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individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

Daisy Page and LaDonna Sanders,
individually and on behalf of all others
similarly situated

Plaintiffs,

vs.

Insource Performance Solutions, LLC;
Keurig Dr Pepper Inc.; and Does 1 through
20, inclusive,

Defendants.

Case No. RG21096367

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime and Doubletime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Provide Rest Periods;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Reimburse All Business Expenses;
7. Failure to Timely Pay All Wages Due Upon Separation of Employment;
8. Violation of Business and Professions Code § 17200, *et seq.*; and
9. Enforcement of Labor Code § 2698 *Et. Seq.* (“PAGA”)

DEMAND FOR JURY TRIAL

1 Plaintiffs Daisy Page and LaDonna Sanders, individually and on behalf of others similarly
2 situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Daisy Page and LaDonna Sanders (“Plaintiffs”) bring this putative class
5 action against Defendants Insource Performance Solutions, LLC, Keurig Dr Pepper Inc., and
6 DOES 1 through 20, inclusive (collectively, “Defendants”), on behalf of themselves individually
7 and a putative class of non-exempt employees employed by Defendants.

8 2. Defendant Insource Performance Solutions, LLC is a recruiting and staffing firm
9 doing business in California.

10 3. Defendant Keurig Dr Pepper Inc., formerly Dr. Pepper-Snapple Group, Inc., is a
11 nationwide conglomerate and makers of a variety of soft drinks throughout the United States,
12 including the location at which Plaintiffs worked in California.

13 4. Through this action, Plaintiffs allege that Defendants have engaged in a
14 systematic pattern of wage and hour violations under the California Labor Code and Industrial
15 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
16 unfair competition.

17 5. Plaintiffs are informed and believe, and thereon allege, that Defendants have
18 increased their profits by violating state wage and hour laws by, among other things:

- 19 (a) Failing to pay minimum wages;
20 (b) Failing to pay overtime and doubletime wages;
21 (c) Failing to provide meal periods;
22 (d) Failing to provide rest breaks;
23 (e) Failing to provide accurate itemized wage statements;
24 (f) Failing to reimburse for all business expenses; and
25 (g) Failing to timely pay all wages due upon separation of employment.

26 6. Defendants maintained and enforced against the class the following unlawful
27 practices and policies, in violation of California state wage and hour laws:
28

1 (a) Defendants forced class members to submit to unpaid health screenings at the
2 beginning of their shifts, as well as unpaid drug tests.

3 (b) Although class members were under Defendants' control while waiting in line for
4 and undergoing these health screenings and drug tests, Defendants did not
5 compensate class members for this time worked.

6 (c) Defendants failed to pay all overtime and doubletime owed and at the regular rate
7 of pay, including all shift differentials and other non-discretionary pay; and

8 (d) Defendants have failed to reimburse Plaintiffs and class members for all business
9 expenses, including masks, gloves and any other Personal Protective Equipment
10 ("PPE").

11 7. Plaintiffs brings this lawsuit seeking monetary relief against Defendants on behalf
12 of themselves and all others similarly situated in California to recover, among other things,
13 unpaid wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to
14 Labor Code §§ 201-203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, 2800, and
15 2802.

16 **JURISDICTION AND VENUE**

17 8. This is a class action, pursuant to California Code of Civil Procedure § 382. The
18 monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdictional limits
19 of the Superior Court and will be established according to proof at trial.

20 9. This Court has jurisdiction over this action pursuant to the California Constitution,
21 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
22 given by statutes to other courts. The statutes under which this action is brought do not specify
23 any other basis for jurisdiction.

24 10. This Court has jurisdiction over all Defendants because, upon information and
25 belief, they are citizens of California, have sufficient minimum contacts in California or
26 otherwise intentionally avail themselves of the California market so as to render the exercise of
27 jurisdiction over them by the California courts consistent with traditional notions of fair play and
28

1 substantial justice.

