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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ASHLEY BROWN, individually, on a  
representative basis, and on behalf of all  
others similarly situated;

Plaintiff,

vs.

MINUTECLINIC DIAGNOSTIC MEDICAL  
GROUP OF CALIFORNIA, INC., a  
California Corporation; MINUTECLINIC  
DIAGNOSTIC MEDICAL GROUP OF  
ORANGE COUNTY, INC., a California  
Company; MINUTECLINIC DIAGNOSTIC  
MEDICAL GROUP OF SAN DIEGO, INC.,  
a California Corporation; and DOES 1  
through 10, inclusive;

Defendants.

Case No.: 30-2021-01185270-CU-OE-CXC  
[Assigned to Hon. Judge Glenda Sanders,  
Dept CX101, 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 Timely Pay Final Wages;
- (6) Failure to Provide Accurate Itemized Wage Statements;
- (7) Unfair and Unlawful Competition;

**PAGA CLAIMS**

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

Plaintiff Ashley Brown (“Plaintiff”) on behalf of herself, on a representative basis, and on behalf of others similarly situated, complains and alleges as follows.

**I. INTRODUCTION AND GENERAL ALLEGATIONS**

1. Plaintiff brings this action against her former employer(s), Defendants MinuteClinic Diagnostic Medical Group of California, Inc., MinuteClinic Diagnostic Medical Group of Orange County, Inc., and MinuteClinic Diagnostic Medical Group of San Diego, Inc., and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all current and former nonexempt employees employed by Defendants in California (the “Class” or “Represented Employees”), for Labor Code violations stemming from Defendants’ failure to pay all wages owed, including minimum, regular, and overtime wages, failure to provide meal periods, failure to provide rest breaks, failure to timely pay wages, and failure to provide accurate itemized wage statements.

2. Plaintiff was employed by Defendants from approximately July through August 2020.

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

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

5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the Represented Employees. For example, Defendants paid Plaintiff and the Represented Employees on an hourly basis but also paid additional earned nondiscretionary compensation (such as shift differentials and others). However, during workweeks where the Represented Employees worked overtime hours and earned additional nondiscretionary compensation and/or bonuses, Defendants failed to include that compensation 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.

1           6.       Plaintiff and the Represented Employees were also denied 30-minute off-duty  
2 meal periods, as mandated by California law. As a result of Defendants' policies and practices,  
3 the Represented Employees were subjected to meal period violations when they were: (1) unable  
4 to take meal periods due to workload, (2) forced to take on-duty meal periods while under  
5 Defendants' control, (3) forced to take meal periods, if such a meal occurred, after the 5th hour  
6 of work, (4) not provided a mandated first meal period for shifts in excess of 6 hours, and (5) not  
7 provided mandated second meal periods for shifts over 10 hours.

8           7.       Defendants also failed to provide Plaintiff and the Represented Employees with  
9 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as  
10 mandated by California law. Defendants did not schedule rest breaks and the Represented  
11 Employees were often not authorized and/or permitted to take mandated rest breaks due to being  
12 overwhelmed by their hectic workload. Additionally, Plaintiff and the Represented Employees  
13 were not permitted to leave the premises for rest breaks, in violation of California law.  
14 Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of  
15 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

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

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

24           10.      Plaintiff alleges that Defendants' violations of the wage and hour components of  
25 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their  
26 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over  
27 its competitors.  
28

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

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

## **II. JURISDICTION**

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

## **III. VENUE**

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

## **IV. PARTIES**

### **Plaintiff**

15. Plaintiff and Class Representative Ashley Brown was employed by Defendants from approximately July through August 2020 and performed work for Defendants in Orange County.

**Defendants**

16. Plaintiff is informed and believes and thereon alleges that Defendant MinuteClinic Diagnostic Medical Group of California, Inc., is a California Corporation authorized to and doing business in Orange County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

17. Plaintiff is informed and believes and thereon alleges that Defendant B MinuteClinic Diagnostic Medical Group of Orange County, Inc. is a California Corporation authorized to and doing business in Orange County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

18. Plaintiff is informed and believes and thereon alleges that Defendant MinuteClinic Diagnostic Medical Group of San Diego, Inc., is a California Corporation authorized to and doing business in Orange County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

19. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 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.

20. Plaintiff is informed and believes and thereon alleges that she 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.

