

**DAILY ALJIAN LLP**

Justin E. D. Daily (State Bar No. 209772)

*jd@dallp.com*

Reed Aljian (State Bar No. 211010)

*ra@dallp.com*

Simon Kwak (State Bar No. 297362)

*sk@dallp.com*

100 Bayview Circle, Suite 5500

Newport Beach, CA 92660

Telephone: 949.861.2524

Facsimile: 949.269.6364

**LAW OFFICE OF DANIEL J. HYUN**

Daniel J. Hyun (State Bar No. 309184)

*dh@danielhyunlaw.com*

1100 West Town and Country Road, Suite 1250

Orange, California 92868

Telephone: 949.596.4782

Facsimile: 949.528.2596

Attorneys for Plaintiff MARIA LOPEZ,

individually and on behalf of all others similarly situated

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF RIVERSIDE**

MARIA LOPEZ, an individual, on behalf of  
herself and others similarly situated,

Plaintiff,

vs.

THE HIGHEST CRAFT, LLC, a California  
limited liability company; COMMUNITY  
DEVELOPMENT LLC, a California limited  
liability company; TGMM, LLC, a  
California limited liability company;  
HYPER TECHNOLOGIES, INC., a  
Delaware corporation; JACOB TELO, an  
individual; NICK WOLIN, an individual;  
TOMMY TRAN, an individual; and DOES  
1 through 50, inclusive,

Defendants.

**CASE NO.: CVRI2100648**

Assigned for All Purposes to:  
Hon. Sunshine S. Sykes, Dept. 6

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT**

*[Amended as a matter of right pursuant to  
Labor Code § 2699.3(a)(2)(C)]*

1. Failure to Pay All Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Periods;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Waiting Time Penalties;
7. Failure to Reimburse Business Expenses;
8. Violation of the Unfair Competition Law; and
9. Violation of the Private Attorneys General Act of 2004

**JURY TRIAL DEMANDED**

Action Filed: February 9, 2021  
Trial Date: None Set

**FILED**  
Superior Court of California  
County of Riverside  
**5/13/2021**  
**D. Brown**  
Electronically Filed

1 Plaintiff MARIA LOPEZ (“Plaintiff”), individually, and on behalf of all others similarly  
2 situated, brings this First Amended Class and Representative Action Complaint (“FAC”) against  
3 Defendants THE HIGHEST CRAFT, LLC, a California limited liability company; COMMUNITY  
4 DEVELOPMENT LLC, a California limited liability company; TGMM, LLC, a California limited  
5 liability company; HYPER TECHNOLOGIES, INC., a Delaware Corporation; JACOB TELO, an  
6 individual; NICK WOLIN, an individual; TOMMY TRAN, an individual; and DOES 1 through 50,  
7 inclusive (collectively, “Defendants”), and alleges as follows:

## 8 INTRODUCTION

9 1. Plaintiff brings this putative class action against Defendants, on behalf of herself  
10 individually and a putative class of California persons who are and were employed by Defendants  
11 as non-exempt employees and/or were classified by Defendants as independent contractors  
12 throughout California during the Class Period (collectively the “Class” or “Class Members”). The  
13 term Class Period is defined as four years prior to the filing of this action to the date of class  
14 certification.

15 2. Plaintiff also brings this representative action pursuant to the Private Attorneys  
16 General Act of 2004 (“PAGA”), Labor Code sections 2698 *et seq.*, against Defendants, on behalf  
17 of herself individually and other aggrieved employees who are and were employed by Defendants  
18 as non-exempt employees and/or were classified by Defendants as independent contractors  
19 throughout California during the PAGA Period. The term PAGA Period is defined as one year prior  
20 to Plaintiff’s notice of labor code violations to the Labor and Workforce Development Agency  
21 (“LWDA”) and Defendants until judgment.

22 3. Plaintiff is informed and believes, and thereon alleges, that Defendants are involved  
23 in the sale of cannabis products in the State of California.

24 4. Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and  
25 hour violations under the California Labor Code, the Industrial Welfare Commission (“IWC”)   
26 Wage Orders, and California Business and Professions Code that have damaged Plaintiff and Class  
27 Members, and contribute to Defendants’ deliberate unfair competition.

28 5. Plaintiff is informed and believes, and thereon alleges, that Defendants have violated

1 and continue to violate state wage and hour laws by, among other things:

- 2 (a) willfully misclassifying employees as independent contractors;
- 3 (b) failing to pay all wages (including minimum, regular, overtime, and double time
- 4 wages);
- 5 (c) failing to provide lawful meal periods or compensation in lieu thereof;
- 6 (d) failing to authorize or permit rest breaks or provide compensation in lieu thereof;
- 7 (e) failing to provide accurate itemized wage statements;
- 8 (f) failing to pay all wages due upon separation of employment; and
- 9 (g) failing to reimburse business expenses.

10 6. Plaintiff seeks monetary relief against Defendants on behalf of herself and the  
11 putative class to recover, among other things, unpaid wages and premiums, liquidated damages,  
12 restitution, interest, attorneys' fees, costs, and penalties pursuant to Labor Code Sections 201, 202,  
13 203, 204, 206, 210, 226, 226.3, 226.7, 226.8, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194,  
14 1194.2, 1197, 1197.1, 1198, 2800, and 2802, and California Code of Civil Procedure Section  
15 1021.5.

#### 16 JURISDICTION AND VENUE

17 7. This is a class action pursuant to California Code of Civil Procedure Section 382  
18 and representative action pursuant to Labor Code sections 2698 *et. seq.* The monetary damages,  
19 restitution, penalties, and other amounts sought by Plaintiff exceeds the minimal jurisdictional  
20 limits of the Superior Court and will be established according to proof at trial.

21 8. This Court has jurisdiction over this action pursuant to the California Constitution,  
22 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes, except  
23 those given by statutes to other courts. The statutes under which this action is brought do not specify  
24 any other basis for jurisdiction. All claims alleged herein arise under California law for which  
25 Plaintiff seeks relief authorized by California law.

26 9. This Court has jurisdiction over all Defendants because, upon information and  
27 belief, they have sufficient minimum contacts in California, or otherwise intentionally avail  
28 themselves of the California market so as to render the exercise of jurisdiction over them by the

1 California courts consistent with traditional notions of fair play and substantial justice.

2 10. Venue is proper in this Court under Code of Civil Procedure Sections 395(a) and  
3 395.5 because, upon information and belief, Defendants reside, transact business, maintain offices,  
4 and/or have an agent or agents in Riverside county, and the acts and omissions alleged herein took  
5 place in Riverside county.

6 **PARTIES**

7 11. Plaintiff is a California citizen and resides in Riverside County, California. Plaintiff  
8 responded to Defendants' "Hyperwolf" job posting and was employed as a non-exempt hourly  
9 employee. Despite hiring Plaintiff as a non-exempt hourly employee, Defendants paid her as if she  
10 was an independent contractor during the Class Period. Specifically, Defendants would pay  
11 Plaintiff her gross wages, without any deductions or wage statements, and failed to issue her a W2  
12 or 1099. Plaintiff's employment with Defendants ended within one year of the filing of this action.  
13 Plaintiff's job duties included, but were not limited to, general dispatch duties such as  
14 communicating with Defendants' customers, delivery drivers, and employees; routing orders and  
15 overseeing deliveries; verifying customer information; and completing paperwork.