2 11. Venue is proper in this Court because, upon information and belief, Defendants
3 reside, transact business or have offices in this county and the acts and omissions alleged herein
4 took place in this county.

5 **THE PARTIES**

6 12. Plaintiffs are citizens of California. Plaintiffs were employed by Defendants
7 during the Class Period in California.

8 13. Plaintiffs are informed and believe, and thereon allege, that Defendants at all
9 times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code
10 and IWC Wage Orders, whose employees were and are engaged throughout this county and the
11 State of California.

12 14. Plaintiffs are unaware of the true names or capacities of the defendants sued herein
13 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
14 Complaint and serve such fictitiously named defendants once their names and capacities become
15 known.

16 15. Plaintiffs are informed and believe, and thereon allege, that each defendant acted
17 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
18 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
19 are legally attributable to the other defendant. Furthermore, Defendants in all respects acted as
20 the employer and/or joint employer of Plaintiffs and the class members.

21 16. Plaintiffs are informed and believe, and thereon allege, that each and all of the
22 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
23 Does 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the
24 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
25 official policy of Defendants.

26 17. At all relevant times, Defendants, and each of them, acted within the scope of such
27 agency or employment, or ratified each and every act or omission complained of herein. At all
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relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

18. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

CLASS ACTION ALLEGATIONS

19. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of themselves and all others similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

20. All claims alleged herein arise under California law for which Plaintiffs seeks relief authorized by California law.

21. Plaintiffs' proposed Class consists of and is defined as follows:

Class

All current and former non-exempt employees who worked for Defendants in the State of California from four years plus 179 days before the filing of this complaint to the date of trial.¹

Plaintiffs also seeks to certify the following Subclass of employees:

Waiting Time Subclass

All members of the Class who separated their employment from Defendants from three years plus 179 days before the filing of this complaint to the date of class certification.

22. Members of the Class and Subclass described above will be collectively referred to as "class members." Plaintiffs reserve the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery and specific theories of liability.

23. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members

¹ The statute of limitations for this matter was tolled by 179 days pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

1 including, but not limited to:

- 2 (a) Whether Defendants paid Plaintiffs and class members all minimum wage
- 3 compensation;
- 4 (b) Whether Defendants paid Plaintiffs and class members overtime and doubletime
- 5 compensation at the proper rate;
- 6 (c) Whether Defendants deprived Plaintiffs and class members of compliant meal
- 7 periods or required Plaintiffs and class members to work through meal periods
- 8 without compensation;
- 9 (d) Whether Defendants deprived Plaintiffs and class members of compliant rest
- 10 periods or required Plaintiffs and class members to work through rest periods
- 11 without compensation;
- 12 (e) Whether Defendants failed to timely pay Plaintiffs and former class members all
- 13 wages due upon termination or within 72 hours of resignation;
- 14 (f) Whether Defendants failed to furnish Plaintiffs and class members with accurate,
- 15 itemized wage statements;
- 16 (g) Whether Defendants failed to reimburse Plaintiffs and class members for business
- 17 expenses; and
- 18 (h) Whether Defendants engaged in unfair business practices in violation of Business
- 19 & Professions Code §§ 17200, *et seq.*

20 24. There is a well-defined community of interest in this litigation and the Class is

21 readily ascertainable:

- 22 (a) Numerosity: The members of the Class are so numerous that joinder of all
- 23 members is impractical. Although the members of the Class are unknown
- 24 to Plaintiffs at this time, on information and belief, the Class is estimated to
- 25 be greater than 100 individuals. The identity of the class members are
- 26 readily ascertainable by inspection of Defendants' employment and payroll
- 27 records.

1 (b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the
2 claims (or defenses, if any) of the Class because Defendants' failure to
3 comply with the provisions of California wage and hour laws entitled each
4 class member to similar pay, benefits and other relief. The injuries sustained
5 by Plaintiffs are also typical of the injuries sustained by the Class because
6 they arise out of and are caused by Defendants' common course of conduct
7 as alleged herein.

