment and Retraining Act (“California WARN Act” [Cal. Lab. Code §§1400 et seq.]).

11 20. Meanwhile, Kemper/Merastar attempted to obtain releases from terminated
12 employees in exchange for a paltry “severance” that was usually less than what was owed under the
13 California WARN Act. In some instances, such releases were signed by some terminated
14 employees, although not Ms. Vado, Ms. Delgadillo or Mr. Aguirre, who were never advised of their
15 California WARN Act rights. The releases that were obtained are invalid as California employers
16 cannot require an employee to sign a release of claims or rights to wages that are undisputedly due.
17 (Cal. Lab. Code § 206.5.) Additionally, Labor Code section 2804 prohibits employers from
18 requiring an employee to release claims for unreimbursed expenses.

19 21. On or about, November 9, 2022, Kemper/Merastar processed the terminated
20 employees’ final payroll. Kemper/Merastar intentionally and knowingly failed to provide employees
21 with proper itemized wage statements relating to their final pay. As noted, employees terminated
22 on October 26, 2022, immediately had access to company records cut-off, including access to
23 payroll. By checking bank balances, former employees noted that their final payroll appears to have
24 been processed and paid on or about November 9, 2022. However, employees could not determine
25 what their final pay entailed, the gross amount of their pay, whether vacation time was properly paid
26 or what deductions were made from their final pay.

27 **CLASS ALLEGATIONS**

28 22. Plaintiffs bring this action individually, and as a class action on behalf of themselves

1 and those employees who were similarly situated and a representative action.

2 23. For purposes of the First Cause of Action for violations of the California WARN
3 Act, the Second Cause of Action for Failure to Pay Wages and the Third Cause of Action for Failure
4 to Furnish Itemized Wage Statements, Plaintiffs define the class as: All of California employees of
5 Kemper Corporation and/or Merastar Insurance Company who were notified of termination on or
6 around October 26, 2022 (“California WARN Class”) without being provided 60 days’ written
7 notice of mass layoff, relocation, or termination of business (“California WARN Class Period”).

8 24. For purposes of the Fourth Cause of Action for Unreimbursed Expenses and Fifth
9 Cause of Action for violation of the Unfair Competition Law, Plaintiffs define the class as: All
10 employees who are or previously were employed by Defendant Kemper Corporation or Merastar
11 Insurance Company in California (the “California Labor Class”) at any time during the period
12 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
13 by the Court (the “Class Period”).

14 25. For purposes of the Sixth Cause of Action for PAGA claims, the claims are brought
15 as a representative action.

16 26. The California WARN Class and the California Labor Class will be referred to
17 herein, collectively, as the “California Class.” The amount in controversy for the aggregate claim
18 of the California Class Members is believed to be under five million dollars (\$5,000,000.00).

19 27. The members of the class are so numerous that joinder of all class members is
20 impractical.

21 28. Membership in the California Class can be determined from Defendants’ own
22 records.

23 29. There are questions of law and fact common to the California Class, which
24 predominate over any questions affecting only individual California Class Members.

25 30. These common questions of law and fact include, without limitation:

26 a. Whether provisions of the California WARN Act apply;

27 b. Where Defendants engaged in a “mass layoff,” “relocation,” or “termination” of
28 business under the California WARN Act;

- 1 c. Whether Defendants failed to provide the required notice under the California
2 WARN Act to California WARN Class Members;
3 d. The measure of damages and/or penalties owed under the California WARN Act;
4 e. Whether Defendants failed to reimburse Plaintiffs and the California Labor Class
5 Members for required business expenses; and
6 f. Whether Defendants failed to provide itemized wage statements to Plaintiffs and the
7 California Labor Class Members on or about November 9, 2022.

8 . Plaintiffs are members of the California Class and suffered damages as a result of
9 Defendants' conduct and actions alleged herein. Plaintiffs and the other California Class Members
10 have been deprived of compensation, reimbursement of expenses, penalties, attorney's fees and
11 costs.

12 31. Plaintiffs' claims are typical of the claims of the California Class and Plaintiffs have
13 the same interests as the other members of the California Class.

14 32. Plaintiffs will fairly and adequately represent and protect the interests of the
15 California Class Members.

16 33. Plaintiffs retained able class counsel with experience in class action litigation.