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

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

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

24 **V.     CLASS ACTION ALLEGATIONS**

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

27           25.     Plaintiff brings this action on behalf of herself and all others similarly situated as  
28 a class action, pursuant to Code of Civil Procedure § 382.

1           26.     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           27.     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           28.     Plaintiff also seeks to represent the following subclasses:

9                   **Meal Break Subclass**

10                  All Represented Employees who worked a shift in excess  
11 of 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                  **Waiting Time Penalties Subclass**

16                  All Represented Employees who separated from their  
17 employment with Defendants during the period three years  
18 before the filing of this action and ending when final  
19 judgment is entered.

20                  **Wage Statement Penalties Subclass**

21                  All Represented Employees during the period one year  
22 before the filing of this action and ending when final  
23 judgment is entered.

24           29.     Plaintiff reserves the right to amend or modify the class description with greater  
25 specificity or further division into subclasses or limitation to particular issues as appropriate.

26           30.     Plaintiff, as Class Representative, is a member of the class and subclasses that she  
27 seeks to represent.  
28

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

4           32. **Numerosity:** The potential members of the Class as defined are so numerous that  
5 a joinder of all Represented Employees is impracticable. Although the exact number is currently  
6 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

7           33. **Commonality:** There are questions of law and fact common to the class which  
8 predominate over any questions affecting only individual members of the class, including  
9 without limitation:

10           i. Whether Defendants violated the California Labor Code and applicable  
11 IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all  
12 hours worked;

13           ii. Whether Defendants violated the California Labor Code and applicable  
14 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented  
15 Employees for hours above 8 and/or 12 per day and/or 40 per week;

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

21           iv. Whether Defendants violated the California Labor Code and applicable  
22 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break  
23 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass  
24 with one additional hour of wages at the regular rate of pay for each instance when a paid rest  
25 break was not provided;

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

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

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

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

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

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

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

**FIRST CAUSE OF ACTION**

**FAILURE TO PAY MINIMUM WAGES**

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

*Plaintiff and the Represented Employees Against All Defendants*

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

38. Plaintiff and the Represented 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.

39. Plaintiff and the Represented 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 Represented Employees were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

40. 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).

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

42. 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.

43. At all material times, Defendants DOES 1 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

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

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

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

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

## 11 **SECOND CAUSE OF ACTION**

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

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

14 *Plaintiff and the Represented Employees Against All Defendants*

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

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

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

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

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

4           52. At all relevant times, Defendants paid Plaintiff and the Represented Employees on  
5 an hourly basis but also paid additional earned nondiscretionary compensation and/or bonuses.  
6 However, during workweeks where the Represented 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           53. 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 Represented 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           54. 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 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

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

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

26           57. During the employment of Plaintiff and the Represented Employees, Defendants  
27 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.  
28

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

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

### **THIRD CAUSE OF ACTION**

#### **FAILURE TO PROVIDE MEAL PERIODS**

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

*Plaintiff and the Meal Break Subclass Against All Defendants*

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

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

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

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

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

65. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and

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

66. Furthermore, on the occasions that Defendants paid Plaintiff and the Meal Break Subclass a meal premium under Labor Code § 226.7 for a missed/denied meal period, Defendants paid this premium at the base rate of pay instead of at the "regular rate" which incorporates additional nondiscretionary compensation (such as shift differentials and bonuses).

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

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

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

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

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

#### **FOURTH CAUSE OF ACTION**

##### **FAILURE TO PROVIDE REST BREAKS**

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

*Plaintiff and the Rest Break Subclass Against All Defendants*

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

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

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

75. 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.

76. 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.

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

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

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

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

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

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

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO TIMELY PAY FINAL WAGES**

21 (Labor Code §§ 201 – 203)

22 *Plaintiff and the Waiting Time Penalties Subclass against All Defendants*

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

25 83. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of  
26 Defendants who did not receive proper protections and benefits of the laws governing the timing  
27 and payment of wages.  
28

89. 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.

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

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

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

10          93. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff  
11 and the Wage Statement Penalties Subclass because Defendants failed to provide a wage  
12 statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the  
13 requirements of Labor Code § 226(a).

14          94. Due to violations discussed herein, Defendants' wage statements failed to  
15 accurately state total hours worked, the hours worked at each hourly rate, the accurate rates of  
16 pay, and further failed to accurately state gross wages earned, all deductions, and net wages  
17 earned.