8 (c) Adequacy: Plaintiffs are qualified to, and will fairly and adequately
9 represent and protect the interests of all members of the Class because it is
10 in his best interest to prosecute the claims alleged herein to obtain full
11 compensation and penalties due to him and the Class. Plaintiffs' attorneys,
12 as proposed class counsel, are competent and experienced in litigating large
13 employment class actions and are versed in the rules governing class action
14 discovery, certification and settlement. Plaintiffs have incurred and,
15 throughout the duration of this action, will continue to incur attorneys' fees
16 and costs that have been and will be necessarily expended for the prosecution
17 of this action for the substantial benefit of each class member.

18 (d) Superiority: The nature of this action makes the use of class action
19 adjudication superior to other methods. A class action will achieve
20 economies of time, effort and expense as compared with separate lawsuits,
21 and will avoid inconsistent outcomes because the same issues can be
22 adjudicated in the same manner and at the same time for each Class. If
23 appropriate this Court can, and is empowered to, fashion methods to
24 efficiently manage this case as a class action.

25 (e) Public Policy Considerations: Employers in the State of California and
26 other states violate employment and labor laws every day. Current
27 employees are often afraid to assert their rights out of fear of direct or
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indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as affording them privacy protections.

GENERAL ALLEGATIONS

25. At all relevant times mentioned herein, Defendants employed Plaintiffs and other persons as non-exempt employees.

26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive wages for all hours worked and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and class members were not paid wages (including minimum wages and overtime wages) when Defendants required Plaintiffs and class members to work off-the-clock before their shifts, for example, Defendants required Plaintiffs and class members to work off-the-clock before the beginning of their shifts, during health screenings when Plaintiffs and class members were under Defendants' control. Plaintiffs and class members were also subjected to unpaid mandatory drug tests.

27. Plaintiffs are informed and believe, and thereon allege, Defendants failed to provide Plaintiffs and class members timely, uninterrupted, off-duty meal periods of no less than thirty minutes before their fifth hour of work. Defendants regularly failed provide a duty free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than 10 hours, as required under California law. Moreover, on shifts of no more than six hours, aggrieved employees did not waive their right to a meal period.

28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive all required meal periods or payment of one (1) additional hour of pay at the aggrieved employees' regular rate of

1 pay when they did not receive a timely meal period. In violation of the Labor Code and IWC Wage
2 Orders, aggrieved employees did not receive all timely meal periods or payment of one (1)
3 additional hour of pay at the Plaintiffs' and class members' regular rate of pay.

4 29. Upon information and belief, Defendants failed to provide the Plaintiffs and class
5 members timely, uninterrupted, on-the-clock rest period of no less than ten minutes for every four
6 hours worked, or every major fraction thereof. Defendants also routinely failed to provide the
7 aggrieved employees with a second rest period for shifts lasting longer than six hours, or a third
8 rest period for shifts lasting longer than ten hours. These policies, among others, have resulted in
9 a denial of these employees' rights to a ten-minute rest period in violation of California law.

10 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and class members were entitled to receive all rest breaks or
12 payment of one (1) additional hour of pay at the Plaintiffs' and class members' regular rate of pay
13 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs
14 and class members did not receive all rest breaks or payment of one (1) additional hour of pay at
15 the aggrieved employees' regular rate of pay, including all non-discretionary bonuses, when a rest
16 break was missed.

17 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that Plaintiffs and class members were entitled to receive itemized wage
19 statements that accurately showed their gross and net wages earned, inclusive dates of pay periods,
20 total hours worked, and all applicable hourly rates in effect and the number of hours worked at each
21 hourly rate in accordance with California law. In violation of the Labor Code, Plaintiffs and Labor
22 Class Members were not provided with accurate itemized wage statements. Moreover, Plaintiffs
23 were not able to access their wage statements due to website malfunctions. When Plaintiffs
24 requested hard copies of their time records, Defendants neglected to fulfill their requests in a timely
25 manner, if at all.