16 12. Plaintiff is informed and believes, and thereon alleges, that Defendant THE  
17 HIGHEST CRAFT, LLC ("THCL") is a manufacturer, distributor, and/or retailer of cannabis  
18 products. Plaintiff is informed and believes, and thereon alleges that THCL was and is a California  
19 limited liability company doing business in the State of California. Plaintiff is informed and  
20 believes, and thereon alleges, that THCL was and is doing business as "Hyperwolf," "Steep,"  
21 "Hype," "Grldrnd," and "Treemason." Hyperwolf is THCL's fictitious business name as registered  
22 with the Riverside County Assessor. THCL provided Plaintiff with an employee identification card  
23 which displayed: (1) THCL's cannabis license number registered with the California Bureau of  
24 Cannabis Control, (2) THCL's fictitious business name "Hyperwolf" which is registered with the  
25 Riverside County Assessor, (3) Plaintiff's photo, and (4) Plaintiff's name. THCL's Cannabis-  
26 Microbusiness License number is C12-0000103-LIC and is owned by Defendant TOMMY TRAN  
27 according to the California Bureau of Cannabis Control. During the Class Period, Plaintiff worked  
28 at THCL's worksites located in Riverside County.

1           13. Plaintiff is informed and believes, and thereon alleges, that Defendant  
2 COMMUNITY DEVELOPMENT LLC (“CDL”) is a California limited liability company doing  
3 business as Hyperwolf in the State of California. Hyperwolf is CDL’s fictitious business name as  
4 registered with the Riverside County Assessor. Per its registration with the California Secretary of  
5 State, CDL’s entity address is 18421 Collier Avenue, Unit B, Lake Elsinore, California 92530  
6 which is one of the worksites Plaintiff worked at during the Class Period. CDL is a Member  
7 Manager of THCL.

8           14. Plaintiff is informed and believes, and thereon alleges, that Defendant TGMM, LLC  
9 (“TL”) is a California limited liability company doing business in the State of California. Tommy  
10 Tran is the Member Manager, agent for service of process, and Chief Executive Officer of TL. TL  
11 is a Member Manager of THCL.

12           15. Plaintiff is informed and believes, and thereon alleges, that Defendant HYPER  
13 TECHNOLOGIES, INC. (“HTI”) is a Delaware corporation doing business in the State of  
14 California. HTI is the Member Manager of CDL.

15           16. Plaintiff is informed and believes, and thereon alleges that Defendant JACOB TELO  
16 (“Mr. Telo”), is an individual, and is or was a Member Manager of Defendant THCL.

17           17. Plaintiff is informed and believes, and thereon alleges that Defendant NICK  
18 WOLIN (“Mr. Wolin”), is an individual, and is or was the Managing Member of Defendant THCL.

19           18. Plaintiff is informed and believes, and thereon alleges that Defendant TOMMY  
20 TRAN (“Mr. Tran”), is an individual, and is the Member Manger of Defendant TL. Mr. Tran is  
21 listed as the “Business Owner” for THCL’s Cannabis-Microbusiness License number C12-  
22 0000103-LIC according to the California Bureau of Cannabis Control.

23           19. During the Class Period, Mr. Telo and Mr. Wolin were involved in the day-to-day  
24 operations of Hyperwolf, including hiring, firing, and disciplining employees, creating work  
25 schedules, delegating and providing assignments and policies, creating company rules and policies,  
26 working directly at worksites and overseeing operations, communicating with employees, and  
27 requiring employees to work off-the-clock without compensation for meetings and other company  
28 events such as company picture days, among other things. Consequently, Mr. Telo and Mr. Wolin

1 violated or caused to be violated the IWC Wage Order provisions regulating minimum wages or  
2 hours and days of work, as well as Labor Code Sections 203, 226, 226.7, 1194, and 2802. Thus,  
3 Mr. Telo and Mr. Wolin are personally liable for the Labor Code and IWC Wage Order violations  
4 pursuant to Labor Code Section 558.1.

5         20. Plaintiff is informed and believes that Mr. Tran represented to the public that he is  
6 an owner of THCL in publicly-filed records with various agencies of the State of California,  
7 including the California Bureau of Cannabis Control. As an owner of THCL and sole Member  
8 Manager of Defendant TGMM, Mr. Tran exercised substantial control over the wages, hours and/or  
9 working conditions of Plaintiff and the putative class, including, but not limited to, the management  
10 of Defendants' operations and finances, such as the payment of wages to the putative class,  
11 maintenance of government licenses and authorizations necessary for Defendants to operate its  
12 cannabis business and employ putative class members to carry out its business, and engage in  
13 corporate decision making to dictate corporate policy. Consequently, Mr. Tran violated or caused  
14 to be violated the IWC Wage Order provisions regulating minimum wages or hours and days of  
15 work, as well as Labor Code Sections 203, 226, 226.7, 1194, and 2802. Thus, Mr. Tran is  
16 personally liable for the Labor Code and IWC Wage Order violations pursuant to Labor Code  
17 Section 558.1.

18         21. Plaintiff is informed and believes that Defendants CDL, HTI, and TGMM are  
19 employers of the putative class and are Member Managers with ownership interests in Defendants'  
20 cannabis-related business, overseeing and managing Defendants' business operations, including,  
21 but not limited to, the creation and implementation of employee work rules, policies, and practices  
22 complained of herein. Defendants CDL, HTI, and TGMM exercised substantial control over the  
23 wages, hours and/or working conditions of Plaintiff and the putative class, including, but not limited  
24 to, the management of Defendants' operations and finances, such as payment of wages to the  
25 putative class, maintenance of government licenses and authorizations necessary for Defendants to  
26 operate its cannabis business and employ putative class members to carry out its business, and  
27 engage in corporate decision making to dictate corporate policy. Consequently, Defendants CDL,  
28 HTI, and TGMM paid or caused to be paid wages less than the minimum wage fixed by law, and

1 are liable for the Labor Code and IWC Wage Order violations pursuant to Labor Code Section  
2 1197.1.

3 22. Plaintiff is informed and believes that other persons, including, natural persons who  
4 are owners, directors, officers, agents, managing agents, or employees of other persons, are  
5 employers or acted on behalf of the putative class's employer who violated or caused to be violated  
6 the IWC Wage Order provisions regulating minimum wages or hours and days of work, as well as  
7 Labor Code Sections 203, 226, 226.7, 1194, and 2802. Thus, these persons, sued fictitiously as  
8 DOES 1 through 50, inclusive, are liable for the Labor Code and IWC Wage Order violations  
9 pursuant to Labor Code Sections 558.1 and 1197.1.

10 23. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter  
11 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as  
12 employers, whose employees were and are engaged throughout this county and the State of  
13 California.