17 34. Further, Plaintiffs' interests are coincident with, and not antagonistic to, the interest
18 of the other California Class Members.

19 35. There is a unity interest among Plaintiffs and the members of the California Class
20 to ensure that Defendants adequately compensate the members of the California Class for the
21 injuries sustained.

22 36. The questions of law and fact common to the California Class Members predominate
23 over any questions affecting only individual members, including legal and factual issues relating
24 to liability and damages.

25 37. A class action is superior to other available methods for the fair and efficient
26 adjudication of this controversy because joinder of all class members is impractical. Moreover,
27 since the damages suffered by individual members of the class may be relatively small, the expense
28 and burden of individual litigation makes it practically impossible for the members of the class

1 individually to redress the wrongs done to them. Without class certification and determination of
2 declaratory, injunctive, statutory, and other legal questions within the class format, prosecution of
3 separate actions by individual members of the California Class will create the risk of:

- 4 a. Inconsistent or varying adjudications with respect to individual members of the
5 California Class which would establish incompatible standards of conduct for the
6 parties opposing the California Class; and/or,
- 7 b. Adjudication with respect to individual members of the California Class which
8 would as a practical matter be dispositive of the interests of the other members not
9 party to the adjudication or substantially impair or impeded their ability to protect
10 their interests.

11 38. Class treatment provides manageable judicial treatment calculated to bring an
12 efficient and rapid conclusion to all litigation of all Labor Code violation and wage and hour related
13 claims arising out of the conduct of Defendants.

14 **FIRST CAUSE OF ACTION**

15 *For Violations of California WARN Act - [Labor Code §§ 1400, et seq.]*

16 (By Plaintiffs and the California WARN Class Against All Defendants)

17 39. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein,
18 the prior paragraphs of this Complaint.

19 40. Plaintiffs bring these WARN Act claims on behalf of themselves individually and
20 as class claims.

21 41. The California WARN Act (Labor Code § 1400, et seq.) requires employers at a
22 “covered establishment” (75 or more employees), give 60 days’ notice before a mass layoff of 50
23 or more employees. Employers must give notice not only to employees, but also to the relevant
24 California government agency, the Employment Development Department. (Cal. Lab. Code §
25 1401(a).) Employers are excused from providing notice of a mass layoff only if there is a “physical
26 calamity” or “act of war.” (Cal. Lab. Code § 1401(c).)

27 42. If an employer fails to give notice of a mass layoff, relocation, or cessation of
28 business, its employees are entitled to recover: up to 60 days of wages (at their regular rate of pay),

1 and the value of any employment benefits that the employee would have received during that time
2 (such as payment of medical expenses under a health insurance plan, or matching contributions to
3 a 401(k) retirement plan). See Cal. Labor Code § 1402.

4 43. Kemper/Merastar did not provide advance notice to employees that they would be
5 terminated. Notice was provided only on the day of the mass layoff. Furthermore, Kemper/Merastar
6 did not compensate employees for the failure to provide notice of the mass layoff. It is also believed
7 that Kemper/Merastar did not file a WARN notice with the California Employment Development
8 Department.

9 44. Defendants have not compensated Plaintiffs and the California Warn Class Members
10 for its failure to provide notice of the mass layoffs.

11 45. Pursuant to Labor Code sections 201 and 1402, Plaintiffs request 60 days of unpaid
12 compensation and benefits.

13 46. Pursuant to Labor Code section 1403, Plaintiffs request all recoverable penalties
14 available.

15 47. Pursuant to Labor Code section 1404 and Code of Civil Procedure section 1021.5,
16 Plaintiffs request attorney's fees and costs.

17 **SECOND CAUSE OF ACTION**

18 *For Failure to Pay Wages - [Labor Code §§ 201, 203 & 208]*

19 (By Plaintiffs and the California Labor Class Against All Defendants)

20 48. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein,
21 the prior paragraphs of this Complaint.

22 49. Plaintiffs bring these Labor Code claims on behalf of themselves individually and
23 as class claims.

24 50. Pursuant to Labor Code section 201, employees who are discharged must be paid
25 all wages due at the time of termination.

26 51. Pursuant to Labor Code section 208, an employer must pay a discharged employee
27 at the place of discharge.