26 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiffs and Waiting Time Subclass members were entitled to timely
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1 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiffs
2 and Waiting Time Subclass members did not receive payment of all wages within permissible time
3 periods.

4 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
5 should have known that they had a duty to indemnify Plaintiffs and class members for all necessary
6 expenditures or losses incurred in the discharge of their duties. For example, Plaintiffs and other
7 class members were required to use their personal cellular device for work related purposes, such
8 as, but not limited to, communicating with other co-workers. Furthermore, Defendants failed to
9 reimburse Plaintiff and other class members for the purchasing of Personal Protective Equipment
10 (“PPE”), including but not limited to masks and gloves.

11 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known they had a duty to compensate Plaintiffs and class members, and Defendants
13 had the financial ability to pay such compensation but willfully, knowingly and intentionally failed
14 to do so all in order to increase Defendants’ profits.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

17 **(Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order § 3)**

18 35. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
19 though fully set forth herein.

20 36. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
21 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
22 wage than the minimum so fixed is unlawful.

23 37. During the relevant time period, Defendants paid Plaintiffs and class members
24 less than minimum wages when, for example, Defendants required Plaintiffs and class members
25 to work off-the-clock before the beginning of their shifts, during health screenings when
26 Plaintiffs and class members were under Defendants’ control. Plaintiffs and class members were
27 also subjected to unpaid mandatory drug tests. To the extent these hours do not qualify for the
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1 payment of overtime or doubletime, Plaintiffs and class members were not being paid at least
2 minimum wage for their work.

3 38. During the relevant time period, Defendants regularly failed to pay at least
4 minimum wage to Plaintiffs and class members for all hours worked pursuant to Labor Code
5 §§ 1194 and 1197.

6 39. Defendants' failure to pay Plaintiffs and class members the minimum wage as
7 required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and class
8 members are entitled to recover the unpaid balance of their minimum wage compensation as well
9 as interest, costs and attorney's fees.

10 40. Pursuant to Labor Code § 1194.2, Plaintiffs and class members are entitled to
11 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
12 thereon.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY OVERTIME WAGES**

15 **(Violation of Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order)**

16 41. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
17 though fully set forth herein.

18 42. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
19 unlawful to employ persons without compensating them at a rate of pay either one and one-half
20 or two times the person's regular rate of pay, depending on the number of hours worked by the
21 person on a daily or weekly basis.

22 43. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
23 period, Defendants were required to compensate Plaintiffs and class members for all overtime
24 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours worked
25 in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
26 hours of the seventh consecutive work day, with doubletime after eight (8) hours on the seventh
27 day of any work week, or after twelve (12) hours in any work day.

1 44. Plaintiffs and class members were non-exempt employees entitled to the
2 protections of California Labor Code §§ 510 and 1194.

3 45. In violation of state law, Defendants have knowingly and willfully refused to
4 perform their obligations and compensate Plaintiffs and class members for all wages earned as
5 alleged above.

6 46. Defendants' failure to pay Plaintiffs and class members the unpaid balance of
7 overtime and doubletime compensation, as required by California law, violates the provisions of
8 Labor Code §§ 510 and 1198, and is therefore unlawful.

9 47. Pursuant to Labor Code § 1194, Plaintiffs and class members are entitled to
10 recover their unpaid overtime and doubletime compensation as well as interest, costs and
11 attorneys' fees.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS**

14 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

15 48. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
16 though fully set forth herein.

17 49. Labor Code § 226.7 provides that no employer shall require an employee to work
18 during any meal period mandated by the IWC Wage Orders.

19 50. Section 11 of the applicable IWC Wage Order states, "no employer shall employ
20 any person for a work period of more than five (5) hours without a meal period of not less than
21 30 minutes, except that when a work period of not more than six (6) hours will complete the day's
22 work the meal period may be waived by mutual consent of the employer and the employee."

23 51. Labor Code § 512(a) provides that an employer may not require, cause or permit
24 an employee to work for a period of more than five (5) hours per day without providing the
25 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
26 total work period per day of the employee is not more than six (6) hours, the meal period may be
27 waived by mutual consent of both the employer and the employee.