14 24. Defendants DOES 1 through 50, are sued under fictitious names pursuant to Code  
15 of Civil Procedure Section 474 because Plaintiff does not know their true names or capacities.  
16 Plaintiff will seek leave of court to amend this FAC and serve such fictitiously named Defendants  
17 when their names and capacities are ascertained.

18 25. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 50 are  
19 or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all  
20 relevant times.

21 26. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted in  
22 all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,  
23 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant is legally  
24 attributable to the other Defendants.

25 27. Plaintiff is informed and believes, and thereon alleges, that each Defendant directly  
26 or indirectly, through agents or other persons or entities, employed or otherwise exercised control  
27 over the wages, hours, and working conditions of Plaintiff. Furthermore, each Defendant in all  
28 respects acted as the employer and/or joint employer of Plaintiff and the Class Members.

1           28.     Plaintiff is informed and believes, and thereon alleges, that each and all of the acts  
2 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1  
3 through 50, acting as the agent, alter ego, agent, servant, joint venturer, co-conspirator, and/or  
4 partner for the other, within a common enterprise and legal authority to act on the other's behalf.  
5 The acts of any and all Defendants were in accordance with, and represent, the official policy of  
6 Defendants.

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

11           30.     Plaintiff is informed and believes, and thereon alleges, that Defendants and DOES  
12 1 through 50, inclusive, are jointly and severally liable as joint employers, a single enterprise, alter  
13 ego of the other, or any other grounds for joint and several liability provided under law, for engaging  
14 in the following acts: commingled funds and other assets; engaged in the diversion of corporate  
15 funds and assets; treated the assets of the corporate entities as their own; used the same office or  
16 business location; employed the same employees and attorneys; undercapitalized the corporate  
17 entities; disregarded the legal formalities; failed to maintain arm's length relationships; used the  
18 corporate formality to procure labor, services, and merchandise for related persons or entities; and  
19 manipulated the assets and liabilities between each other so as to concentrate the assets in one and  
20 the liabilities in another; among others.

21           31.     Plaintiff is informed and believes, and thereon alleges, that each of said Defendants  
22 is in some manner intentionally, negligently, and/or otherwise responsible for the acts, omissions,  
23 occurrences, and transactions alleged herein.

24                                   **CLASS ALLEGATIONS**

25           32.     Plaintiff brings this class action pursuant to Code of Civil Procedure Section 382 on  
26 behalf of herself and all others similarly situated who were injured by Defendants' violations of the  
27 Labor Code, Business and Professions Code Sections 17200, *et seq.*, and IWC Wage Orders during  
28 the Class Period.

1 33. Plaintiff's proposed Class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly employed by Defendants as non-  
4 exempt employees and/or were classified by Defendants as independent contractors  
5 in the State of California within four years prior to the filing of this action to the date  
6 of class certification.

7 34. Plaintiff also seeks to certify the following Subclass:

8 Waiting Time Subclass

9 All Class Members who separated from their employment with Defendants at any  
10 time within three years prior to the filing of this action to the date of class  
11 certification ("Subclass" or "Waiting Time Subclass").

12 35. Members of the Class and Subclass described above will be collectively referred to  
13 as "Class Members."

14 36. Plaintiff reserves the right to modify or re-define the Class or Subclass, establish  
15 additional subclasses, or modify or re-define any class or subclass definition as appropriate based  
16 on investigation, discovery, and specific theories of liability.

17 37. There is a well-defined community of interest in this litigation and the proposed  
18 Class and Subclass are readily ascertainable.

19 38. **Commonality:** This action has been brought and may properly be maintained as a  
20 class action under the California Code of Civil Procedure Section 382 because there are common  
21 questions of law and fact as to the Class Members that predominate over any questions affecting  
22 only individual members including, but not limited to, the following:

- 23 (a) Whether Defendants paid Plaintiff and Class Members all wages (including  
24 minimum, regular, overtime, and double time wages) for all hours worked;
- 25 (b) Whether Defendants' rounding policy and practice favored Defendants by  
26 systematically undercompensating Plaintiff and Class Members;
- 27 (c) Whether Defendants paid Plaintiff and Class Members wages at the proper rates;
- 28 (d) Whether Defendants required Plaintiff and Class Members to work off-the-clock

without compensation;

(e) Whether Defendants provided Plaintiff and Class Members with compliant meal periods or paid compensation in lieu thereof;

(f) Whether Defendants authorized and permitted compliant rest breaks to Plaintiff and Class Members or paid compensation in lieu thereof;

(g) Whether Defendants failed to provide Plaintiff and Class Members with accurate itemized wage statements;

(h) Whether Defendants failed to timely pay the Plaintiff and Class Members all wages due immediately upon termination or within 72 hours of resignation;

(i) Whether Defendants failed to reimburse Plaintiff and Class Members for necessary business expenditures;

(j) Whether Defendants' conduct was willful or reckless; and

(k) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code Sections 17200, *et seq.*

39. There is a well-defined community of interest. Further, Plaintiff and Class Members have suffered common injuries as a result of Defendants' systemic employment policies and practices. Looking to Defendants' employment policies and practices, the Court can adjudicate the lawfulness of those policies and practices on a class-wide basis, according to proof, and issue an award to Plaintiff and Class Members accordingly. In addition, answers to common questions raised in this FAC will advance resolution of each individual Class Member's claims.

40. **Numerosity:** The Class Members are so numerous that joinder of all members is impractical. Although the members of the entire Class and Subclass are unknown to Plaintiff at this time, on information and belief, the class is estimated to be greater than 150 individuals.

41. **Ascertainability:** The identities of the Class Members are readily ascertainable by inspection of Defendants' employment and payroll records.

42. **Typicality:** The claims (or defenses, if any) of Plaintiff are typical of the claims of the Class Members because Defendants' failure to comply with the provisions of California's wage and hour laws entitled each Class Member to similar pay, benefits, and other relief. The injuries

1 sustained by Plaintiff are also typical of the injuries sustained by Class Members because they arise  
2 out of and are caused by Defendants' common course of conduct as alleged herein.

3 43. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of  
4 all Class Members because it is in Plaintiff's best interest to prosecute the claims alleged herein to  
5 obtain full compensation and penalties due to Plaintiff and the Class Members. Plaintiff's attorneys,  
6 as proposed class counsel, are competent and experienced in litigating large employment class  
7 actions and versed in the rules governing class action discovery, certification, and settlement.  
8 Plaintiff has incurred and, throughout the duration of this action, will continue to incur attorneys'  
9 fees and costs that have been and will be necessarily expended for the prosecution of this action for  
10 the substantial benefit of the Class Members.

11 44. **Superiority:** The nature of this action makes use of class action adjudication  
12 superior to other methods. A class action will achieve economies of time, effort, and expense as  
13 compared with separate lawsuits and will avoid inconsistent outcomes because the same issues can  
14 be adjudicated in the same manner for the entire Class and Subclass at the same time. If appropriate,  
15 this Court can, and is empowered to, fashion methods to efficiently manage this case as a class  
16 action.

17 45. **Public Policy Considerations:** Employers in the State of California violate  
18 employment and labor laws every day. Current employees are often afraid to assert their rights out  
19 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because  
20 they believe their former employers might damage their future endeavors through negative  
21 references and/or other means. Class actions provide class members who are not named in the FAC  
22 with a type of anonymity that allows for the vindication of their rights while affording them privacy  
23 protections.