28 52. Employees who were terminated on October 26, 2022 were not paid the 60 days of

1 wages due to them under the California WARN Act.

2 53. Pursuant to Labor Code section 203, an employer who willfully fails to pay any
3 wages due an employee who is discharged within the time frames provided under Labor Code § 201
4 may be assessed continuing wages as a penalty from the date the wages were due up to a maximum
5 of 30 days.

6 54. Plaintiffs request payment of all wages due under the Labor Code.

7 55. Plaintiffs request payment of all penalties available under the Labor Code, including
8 Labor Code sections 203 and 210.

9 56. Plaintiffs request the payment of attorney's fees and costs pursuant to Labor Code
10 sections 218.5 and Code of Civil Procedure section 1021.5.

11 **THIRD CAUSE OF ACTION**

12 *[For Failure to Provide Itemized Wage Statements - Labor Code §§226, 226.3]*

13 (By Plaintiffs and the California Labor Class Against All Defendants)

14 57. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein,
15 the prior paragraphs of this Complaint.

16 58. Plaintiffs bring these Labor Code claims on behalf of themselves individually and
17 as class claims.

18 59. California Labor Code section 226(a) requires employers to provide itemized wage
19 statements to their employees that show gross and net wages, deductions, the date range of the pay
20 period, and hourly rates and hours worked.

21 60. The employers violated California Labor Code § 226 by failing to provide Ms. Vado,
22 Ms. Delgadillo and Mr. Aguirre the required itemized wage statement for their final payroll. The
23 employer cut-off access to payroll records and then made a direct deposit to bank accounts. The
24 final itemized wage statement were not provided and were not viewable by former employees,
25 leaving them uncertain as to what they had actually been paid.

26 61. California Labor Code section 226(e) states that an employee suffering injury as a
27 result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled
28 to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which

1 a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
2 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
3 an award of costs and reasonable attorney's fees.

4 62. California Labor Code section 226.3 provides for heightened penalties where the
5 employer fails to provide the employee a wage deduction statement or fails to keep required records.
6 Specifically, Labor Code 226.3 states: "Any employer who violates subdivision (a) of Section 226
7 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee
8 per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation
9 in a subsequent citation, for which the employer fails to provide the employee a wage deduction
10 statement or fails to keep the records required in subdivision (a) of Section 226."

11 63. Also, California Labor Code section 226(h), allows for injunctive relief to ensure
12 compliance with the Labor Code, which would include mandating access to their final paychecks.
13 An award of costs and reasonable attorney's fees is also allowable pursuant to California Labor
14 Code section 226(h).

15 64. Pursuant to Labor Code section 226, Plaintiffs request injunctive relief mandating
16 Defendants to make itemized wage statements available.

17 65. Plaintiffs request penalties pursuant to Labor Code sections 226 and 226.3.

18 66. Plaintiffs request attorney's fees and costs pursuant to Labor Code section 226 and
19 Code of Civil Procedure section 1021.5.

20 **FOURTH CAUSE OF ACTION**

21 *For Failure to Reimburse Expenses - [Labor Code §§ 2800 & 2802]*

22 (By Plaintiffs and the California Labor Class Against All Defendants)

23 67. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein,
24 the prior paragraphs of this Complaint.

25 68. Plaintiffs bring these Labor Code claims on behalf of themselves individually and
26 as class claims.

27 69. Under California Labor Code sections 2800 and 2802, employers are required to
28 indemnify employees for all expenses incurred in the course and scope of their employment.

1 California Labor Code section 2802 expressly states that "an employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence
3 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
4 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
5 be unlawful."

6 70. Defendants as a matter of corporate policy, practice, and procedure, intentionally,
7 knowingly, and systematically failed to reimburse and indemnify Plaintiffs and the other California
8 Labor Class Members for required business expenses incurred in direct consequence of discharging
9 their duties on behalf of Defendants.

10 71. Under California Labor Code Section 2802, "an employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
13 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
14 be unlawful."

15 72. Employees were required to use their personal cell phones and home internet as a
16 result of, and in furtherance of, their job duties and were never reimbursed for the expenses. The
17 employers failed to indemnify and reimburse employees for these expenses as an employer is
18 required to do under the laws and regulations of California. Ms. Vado, Ms. Delgadillo and Mr.
19 Aguirre desire to seek reimbursement for the unpaid business expenses with interest at the statutory
20 rate and costs under California Labor Code section 2802.