1 52. Labor Code § 512(a) also provides that an employer may not employ an employee
2 for a work period of more than ten (10) hours per day without providing the employee with a
3 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no
4 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
5 employer and the employee only if the first meal period was not waived.

6 53. During the relevant time period, Plaintiffs and class members did not receive
7 timely, compliant meal periods for each five hours worked per day.

8 54. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
9 an employer to pay an employee one additional hour of pay at the employee's regular rate of
10 compensation for each work day that a meal period is not provided.

11 55. At all relevant times, Defendants failed to pay Plaintiffs and class members all
12 meal period premiums due for meal period violations pursuant to Labor Code § 226.7(b) and
13 section 11 of the applicable IWC Wage Order.

14 56. As a result of Defendants' failure to pay Plaintiffs and class members an additional
15 hour of pay for each day a meal period was not provided, Plaintiffs and class members suffered
16 and continue to suffer a loss of wages and compensation.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REST PERIODS**

19 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)**

20 57. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
21 though fully set forth herein.

22 58. Labor Code § 226.7(a) provides that no employer shall require an employee to
23 work during any rest period mandated by the IWC Wage Orders.

24 59. Section 12 of the applicable IWC Wage Order states "every employer shall
25 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
26 the middle of each work period" and the "authorized rest period time shall be based on the total
27 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction

thereof” unless the total daily work time is less than three and one-half (3½) hours.

60. During the relevant time period, Plaintiffs and class members did not receive a ten (10) minute rest period for every four (4) hours or major fraction thereof worked.

61. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

62. At all relevant times, Defendants failed to pay Plaintiffs and class members all rest period premiums due for rest period violations pursuant to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

63. As a result of Defendants’ failure to pay Plaintiffs and class members an additional hour of pay for each day a rest period was not provided, Plaintiffs and class members suffered and continue to suffer a loss of wages and compensation.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226; Violation of IWC Wage Order)

64. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

65. Labor Code § 226(a) requires Defendants to provide each employee with an accurate wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the

1 employee.

2 66. During the relevant time period, Defendants have knowingly and intentionally
3 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs
4 and class members. The deficiencies include, among other things, the failure to correctly state
5 the gross and net wages earned by Plaintiffs and class members. Moreover, Plaintiffs were not
6 able to access their wage statements due to website malfunctions. When Plaintiffs requested hard
7 copies of their time records, Defendants neglected to fulfill their requests in a timely manner, if
8 at all.

9 67. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiffs
10 and class members have suffered injury and damage to their statutorily protected rights.
11 Specifically, Plaintiffs and class members have been injured by Defendants' intentional violation
12 of California Labor Code § 226(a) because they were denied both their legal right to receive, and
13 their protected interest in receiving, accurate itemized wage statements under California Labor
14 Code § 226(a). Plaintiffs have had to file this lawsuit in order to determine the extent of the
15 underpayment of wages, thereby causing Plaintiffs to incur expenses and lost time. Plaintiffs
16 would not have had to engage in these efforts and incur these costs had Defendants provided the
17 accurate wages earned. This has also delayed Plaintiffs' ability to demand and recover the
18 underpayment of wages from Defendants.

19 68. California Labor Code § 226(a) requires an employer to pay the greater of all
20 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,
21 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,
22 plus attorney's fees and costs, to each employee who was injured by the employer's failure to
23 comply with California Labor Code § 226(a).

24 69. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and
25 class members from knowing, understanding and disputing the wages paid to them, and resulted
26 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
27 intentional failure to comply with California Labor Code § 226(a), Plaintiffs and class members
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1 have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to
2 be shown according to proof at trial.

3 70. Plaintiffs and class members are also entitled to injunctive relief under California
4 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
5 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 **(Violation of Labor Code §§ 2800, 2802, and the Applicable IWC Wage Order § 9)**

9 71. Plaintiffs re-allege and incorporate by this reference each and every allegation set
10 forth in all previous paragraphs of the Complaint.