#### 24 **GENERAL ALLEGATIONS**

25 46. At all relevant times mentioned herein, Defendants employed Plaintiff and other  
26 persons as non-exempt employees and/or classified them as independent contractors to work at  
27 Defendants' worksites within California. Defendants employed Plaintiff in a non-exempt hourly  
28 position and treated her as an independent contractor in the state of California and continues to

1 employ non-exempt employees and/or classify them as independent contractors within California.  
2 To the extent Defendants classified and treated Plaintiff and Class Members as independent  
3 contractors, such a classification is improper, willful, and in violation of Labor Code Section 226.8.  
4 Plaintiff and Class Members should have been classified as non-exempt employees since (A) they  
5 were not free from the control and direction of Defendants in connection with the performance of  
6 the work, (B) they did not perform work that is outside the usual course of Defendants' business,  
7 and (C) they were not customarily engaged in an independently established trade, occupation, or  
8 business of the same nature as the work performed. For example:

- 9 • Defendants directly and indirectly exercised control over the wages, hours, and  
10 working conditions of Plaintiff and Class Members since they were provided work  
11 schedules and assignments; performed work pursuant to Defendants' instructions,  
12 policies, and procedures; were subject to discipline; were required to download  
13 certain phone applications to communicate with Defendants' employees and  
14 customers and fulfill orders; and were otherwise controlled by Defendants and/or  
15 subject to their direct or indirect control;
- 16 • Defendants retained the right to terminate Plaintiff and Class Members' working  
17 relationship at their discretion;
- 18 • Plaintiff and Class Members were engaged in the sale of cannabis products, an  
19 integral and entirely essential aspect of Defendants' regular business;
- 20 • Plaintiff and Class Members commonly worked for Defendants for lengthy periods  
21 of time;
- 22 • Plaintiff and Class Members were not customarily engaged in an independently  
23 established trade, occupation, or business of the same nature as the work performed  
24 by Defendants;
- 25 • Defendants paid Plaintiff and Class Members an hourly wage;
- 26 • Plaintiff and Class Members' job duties of essentially delivering products did not  
27 require special skills; and
- 28 • The clients are and/or were Defendants' clients, and not those of Plaintiff and Class

Members.

47. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices, and the requirements of California law.

48. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known they had a duty to compensate Plaintiff and Class Members, and Defendants had the financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so all in order to increase Defendants' profits.

49. At no time during the Class Period did Plaintiff or any Class Member qualify or meet the requirements to be exempt from all lawful overtime wages, and compliant meal and rest periods, among other things.

50. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive at least minimum wages and wages at their regular rate of pay, and that they were not receiving minimum and regular wages for all work that was required to be performed. In violation of the Labor Code, Defendants failed to pay the minimum and regular rate of pay to Plaintiff and other Class Members for all hours worked. Specifically, Defendants paid Plaintiff and other Class Members for their scheduled work hours, even though the actual hours worked exceeded the scheduled work hours. As such, Defendants rounded Plaintiff's and other Class Members' time worked, and failed to pay them for work performed outside of their scheduled hours (e.g., work performed before and after their scheduled shifts). Defendants' rounding practice systematically undercompensated the Class Members and favored the Defendants rather than the employee. Defendants also required and/or pressured Plaintiff and Class Members to attend work events, such as company picture days and meetings, without pay. Moreover, Defendants required Plaintiff and Class Members to use their personal cell phones to download phone applications to fulfill and manage orders, and communicate with Defendants' customers, other employees, and management, and otherwise perform their job duties. As such, Plaintiff and Class Members received work related communications from

1 customers, co-workers, and/or Defendants while they were off-the-clock (e.g., at home) without  
2 compensation. Defendants also auto-deducted and rounded meal periods when meal periods were  
3 missed or short.

4 51. During the Class Period, Plaintiff and Class Members regularly worked in excess of  
5 eight (8), 10 and/or 12 hours per workday, and/or 40 hours per workweek, and/or eight (8) hours  
6 on the seventh consecutive day of work. In violation of the Labor Code, Defendants failed to pay  
7 the proper overtime and double time rate of pay due to the same unlawful conduct described above.  
8 In addition, Defendants failed to pay the proper overtime rate of pay for hours worked in excess of  
9 eight (8) per day and/or 40 per workweek. For example, Defendants' records show that Plaintiff  
10 worked in excess of eight (8) hours per day, but Defendants paid her overtime hours at her regular  
11 rate of pay. Further, despite working over 12 hours per workday and/or over eight (8) hours on the  
12 seventh consecutive day of work, Defendants failed to pay Plaintiff and other Class Members  
13 double time compensation.

14 52. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
15 should have known that Plaintiff and Class Members were entitled to receive a timely, off-duty,  
16 uninterrupted 30-minute meal period for every five hours of work, or payment of one additional  
17 hour of pay at their regular rate of pay when they did not receive a compliant meal period. In  
18 violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive  
19 compliant meal periods due to Defendants' workload, understaffing, and unlawful policies.  
20 Specifically, Plaintiff and Class Members regularly had their meal periods late, interrupted, short,  
21 and/or missed altogether. For example, Plaintiff and other Class Members' meal periods were short  
22 and/or interrupted with customer orders and/or were late since they had to complete their duties  
23 before taking a meal period (often well past the fifth hour of work). Defendants also failed to adopt  
24 and implement a policy authorizing a second 30-minute meal period when Plaintiff and other Class  
25 Members worked in excess of 10 hours per workday. Defendants also restricted meal periods to the  
26 worksite. Despite these meal period violations, Defendants auto-deducted and rounded meal  
27 periods even when meal periods were missed or less than 30 minutes. In addition, Defendants failed  
28 to provide Plaintiff and Class Members with one additional hour of pay at their regular rate of pay

1 for each workday that a proper meal period was not provided during the Class Period.

2 53. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
3 should have known that Plaintiff and Class Members were entitled to receive a 10-minute, off-duty,  
4 uninterrupted rest period for every four (4) hours worked, or major fraction thereof, or payment of  
5 one additional hour of pay at their regular rate of pay when they were not permitted to take a  
6 compliant rest period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class  
7 Members were not permitted to take compliant rest breaks due to Defendants' understaffing, busy  
8 workload, and unlawful policies and practices as explained above. Specifically, Defendants failed  
9 to provide uninterrupted, 10-minute rest breaks due to the same understaffing, policies, and busy  
10 workload explained above. As such, Plaintiff and Class Members regularly had their rest breaks  
11 interrupted, missed, short, and/or on-duty. In addition, Defendants also failed to adopt and  
12 implement a policy authorizing a third 10-minute rest period when Plaintiff and other Class  
13 Members worked in excess of 10 hours per workday. Further, Defendants failed to compensate  
14 Plaintiff and other Class Members with an additional hour of pay at their regular rate for every day  
15 in which they suffered a rest period violation.