21 73. In the course of their employment, Defendants required Plaintiffs and other
22 California Labor Class Members to use their personal cell phones and home internet as a result of
23 and in furtherance of their job duties.

24 74. However, Defendants unlawfully failed to reimburse Plaintiffs and other California
25 Labor Class Members for the use of their personal cell phones and personal home internet. As a
26 result, in the course of their employment with Defendants, the Plaintiffs and other California Labor
27 Class Members incurred unreimbursed business expenses that included, but were not limited to,
28 costs related to the use of their personal cell phones and personal home internet.

75. Plaintiffs seek reimbursement of the unpaid expenses.

76. Plaintiffs seek attorney's fees and costs pursuant to Labor Code section 2802 and Code of Civil Procedure section 1021.5.

FIFTH CAUSE OF ACTION

[Unfair Competition - Cal Bus. & Prof Code §§17200 et seq.]

(By Plaintiffs and the California Class Against All Defendants)

77. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

78. Plaintiffs bring these Labor Code claims on behalf of themselves individually and on behalf of the California Class as class claims.

79. Defendants are a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

80. California Business & Professions Code §§ 17200, et seq. (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows: Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

81. Defendants' policies and practices alleged herein were unlawful, unfair, and deceptive business practices whereby Defendants failed to give employees notice of a mass layoff, failed to make itemized wage statements accessible and failed to reimburse employees for expenses incurred during their employment.

82. Defendants have also attempted to, and in some cases succeeded in, garnering invalid releases from terminated employees. Plaintiffs maintain any releases secured from the California Class are invalid and unenforceable.

1 83. Plaintiffs and other members of the California Class seek an injunction enjoining
2 such conduct by Defendants in the future, relief for the named Plaintiffs and other members of the
3 California Class who has been economically injured by Defendants' past and current unlawful
4 conduct, and all other appropriate legal and equitable relief. Plaintiffs also seek to prevent
5 Defendants from seeking additional releases from employees without first informing them of the
6 existence of this lawsuit and potential California WARN Act violations.

7 84. By the conduct alleged herein, Defendants have engaged and continues to engage
8 in a business practice which violates California law, including but not limited to the California
9 Labor Code sections delineated more fully herein, for which this Court should issue declaratory and
10 other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent
11 and remedy the conduct held to constitute unfair competition, including restitution of wages
12 wrongfully withheld.

13 85. By the conduct alleged herein, Defendants' practices were unlawful and unfair in that
14 these practices violated public policy, were immoral, unethical, oppressive unscrupulous or
15 substantially injurious to employees, and were without valid justification or utility for which this
16 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
17 Business & Professions Code, including restitution of wages wrongfully withheld.

18 86. All the acts described herein as violations of, among other things, the California
19 Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive,
20 and unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
21 practices in violation of Cal. Bus. & Prof. Code §§ 17200, et seq.

22 87. Plaintiffs and the other members of the California Class are entitled to, and do, seek
23 such relief as may be necessary to restore to them the money and property which Defendants have
24 acquired, or of which Plaintiffs and the other members of the California Class have been deprived,
25 by means of the above described unlawful and unfair business practices, unpaid wages and
26 unreimbursed expenses.

27 88. Defendants have engaged and continues to engage in business practices which
28 violate California law, including but not limited to, all California Labor Code section cited more

1 fully herein. California Business & Professions Code section 17203 allows for injunctive relief “as
2 may be necessary” to prevent and remedy the conduct held to constitute unfair competition,
3 including restitution of compensation wrongfully withheld.

4 89. Plaintiffs and the other members of the California Class have no plain, speedy and/or
5 adequate remedy at law that will end the unlawful and unfair business practices of Defendants.
6 Further, the practices herein alleged presently continue to occur unabated. As a result of the
7 unlawful and unfair business practices described herein, Plaintiffs and the other members of the
8 California Class have suffered and will continue to suffer irreparable legal and economic harm
9 unless Defendants are restrained from continuing to engage in these unlawful and unfair business
10 practices.