11 72. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases
12 indemnify his employee for losses caused by the employer's want of ordinary care."

13 73. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify his
14 or her employee for all necessary expenditures or losses incurred by the employee in direct
15 consequence of the discharge of his or her duties..."

16 74. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the
17 term 'necessary expenditures or losses' shall include all reasonable costs, including but not
18 limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

19 75. The Applicable IWC Wage Order § 9 provides that: "When tools or equipment
20 are required by the employer or are necessary to the performance of a job, such tools and
21 equipment shall be provided and maintained by the employer . . ."

22 76. California Labor Code section 2804 mandates that this statutory right cannot be
23 waived.

24 77. During the relevant time period, Defendants were required to indemnify and
25 reimburse Plaintiffs and members of the Plaintiffs Class for all expenditures or losses caused by
26 the employer's want of ordinary care and/or incurred in direct consequent of the discharge of
27 their duties, but failed to indemnify and reimburse Plaintiffs and members of the Plaintiffs Class.

78. As a direct and proximate result, Plaintiffs and members of the Plaintiffs Class have suffered, and continue to suffer, substantial losses, related to the use and enjoyment of such monies to be reimbursed, lost interest on such monies, and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations under California law, all to their damage in amounts according to proof at the time of trial.

79. Accordingly, Plaintiffs and members of the Plaintiffs Class are entitled to recover, and hereby seek, an amount equal to incurred necessary expenditures, pre- and post-judgment interest, applicable penalties, attorneys' fees and costs, and any further equitable relief this Court may deem just and proper. *See* Cal. Lab. Code § 2802, *see also*, Cal. Civ. Proc. Code § 1021.5.

80. Plaintiffs, on behalf of themselves and members of the Plaintiffs Class, request relief as described below.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND

WITHIN THE REQUIRED TIME

(Violation of Labor Code §§ 201, 202 and 203; Violation of IWC Wage Order)

81. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

82. California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his employment, his wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his intention to quit, in which case the employee is entitled to his wages at the time of quitting.

83. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass members all their earned wages upon termination including, but not limited to, proper minimum wages, Reporting Time Pay, and overtime and doubletime compensation, either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

1 84. Defendants' failure to pay Plaintiffs and Waiting Time Subclass members all their
2 earned wages at the time of discharge or within seventy-two (72) hours of their leaving
3 Defendants' employ is in violation of Labor Code §§ 201 and 202.

4 85. California Labor Code § 203 provides that if an employer willfully fails to pay
5 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
6 and 202, then the wages of the employee shall continue as a penalty from the due date at the same
7 rate until paid or until an action is commenced; but the wages shall not continue for more than
8 thirty (30) days.

9 86. Plaintiffs and Waiting Time Subclass members are entitled to recover from
10 Defendants the statutory penalty which is defined as Plaintiffs' and Waiting Time Subclass
11 members' regular daily wages for each day they were not paid, at their regular hourly rate of pay,
12 up to a thirty (30) day maximum pursuant to Labor Code § 203.

13 **EIGHTH CAUSE OF ACTION**

14 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

15 87. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
16 though fully set forth herein.

17 88. Defendants' conduct, as alleged herein, has been and continues to be unfair,
18 unlawful and harmful to Plaintiffs and class members. Plaintiffs seek to enforce important rights
19 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

20 89. Defendants' activities, as alleged herein, violate California law and constitute
21 unlawful business acts or practices in violation of California Business and Professions Code
22 §§ 17200, *et seq.*

23 90. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated
24 on the violation of any state or federal law.