16 54. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
17 should have known that Plaintiff and Class Members were entitled to reimbursement for their  
18 necessary work-related business expenses. In violation of the Labor Code and IWC Wage Orders,  
19 Defendants failed to reimburse necessary business expenditures. Specifically, Plaintiff and other  
20 Class Members were required to download multiple phone applications and/or other programs on  
21 their personal phones to communicate with Defendants, Defendants' customers, and Defendants'  
22 employees without reimbursement. As such, Defendants required Plaintiff and Class Members to  
23 be responsible for purchasing and supplying all other necessary items such as a smartphone and  
24 related monthly data plan to communicate with Defendants and their customers via phone  
25 applications, emails, text messages, and internet without reimbursement.

26 55. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
27 should have known that Plaintiff and Waiting Time Subclass Members who separated from their  
28 employment with Defendants during the statutory period were entitled to timely payment of all

1 wages due. In violation of the Labor Code, Plaintiff and Waiting Time Class Members did not  
2 receive payment of all wages owed upon separation within the permissible time period due to, *inter*  
3 *alia*, Defendants' failure to pay all wages, meal and rest period premiums, and reimburse expenses  
4 to Plaintiff and Class Members.

5 56. Plaintiff is informed and believes, and thereon alleges that Defendants knew or  
6 should have known that Plaintiff and Class Members were entitled to receive complete and accurate  
7 wage statements. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class  
8 Members were not furnished with complete and accurate wage statements that show all of the  
9 information required by Labor Code Section 226, including, but not limited to, all deductions, the  
10 employee's last four digits of his or her social security number or employee identification number,  
11 the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during  
12 the pay period, the corresponding number of hours worked at each hourly rate, and the entity  
13 name(s), and the name and address of the legal entity that is the employer. For example, Defendants  
14 failed to issue Plaintiff wage statements and willfully treated Plaintiff and other Class Members as  
15 independent contractors by paying them gross wages without any deductions and without any  
16 employer-side payroll tax contributions, among other things.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY ALL WAGES**

19 **(AGAINST ALL DEFENDANTS)**

20 57. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
21 though fully set forth herein.

22 58. At all times herein relevant, Defendants had a duty to comply with Labor Code  
23 Sections 204, 206, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all  
24 applicable local minimum wage ordinances in effect throughout California.

25 59. Labor Code Section 204 and the IWC Wage Orders require timely payment of all  
26 wages owed on regularly scheduled paydays at least twice during each calendar month, on days  
27 designated in advance by the employer as the regular paydays. All wages in earned in excess of the  
28 normal work period must be paid no later than the payday for the next regular payroll period.

1           60. Labor Code Section 206 provides that in case of a dispute over wages, the employer  
2 shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving  
3 to the employee all remedies he/she is otherwise entitled to as to any balance claimed.

4           61. The IWC Wage Orders define “hours worked” as “the time during which an  
5 employee is subject to the control of an employer and includes all time the employee is suffered or  
6 permitted to work, whether or not required to do so.”

7           62. Labor Code Section 1182.12 sets forth the minimum hourly wage that must be paid  
8 to all employees in California for all hours worked. Local minimum wage ordinances, may provide  
9 for higher minimum wage rates that must be paid to employees for all hours worked in those locales  
10 where each local ordinance is in effect. Labor Code Section 1197 affirms that it is unlawful to pay  
11 less than the state or local minimum wage, whichever is higher, for any hour of work.

12           63. Labor Code Section 1194 requires that employers pay employees at least the legal  
13 minimum wage rate for all hours worked, notwithstanding any agreement to work for a lesser wage.  
14 Labor Code Section 1194 further authorizes any employee receiving less than the legal minimum  
15 wage applicable to the employee to recover in a civil action the unpaid balance of the full amount  
16 of wages, along with interest thereon, reasonable attorneys’ fees and costs of suit.

17           64. Labor Code Section 1194.2 authorizes the recovery of liquidated damages in an  
18 amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

19           65. Labor Code Section 1198 prohibits employers from employing for longer hours or  
20 less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise  
21 set by the Labor Commissioner.

22           66. During the relevant time period, Defendants failed to pay Plaintiff and Class  
23 Members all wages due, including minimum and regular wages due to Defendants’ policy and  
24 practice of unfairly rounding time worked, requiring off-the-clock work without compensation, and  
25 failing to pay the proper rates of pay.

26           67. Labor Code section 1197.1 provides that any “employer or other person acting either  
27 individually or as an officer, agent, or employee of another person, who pays or causes to be paid  
28 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an

1 order of the commission, shall be subject to . . . restitution of wages [and] liquidated damages  
2 payable to the employee” in an amount sufficient for the employee to recover underpaid wages and  
3 liquidated damages pursuant to Section 1194.2 of the Labor Code.

4 68. Labor Code section 558.1 provides that any “employer or other person acting on  
5 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum  
6 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,  
7 or causes to be violated, Sections . . . 1194 [of the Labor Code] . . ., may be held liable as the  
8 employer for such violation.”

9 69. In violation of California law, Defendants have knowingly and willfully refused to  
10 perform their obligations and compensate Plaintiff and Class Members for all wages earned as  
11 alleged above.

12 70. Defendants’ failure to pay Plaintiff and Class Members all earned minimum and  
13 regular wages in accordance with Labor Code Sections 204, 206, 1182.12, 1194, 1194.2, 1197,  
14 1198, the applicable IWC Wage Orders, and all applicable local minimum wage ordinances in  
15 effect throughout California, Plaintiff and Class Members are entitled to recover the full amount of  
16 unpaid wages, liquidated damages, prejudgment interest, and statutory penalties, along with  
17 attorneys’ fees and costs in amounts that will be established at trial.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME WAGES**

20 **(AGAINST ALL DEFENDANTS)**

21 71. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
22 though fully set forth herein.

23 72. At all relevant times, Defendants had a duty to comply with Labor Code Sections  
24 204, 206, 510, 1194, and 1198 and the applicable IWC Wage Orders.

25 73. Labor Code Section 204 and the IWC Wage Orders require timely payment of all  
26 wages owed, including overtime, on regularly scheduled paydays at least twice during each  
27 calendar month, on days designated in advance by the employer as the regular paydays. All wages  
28 in earned in excess of the normal work period must be paid no later than the payday for the next

1 regular payroll period.

2 74. Labor Code Section 206 provides that in case of a dispute over wages, the employer  
3 shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving  
4 to the employee all remedies he/she is otherwise entitled to as to any balance claimed.

5 75. Labor Code Section 510 and the IWC Wage Orders require that employers pay  
6 employees for all overtime hours at a rate of one and one-half times the employee's regular rate of  
7 pay for hours worked in excess of eight hours in one workday, 40 hours in one workweek, and after  
8 the first eight hours on the seventh consecutive workday in one work week. Labor Code  
9 Section 510 and the IWC Wage Orders further require that employers pay employees double their  
10 regular rate of pay for hours work in excess of 12 hours in a workday and after eight hours on the  
11 seventh consecutive workday in one workweek. Labor Code Section 510 requires payment of  
12 overtime wages at one and one half times the "regular rate of pay," which includes all forms of  
13 renumeration earned by the employee.