11 90. Plaintiffs and the California Class seek the recovery of actual economic damages,
12 the disgorgement of profits and an injunction enjoining such conduct by Defendants in the future,
13 relief for the named Plaintiffs and the other members of the California Class who have been
14 economically injured by Defendant’s past and current unlawful conduct, and all other appropriate
15 legal and equitable relief appropriate.

16 91. Plaintiffs seek attorney’s fees and costs pursuant to Code of Civil Procedure section
17 1021.5.

18 SIXTH CAUSE OF ACTION

19 *[For Civil Penalties Pursuant to the Private Attorneys General Act (“PAGA”) -*

20 *Cal. Labor Code §§2698, et seq.]*

21 (By Plaintiffs and the California Class Against All Defendants)

22 92. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein,
23 the prior paragraphs of this Complaint.

24 93. Plaintiffs bring this representative action pursuant to the Private Attorneys General
25 Act of 2004, California Labor Code § 2698, et seq. (“PAGA”) on behalf of the State of California
26 and other current and former aggrieved employees of Defendants for engaging in a pattern and
27 practice of wage and hour violations under the California Labor Code as described more fully
28 herein.

1 94. PAGA is a mechanism by which the State of California itself can enforce state labor
2 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
3 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
4 a law enforcement action designed to protect the public and not to benefit private parties. The
5 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
6 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
7 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
8 private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch.
9 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration. Additionally, to the extent
10 Defendants claim any arbitration agreement exists and governs this action, Defendants have waived
11 any right to arbitration by refusing to timely provide Plaintiffs with any such agreement, despite
12 written request for such information by Plaintiffs.

13 95. At all relevant times, for the reasons described herein, and others, Plaintiffs and other
14 similarly situated employees were aggrieved employees of Defendants within the meaning of Labor
15 Code Section 2699(c).

16 96. Labor Code Sections 2699(a) and (g) authorizes aggrieved employees, like Plaintiffs,
17 on behalf of themselves and other current or former employees, to bring a civil action to recover
18 civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

19 97. Plaintiffs complied with the procedures for bringing suit specified in Labor Code
20 Section 2699.3. By certified letter, return receipt requested, dated December 20, 2022, Plaintiffs
21 gave written notice to the Labor and Workforce Development Agency ("LWDA") and to
22 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
23 the facts and theories to support the alleged violations. See Exhibit #1, attached hereto and
24 incorporated by this reference herein.

25 98. As of the date of filing of this Complaint, more than sixty-five (65) days after serving
26 the LWDA with notice of Defendants' violations, the LWDA has not provided any notice by
27 certified mail of its intent to investigate the Defendants' alleged violations as mandated by Labor
28 Code section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A,

1 Plaintiffs may commence and are authorized to pursue this cause of action.

2 99. Defendants violations of the Labor Code includes, failure to pay all wages due,
3 failure to timely pay wages due, failure to reimburse expenses and failure to provide accurate
4 itemized wage statements.

5 100. Pursuant to Labor Code sections 2699(a) and (f), Plaintiffs and the aggrieved
6 employees are entitled to civil penalties for Defendants' violations of Labor Code Section 201, 202,
7 203, 208, 226, 226.3, 2800 and 2802.

8 101. Pursuant to Code of Civil Procedure section 1021.5 and Labor Code section 2699(g),
9 plaintiffs seeks an award of reasonable attorney's fees and costs.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, PLAINTIFFS, individually and on behalf of all other persons similarly
12 situated, respectfully prays for relief against DEFENDANTS and DOES 1 through 50, inclusive,
13 and each of them, as follows:

- 14 1. For compensatory damages in an amount to be ascertained at trial;
- 15 2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well as
16 disgorged profits from DEFENDANTS's unfair and unlawful business practices;
- 17 3. For preliminary and permanent injunctive relief enjoining DEFENDANT from violating
18 the relevant provisions of the California Labor Code and from engaging in the unlawful business
19 practices complained of herein;
- 20 4. For all available penalties pursuant to California Labor Code;
- 21 5. For statutory and civil penalties according to proof, including but not limited to all
22 penalties authorized by PAGA;
- 23 6. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code
24 §§ 218.6, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision
25 providing for pre-judgment interest;
- 26 7. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 226,
27 1404, 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing
28 for attorneys' fees and costs;

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