25 91. Defendants' policies and practices have violated state law in at least the following
26 respects:

27 (a) Failing to pay all minimum wages owed to Plaintiffs and class members in
28

violation of Labor Code §§ 1194.2, and 1197;

(b) Failing to pay all overtime and doubletime wages at the proper rate to Plaintiffs and class members in violation of Labor Code §§ 510, 1194 and 1198;

(c) Failing to provide timely meal period and rest periods without paying Plaintiff and class members premium wages for every day said meal and rest periods were not provided in violation of Labor Code §§ 226.7 and 512;

(d) Failing to provide Plaintiffs and class members with accurate itemized wage statements in violation of Labor Code § 226; and

(e) Failing to timely pay all earned wages to Plaintiffs and Waiting Time Subclass members upon separation of employment in violation of Labor Code §§ 201, 202 and 203.

92. Defendants intentionally avoided paying Plaintiffs and class members' wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish and gain a greater foothold in the marketplace.

93. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiffs and class members are entitled to restitution of the wages unlawfully withheld and retained by Defendants during a period that commences four years prior to the filing of the Complaint; an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

NINTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")

94. Plaintiffs hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

95. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an

1 aggrieved employee on behalf of himself and other current or former employees pursuant to the
2 procedures specified in Labor Code § 2699.3.

3 96. For all provisions of the Labor Code except those for which a civil penalty is
4 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
5 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
6 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
7 period in which Defendants violated these provisions of the Labor Code.

8 97. Defendants' conduct violates numerous Labor Code sections including, but not
9 limited to, the following:

10 (a) Violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 558, 1194, 1197 and
11 1198 for failure to timely pay all earned wages (including minimum and overtime wages) owed
12 to Plaintiffs and other aggrieved employees during employment and upon separation of
13 employment as herein alleged;

14 (b) Violation of Labor Code § 246 for failure to pay sick time for at the regular rate of
15 pay;

16 (c) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
17 the aggrieved employees and failure to pay premium wages for missed meal periods as herein
18 alleged;

19 (d) Violation of Labor Code § 226.7 for failure to permit rest breaks to the aggrieved
20 employees and failure to pay premium wages for missed rest periods as herein alleged;

21 (e) Violation of Labor Code §§ 2800, 2802 for failing to reimburse Plaintiffs and class
22 members for all necessarily incurred business expenses;

23 (f) Violation of Labor Code § 226 for failure to provide accurate itemized wage
24 statements to Plaintiffs and other aggrieved employees as herein alleged; and

25 (g) Violation of Labor Code §§ 1174 and 1174.5 for failing to maintain accurate
26 records.

98. Plaintiffs are an “aggrieved employee” because she was employed by the alleged violator and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of all other aggrieved employees.

99. On February 26, 2021, Plaintiffs gave notice of these claims to the California Labor and Workforce Development Agency (“LWDA”) and to Defendants. Plaintiffs have not received any response from the LWDA indicating that it intends to investigate these claims. Accordingly, Plaintiffs have exhausted all notice requirements under the PAGA.

100. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

101. For bringing this action, Plaintiffs are entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiffs, on their own behalf and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action, including certifying the Class and Subclass alleged by Plaintiffs;

2. For appointment of Daisy Page and LaDonna Sanders as the class representatives;

3. For appointment of Lebe Law, APLC as class counsel for all purposes;

4. For compensatory damages in an amount according to proof with interest thereon;

5. For economic and/or special damages in an amount according to proof with interest thereon;

6. For reasonable attorneys' fees, costs of suit and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 226(e) and 1194;

7. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

8. For civil penalties under PAGA, 75% of which will be paid to the LWDA and

25% of which will distributed to the aggrieved employees;

9. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

10. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;

11. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits and penalties, including interest thereon;

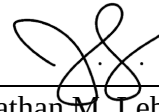
12. For pre-judgment interest; and

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

Dated: November 12, 2021

Lebe Law, APLC

By: _____



Jonathan M. Lebe

Zachary T. Gershman

Attorneys for Plaintiffs Daisy Page and LaDonna Sanders,

Individually and on behalf of all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: November 12, 2021

Lebe Law, APLC

By: _____



Jonathan M. Lebe

Zachary T. Gershman

Attorneys for Plaintiffs Daisy Page and LaDonna Sanders,

Individually and on behalf of all others similarly situated

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