14 76. Labor Code Section 1194 requires that employers pay employees at least the legal  
15 overtime rate for all overtime hours worked, notwithstanding any agreement to work for a lesser  
16 wage. Labor Code Section 1194 further authorizes any employee receiving less than the legal  
17 overtime compensation applicable to the employee to recover in a civil action the unpaid balance  
18 of the full amount of overtime compensation, along with interest thereon, reasonable attorneys'  
19 fees and costs of suit.

20 77. Labor Code Section 1198 prohibits employers from employing for longer hours or  
21 less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise  
22 set by the Labor Commissioner.

23 78. During the relevant time period, Defendants failed to pay Plaintiff and Class  
24 Members all earned overtime and double time wages, due to Defendants' policy and practice of  
25 unfairly rounding time worked, requiring off-the-clock work without compensation, and failing to  
26 pay the proper rates of pay.

27 79. Labor Code section 1197.1 provides that any "employer or other person acting either  
28 individually or as an officer, agent, or employee of another person, who pays or causes to be paid

1 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an  
2 order of the commission, shall be subject to . . . restitution of wages [and] liquidated damages  
3 payable to the employee” in an amount sufficient for the employee to recover underpaid wages.

4 80. Labor Code section 558.1 provides that any “employer or other person acting on  
5 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum  
6 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,  
7 or causes to be violated, Sections . . . 1194 [of the Labor Code] . . ., may be held liable as the  
8 employer for such violation.”

9 81. In violation of state law, Defendants have knowingly and willfully refused to  
10 perform their obligations and compensate Plaintiff and Class Members for all overtime and double  
11 time wages earned as alleged above.

12 82. Defendants’ failure to pay overtime compensation due to Plaintiff and Class  
13 Members in accordance with Labor Code Sections 204, 206, 510, 1194 and 1198 and the IWC  
14 Wage Orders, Plaintiff and Class Members are entitled to recover the full amount of unpaid  
15 overtime and double time compensation, prejudgment interest, statutory penalties, attorneys’ fees,  
16 and costs in amounts that will be established at trial.

17 **THIRD CAUSE OF ACTION**

18 **MEAL PERIOD VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

20 83. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
21 though fully set forth herein.

22 84. At all relevant times, Defendants had a duty to comply with Labor Code Sections  
23 226.7 and 512, and the applicable IWC Wage Orders.

24 85. Labor Code Section 512 and the IWC Wage Orders prohibit an employer from  
25 employing any person for a work period of more than 5 hours per day without providing the  
26 employee with a meal period of not less than 30 minutes (commencing before the employee’s fifth  
27 hour of work), except that if the total work period per day is no more than 6 hours, the meal period  
28 may be waived by mutual consent of the employer and employee. A second meal period of not less

1 than 30 minutes is required if an employee works more than 10 hours per day and must begin before  
2 the employee's tenth hour of work, except if the total hours worked is no more than 12 hours, the  
3 second meal period may be waived by mutual consent of the employer and employee, but only if  
4 the first meal period was not waived. An employer must relieve an employee of all duties during  
5 meal periods.

6 86. The applicable IWC Wage Orders state that "[u]nless the employee is relieved of all  
7 duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period  
8 and counted as time worked."

9 87. Labor Code Section 226.7(b) and the IWC Wage Orders prohibit an employer from  
10 requiring any employee to work during a meal period mandated by any California statute,  
11 regulation, standard or order. If an employer fails to provide an employee with a meal period in  
12 accordance with state law, Labor Code Section 226.7(c) and the IWC Wage Orders require that the  
13 employer pay the employee one additional hour of pay at the employee's regular rate of  
14 compensation for each workday that the meal period is noncompliant.

15 88. During the relevant time period, Plaintiff and Class Members did not receive  
16 compliant meal periods for working more than five (5) and/or 10 hours per day because their meal  
17 periods were late, interrupted, short, missed and/or restricted to the worksite.

18 89. During the relevant time period, Defendants failed to pay Plaintiff and Class  
19 Members meal period premiums for noncompliant meal periods pursuant to Labor Code Section  
20 226.7(b) and the applicable IWC Wage Order.

21 90. Labor Code section 558.1 provides that any "employer or other person acting on  
22 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum  
23 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,  
24 or causes to be violated, Sections . . . 226.7 [of the Labor Code] . . ., may be held liable as the  
25 employer for such violation."

26 91. As a result of Defendants' failure to provide compliant meal periods and pay meal  
27 period premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and  
28 Labor Code Sections 226.7 and 512, Plaintiff and Class Members suffered and continue to suffer a

1 loss of wages and compensation.

2 92. Because Plaintiff and Class Members were and/or are entitled to such meal periods  
3 or “premium pay” in lieu thereof, they are entitled to such payment per shift in an amount according  
4 to proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek  
5 pre- and post-judgment interest as provided by law at 10% per annum, in an amount according to  
6 proof.

7 93. Also, pursuant to Code of Civil Procedure Section 1021.5, Plaintiff will seek  
8 attorneys’ fees and costs from Defendants in an amount subject to proof and approved by the Court.

9 **FOURTH CAUSE OF ACTION**

10 **REST PERIOD VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

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

14 95. At all relevant times, Defendants had a duty to comply with Labor Code Section  
15 226.7 and the applicable IWC Wage Orders.

16 96. The IWC Wage Orders require employers to authorize and permit all employees to  
17 take 10-minute duty-free rest periods for each four hours worked, or major fraction thereof.

18 97. If an employer fails to provide an employee with a rest period in accordance with  
19 California law, Labor Code Section 226.7(c) and the IWC Wage Orders require that the employer  
20 pay the employee one additional hour of pay at the employee’s regular rate of compensation for  
21 each workday that the rest period is noncompliant.

22 98. During the relevant time period, Defendants failed to provide compliant rest breaks.  
23 Specifically, Plaintiff and Class Members missed their rest breaks or had them interrupted,  
24 shortened, and/or restricted to the worksite due to Defendants’ policy and practice of understaffing  
25 despite a heavy workload. In addition, Defendants failed to provide third rest breaks when Plaintiff  
26 and Class Members worked over 10 hours in a day and failed to implement and maintain a lawful  
27 rest period policy. Consequently, Plaintiff and Class Members did not receive a 10-minute rest  
28 period for every four (4) hours worked or major fraction thereof.

100. Labor Code section 558.1 provides that any “employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections . . . 226.7 [of the Labor Code] . . . , may be held liable as the employer for such violation.”

101. As a result of Defendants' failure to provide compliant rest periods and pay rest period premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor Code Sections 226.7 and 516, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

102. Because Plaintiff and Class Members were and/or are entitled to such rest periods or “premium pay” in lieu thereof, they are entitled to such payment per shift in an amount according to proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

103. Also, pursuant to Code of Civil Procedure Section 1021.5, Plaintiff will seek attorneys' fees and costs from Defendants in an amount subject to proof and approved by the Court.