18          95. Additionally, Defendants' wage statements frequently failed to state the accurate  
19 overtime rate of pay. For example, Defendants operated on a biweekly payroll and, thus, each  
20 wage statement covered two workweeks. Plaintiff and the Wage Statement Penalties Subclass  
21 frequently earned hourly pay plus additional nondiscretionary compensation during one or both  
22 workweeks in a pay period. On those occasions, Defendants were required to separately itemize  
23 the overtime rate paid for each distinct workweek since it is well established that overtime is  
24 owed and calculated on a workweek basis (not based on the pay period dictated by an employer).  
25 However, Defendants failed to do so, and instead provided a single line-item that supposedly  
26 accounted for the overtime true-up owed over the entire two workweek period ("OT ADJ").  
27 This is a direct violation of Labor Code § 226(a)(9).  
28

1           96.     Additionally, Defendants provided wage statements to Plaintiff and the Wage  
2 Statement Penalties Subclass that failed to accurately state the name and address of the legal  
3 entity that is the employer.

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

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

18           99.     As a result of Defendants' knowing and intentional failure to comply with Labor  
19 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in  
20 that each was prevented from knowing, understanding and disputing the wage payments paid to  
21 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an  
22 injury in that the failure to show all wages earned on the itemized wage statements resulted in  
23 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and  
24 withholdings owed by the employer, including, but not limited to, the failure to make all  
25 necessary contributions for unemployment benefits, social security benefits, proper payment of  
26 taxes and withholdings, and other mandated state and federal benefits.

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

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

10                               **SEVENTH CAUSE OF ACTION**

11                               **UNFAIR AND UNLAWFUL COMPETITION**

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

13                               *Plaintiff and the Represented Employees against All Defendants*

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

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

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

22           105. As alleged herein, Defendants engaged in conduct that violated California's wage  
23 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide  
24 mandated meal periods and rest breaks, \ and failure to timely pay final wages, all to decrease  
25 their costs and increase their profits.

26           106. At all times relevant herein, Defendants did not pay Plaintiff and the Represented  
27 Employees wages and monies and other financial obligations to which they were entitled.  
28

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

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

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

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

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

26           112. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,  
27 and does, seek such relief as may be necessary to disgorge the profits which Defendants have  
28 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the

1 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the  
2 Represented Employees are not obligated to establish individual knowledge of the unfair  
3 practices of Defendants in order to recover restitution.

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

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

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

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

23 116. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to  
24 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by  
25 PAGA through a representative action pursuant to the PAGA and the California Supreme Court  
26 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor  
27 does she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.  
28

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

8                           **EIGHTH CAUSE OF ACTION**

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

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

11                           *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

1           123. 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                           **NINTH CAUSE OF ACTION**

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

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

7                           *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

22          128. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the  
23 Aggrieved Employees due to the failure to include all earned and nondiscretionary compensation  
24 in the calculation for the regular rate of pay and overtime rate.

25          129. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees on  
26 an hourly basis but also paid additional earned nondiscretionary compensation and/or bonuses.  
27 However, during workweeks where the Aggrieved Employees worked overtime hours and  
28 earned additional nondiscretionary compensation and/or bonuses, Defendants failed to include

1 the bonuses in the calculations for the regular rate of pay and instead paid overtime at only 1.5  
2 times the base rate of pay – violating the well-established rule that overtime must always be paid  
3 at time and one-half the regular rate of pay.

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

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

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

#### 14 **TENTH CAUSE OF ACTION**

##### 15 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

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

17 *Plaintiff and the Aggrieved Employees against All Defendants*

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

20 134. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
21 who did not receive proper protections and benefits of the laws governing mandatory meal  
22 periods.

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

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

1 period may be waived by mutual consent of both the employer and the employee. Employers  
2 may not employ an employee for a work period more than 10 hours per day without providing  
3 the employee with a second meal period of not less than 30 minutes.

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

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

14 139. Furthermore, on the occasions that Defendants paid Plaintiff and the Aggrieved  
15 Employees a meal premium under Labor Code § 226.7 for a missed/denied meal period,  
16 Defendants paid this premium at the base rate of pay instead of at the "regular rate" which  
17 incorporates additional nondiscretionary compensation (such as shift differentials and bonuses).