## FIFTH CAUSE OF ACTION

## FIFTH CAUSE OF ACTION

## FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

**(AGAINST ALL DEFENDANTS)**

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

105. At all relevant times, Defendants had a duty to comply with Labor Code Section 226.

106. Labor Code Section 226(a) requires that, semimonthly or at the time of each payment of wages, employers must furnish each employee with an accurate itemized wage

1 statement in writing that accurately shows (1) gross wages earned, (2) total number of hours  
2 worked, (3) the number of any piece-rate units earned and all applicable piece rates, (4) all  
3 deductions made from wages, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the  
4 name and last four digits or employment identification number of the employee, (8) the name and  
5 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect and the  
6 corresponding number of hours worked at each hourly rate.

7 107. Labor Code Section 226(e)(1) authorizes an employee suffering injury as a result of  
8 a knowing and intentional failure by an employer to provide an accurate itemized wage statement  
9 to recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each  
10 violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee,  
11 in addition to an award of costs and attorneys' fees.

12 108. During the relevant time period, Defendants have knowingly and intentionally failed  
13 to comply with Labor Code Section 226(a). Specifically, Defendants failed to provide Plaintiff and  
14 Class Members with any wage statements let alone itemized wage statements that accurately  
15 reported, among other things, all deductions, the employee's last four digits of his or her social  
16 security number or employee identification number, the gross and net wages earned, the total hours  
17 worked, all applicable hourly rates in effect during the pay period, the corresponding number of  
18 hours worked at each hourly rate, and the name and address of the legal entity that is the employer.

19 109. As a result of Defendants' violation of California Labor Code Section 226(a),  
20 Plaintiff and Class Members have suffered injury and damage to their statutorily protected rights.  
21 Specifically, Plaintiff and Class Members have been injured by Defendants' intentional violation  
22 of California Labor Code Section 226(a) because they were denied both their legal right to receive,  
23 and their protected interest in receiving, accurate itemized wage statements under California Labor  
24 Code Section 226(a). Plaintiff has had to file this lawsuit in order to determine the extent of the  
25 underpayment of wages and the identity of her employers, thereby causing Plaintiff to incur  
26 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these costs  
27 had Defendants provided the accurate wages earned. This has also delayed Plaintiff's ability to  
28 demand and recover the underpayment of wages from Defendants.

110. Labor Code section 558.1 provides that any “employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections . . . 226 [of the Labor Code] . . . , may be held liable as the employer for such violation.”

111. Defendants’ violations of California Labor Code Section 226(a) prevented Plaintiff and Class Members from knowing, understanding and disputing the wages paid to them, and resulted in an unjustified economic enrichment to Defendants. As a result of Defendants’ knowing and intentional failure to comply with California Labor Code Section 226(a), Plaintiff and Class Members have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

112. Plaintiff and Class Members are also entitled to injunctive relief under California Labor Code Section 226(h), compelling Defendants to comply with California Labor Code Section 226, and seek the recovery of attorneys’ fees and costs incurred in obtaining this injunctive relief.

### **SIXTH CAUSE OF ACTION**

#### **WAITING TIME PENALTIES**

#### **(AGAINST ALL DEFENDANTS)**

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

114. At all relevant times, Defendants had a duty to comply with Labor Code Sections 201, 202, and 203. Defendants failed to comply with these final paycheck requirements with respect to Plaintiff and Waiting Time Subclass Members.

115. Labor Code Section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

116. Labor Code Section 202 requires that if “an employee not having a written contract for a definite period” quits, the employee’s wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

117. Labor Code Section 203 provides that if an employer willfully fails to pay, without abatement or reduction, any wages of an employee who is discharged or quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced, but that the wages shall not continue for more than 30 days per employee.

118. During the relevant time period, Defendants willfully failed to pay Waiting Time Subclass Members all their earned wages upon termination including, but not limited to, minimum, regular, overtime, and double time compensation, premium compensation, and reimbursements either at the time of discharge or within 72 hours of leaving Defendants' employ.

119. Labor Code section 1197.1 provides that any "employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to . . . restitution of wages [and] liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203" of the Labor Code.

120. Labor Code section 558.1 provides that any "employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections . . . 203 [of the Labor Code] . . . , may be held liable as the employer for such violation."

121. As a result of Defendants' failure to timely pay all wages owed to Plaintiff and Waiting Time Subclass Members in accordance with Labor Code Sections 201, 202 and 203, Plaintiff and Waiting Time Subclass Members are entitled to recover waiting time penalties, prejudgment interest, attorneys' fees, and costs in amounts that will be established at trial.

**SEVENTH CAUSE OF ACTION**

**FAILURE TO REIMBURSE BUSINESS EXPENSES**

**(AGAINST ALL DEFENDANTS)**

122. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as

1 though fully set forth herein.

2 123. At all relevant times, Defendants had a duty to comply with Labor Code  
3 Sections 2800 and 2802. Defendants failed to comply with these indemnification and  
4 reimbursement requirements with respect to Plaintiff and Class Members.

5 124. Labor Code Section 2800 requires employers to indemnify employees for losses  
6 caused by the employer's want of ordinary care. To the extent Defendants claim that Plaintiff and  
7 Class Members failed to request, demand, notify or otherwise seek reimbursement for their  
8 expenses and losses, Defendants were obligated to nevertheless indemnify Plaintiff and Class  
9 Members due to their own negligence.

10 125. Labor Code Section 2802(a) requires that employers indemnify and reimburse  
11 employees for all business expenses, which are defined as all necessary expenditures or losses  
12 incurred by the employee in direct consequence of the discharge of the employee's duties or  
13 otherwise incurred based on the employee's obedience to the employer's directions. Labor Code  
14 Section 2802(b) authorizes employees to recover in a court action interest which shall accrue from  
15 the date on which the employee incurred the necessary expenditure or loss. Labor Code  
16 Section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor  
17 Code Section 2802, to also recover attorneys' fees and costs.

18 126. During the relevant time period, Defendants required Plaintiff and Class Members  
19 to download and maintain phone applications on their personal cell phones which they purchased  
20 and maintained with monthly phone, data, and device plans. Plaintiff and Class Members were  
21 required to download and maintain various phone, messaging, and/or other applications to perform  
22 their job duties without reimbursement such as communicating with Defendants' customers,  
23 employees, and management, completing paperwork, verifying information, and routing orders,  
24 among other things.

25 127. Labor Code section 558.1 provides that any "employer or other person acting on  
26 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum  
27 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,  
28 or causes to be violated, Sections . . . 2802 [of the Labor Code] . . ., may be held liable as the

1 employer for such violation.”

2 128. As a result of Defendants’ failure to indemnify and reimburse Plaintiff and Class  
3 Members for all business and work-related costs, expenditures, losses and expenses in accordance  
4 with Labor Code Sections 2800 and 2802, Plaintiff and Class Members are entitled to recover the  
5 full unreimbursed balance of reimbursements, expenditures and losses, prejudgment interest, and  
6 statutory penalties, along with attorneys’ fees and costs in amounts that will be established at trial.

7 **EIGHTH CAUSE OF ACTION**

8 **UNFAIR BUSINESS PRACTICES**

9 **(AGAINST ALL DEFENDANTS)**

10 129. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
11 though fully set forth herein.