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

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

1           142. 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                           **ELEVENTH CAUSE OF ACTION**

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

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

7                           *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

22          148. At all relevant times, Defendants also failed to provide Plaintiff and the  
23 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major  
24 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the  
25 Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks  
26 due to being overwhelmed by their hectic workload. Additionally, Plaintiff and the Aggrieved  
27 Employees were often not permitted to leave the premises for rest breaks, in violation of  
28 California law. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked

1 in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated  
2 rest break.

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

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

10 **TWELFTH CAUSE OF ACTION**

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

12 (Labor Code § 204)

13 *Plaintiff and the Aggrieved Employees against All Defendants*

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

16 152. Plaintiff and the Aggrieved Employees are and/or were "nonexempt" employees  
17 of Defendants who did not receive proper protections and benefits of the laws regarding the  
18 timing of payment of wages each period.

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

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

27 155. At all relevant times herein, Defendants did not provide Plaintiff and the  
28 Aggrieved Employees with all wages due and owing each period within the time required by

1 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved  
2 Employees with all wages due and owing each pay period, including, but not limited to,  
3 minimum, regular, and overtime wages, as well as meal and rest period premiums, within the  
4 time specified by Labor Code § 204.

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

8 **THIRTEENTH CAUSE OF ACTION**

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

10 (Labor Code §§ 201 – 203 and 256)

11 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

25 162. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved  
26 Employees with all wages due and owing upon separation of employment, including, but not  
27 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,  
28 within the time specified by Labor Code §§ 201 – 203.

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

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/or any other damages permitted under PAGA.

7                           **FOURTEENTH CAUSE OF ACTION**

8                                   **PAGA ASSESSMENT FOR**

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

10                                           (Labor Code § 226)

11                                           *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

23           168. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff  
24 and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff  
25 and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

26           169. Due to violations discussed herein, Defendants' wage statements failed to  
27 accurately state total hours worked, the hours worked at each hourly rate, the accurate rates of  
28

1 pay, and further failed to accurately state gross wages earned, all deductions, and net wages  
2 earned.

3 170. Additionally, Defendants' wage statements frequently failed to state the accurate  
4 overtime rate of pay. For example, Defendants operated on a biweekly payroll and, thus, each  
5 wage statement covered two workweeks. Plaintiff and the Aggrieved Employees frequently  
6 earned hourly pay plus additional nondiscretionary compensation during one or both workweeks  
7 in a pay period. On those occasions, Defendants were required to separately itemize the  
8 overtime rate paid for each distinct workweek since it is well established that overtime is owed  
9 and calculated on a workweek basis (not based on the pay period dictated by an employer).  
10 However, Defendants failed to do so, and instead provided a single line-item that supposedly  
11 accounted for the overtime true-up owed over the entire two workweek period ("OT ADJ").  
12 This is a direct violation of Labor Code § 226(a)(9).

13 171. Additionally, Defendants provided wage statements to Plaintiff and the Aggrieved  
14 Employees that failed to accurately state the name and address of the legal entity that is the  
15 employer.

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

20 173. As a result of the Defendants' violations of Labor Code §226(a)(9), Plaintiff seeks  
21 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,  
22 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.  
23 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section  
24 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

## 25 **VII. PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on behalf of herself, on a representative basis, and all others  
27 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as  
28 follows:

1. As to the Eighth through Fourteenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys' fees and costs as permitted under the PAGA;
3. That the First through Seventh Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Seventh Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198, 1199, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
11. For pre- and post-judgment interest; and
12. For such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial as to the First through Seventh Causes of Action pled herein.

Dated: April 21, 2021

LAUBY MANKIN & LAUBY, LLP

BY:



Brian J. Mankin, Esq.  
Peter J. Carlson, Esq.  
Attorneys for Plaintiff

**PROOF OF SERVICE**  
**(Pursuant to CCP §§ 1013(a)(1) and 2015.5)**

STATE OF CALIFORNIA     )  
                                          ) ss.  
COUNTY OF RIVERSIDE     )

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 4590 Allstate Drive, Riverside, California 92501.

On April 21, 2021, I caused to be served the foregoing document(s) described as follows:

**FIRST AMENDED COMPLAINT**

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address [tracie@lmlfirm.com](mailto:tracie@lmlfirm.com) to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California.

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 21, 2021, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
Tracie Chiarito, Declarant

**SERVICE LIST**

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