12 130. Defendants’ conduct, as alleged herein, has been and continues to be unfair,  
13 unlawful and harmful to Plaintiff and Class Members. Plaintiff seeks to enforce important rights  
14 affecting the public interest within the meaning of Code of Civil Procedure Section 1021.5.

15 131. Defendants’ activities, as alleged herein, violate California law and constitute  
16 unlawful business acts or practices in violation of California Business and Professions Code  
17 Sections 17200, *et seq.*

18 132. A violation of Business and Professions Code Sections 17200, *et seq.* may be  
19 predicated on the violation of any state or federal law.

20 133. Defendants’ policies and practices have violated state law in at least the following  
21 respects:

- 22 (a) Failing to pay all minimum and regular wages due to Plaintiff and Class Members  
23 in violation of Labor Code Sections 204, 206, 1182.12, 1194, 1194.2, 1197 and  
24 1198;
- 25 (b) Failing to pay all overtime and double time wages due to Plaintiff and Class  
26 Members in violation of Labor Code Sections 510, 1194 and 1198;
- 27 (c) Failing to provide meal periods without paying Plaintiff and Class Members  
28 premium wages for every day in which a meal period was not provided in violation

of Labor Code Sections 226.7 and 512;

(d) Failing to authorize or permit rest breaks without paying Plaintiff and Class Members premium wages for every day in which a rest break was not authorized or permitted in violation of Labor Code Section 226.7;

(e) Failing to provide Plaintiff and Class Members with accurate itemized wage statements in violation of Labor Code Section 226;

(f) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass Members upon separation of employment in violation of Labor Code Sections 201, 202 and 203; and

(g) Failing to reimburse Plaintiff and Class Members all necessary business expenses in violation of Labor Code Sections 2800 and 2802.

134. Defendants intentionally avoided paying Plaintiff 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. Indeed, Defendants failed to pay employers-side payroll taxes for Plaintiff and Class Members, thereby shortchanging the revenues due to the State of California and/or the federal government, and placed that burden on their employees.

135. Pursuant to Business and Professions Code Sections 17202, 17203, and 17208, Plaintiff 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 Section 1021.5 and other applicable laws; and an award of costs.

136. Plaintiff and Class Members are entitled to an injunction, restitution, and other equitable relief against such unlawful practices to return all funds over which Plaintiff and Class Members have an ownership interest and to prevent future damage pursuant to Business and Professions Code Sections 17200 *et seq.*

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

#### **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

**(AGAINST ALL DEFENDANTS)**

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

138. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate or after 65 days have passed without notice from the LWDA.

139. Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This written notice was provided via certified mail to Defendants and to the LWDA by electronically filing the notice via the Department of Industrial Relations' website. More than 65 days has passed since Plaintiff submitted her original PAGA notice to the LWDA without notice from the LWDA. Accordingly, Plaintiff may amend her Complaint to add a PAGA cause of action.

140. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the 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 aggrieved employee on behalf of herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

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

142. Pursuant to Labor Code Sections 2699.3 and 2699.5, Plaintiff may seek civil penalties for any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,

205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.

143. Further, Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

144. Labor Code section 558.1 provides that any “employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802 [of the Labor Code], may be held liable as the employer for such violation.”

145. Labor Code section 1197.1 also provides “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be

1 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by  
2 an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial  
3 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee  
4 for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for  
5 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each  
6 pay period for which the employee is underpaid regardless of whether the initial violation is  
7 intentionally committed.

8 146. Labor Code Section 226.3 provides: “[a]ny employer who violates subdivision (a)  
9 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)  
10 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for  
11 each violation in a subsequent citation, for which the employer fails to provide the employee a  
12 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.  
13 The civil penalties provided for in this section are in addition to any other penalty provided by law.”

14 147. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to  
15 maintain accurate and complete payroll records showing the hours worked daily by and the wages  
16 paid to employees.

17 148. Defendants’ conduct violates numerous Labor Code sections, including, but not  
18 limited to, the following:

19 (a) Violation of Labor Code sections 201-204, 206, 210, 226.8, 510, 558, 558.1, 1194,  
20 1197, 1197.1, and 1198 for failure to timely pay all earned wages (including minimum, regular,  
21 overtime, and double time wages) owed to Plaintiff and other aggrieved employees during  
22 employment and upon separation of employment as herein alleged;

23 (b) Violation of Labor Code sections 226.7 and 512 for failure to provide meal periods  
24 to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal  
25 periods as herein alleged;

26 (c) Violation of Labor Code sections 226.7 for failure to permit rest breaks to Plaintiff  
27 and other aggrieved employees and failure to pay premium wages for missed rest periods as herein  
28 alleged;

1 (d) Violation of Labor Code sections 226 and 226.3 for failure to provide accurate  
2 itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;

3 (e) Violation of Labor Code sections 1174 and 1174.5 for failure to maintain accurate  
4 records regarding the employment of Plaintiff and other aggrieved employees as herein alleged;  
5 and

6 (f) Violation of Labor Code sections 2800 and 2802 for failure to reimburse business  
7 expenses.

8 149. As set forth above, Defendants have violated numerous provisions of the Labor  
9 Code regulating hours and days of work as well as the IWC Wage Orders.

10 150. Plaintiff is an “aggrieved employee” because she was employed by the alleged  
11 violators and had one or more of the alleged violations committed against her, and therefore is  
12 properly suited to represent the interests of all other aggrieved employees.

13 151. Plaintiff has exhausted the procedural requirements under Labor Code section  
14 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself  
15 and all other aggrieved employees under the PAGA.

16 152. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to  
17 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited  
18 above.

19 153. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred  
20 herein.

21 **PRAYER FOR RELIEF**

22 Plaintiff, individually and on behalf of all others similarly situated, prays for relief and  
23 judgment against Defendants, jointly and severally, as follows:

- 24 1. For certification of this action as a class action, including certifying the Class and  
25 Subclass alleged by Plaintiff;
- 26 2. For appointment of Plaintiff MARIA LOPEZ as the class representative;
- 27 3. For appointment of Daily Aljian LLP and the Law Office of Daniel J. Hyun as class  
28 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 damages, monetary relief, wages, premiums, reimbursements, benefits and penalties, including interest thereon;
7. For waiting time penalties pursuant to Labor Code Section 203;
8. For liquidated damages pursuant to Labor Code Section 1194.2;
9. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
10. For restitution to Plaintiff and Class Members of all money and property unlawfully acquired by Defendants through unfair or unlawful business practices pursuant to Business and Professions Code Sections 17200 *et seq.*;
11. 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 Sections 17200, *et seq.*;
12. For prejudgment interest on all sums recovered pursuant to Labor Code Section 218.6 and Civil Code Sections 3287 and 3289;
13. For post judgment interest on all amounts awarded to Plaintiff and Class Members as provided by law;
14. For recovery of attorneys' fees and costs provided by Labor Code Sections 226, 1194, 2802, 2698, *et seq.*, and Code of Civil Procedure Section 1021.5;
15. PAGA civil penalties; and
16. For such other relief as the Court deems just and proper.

Dated: May 13, 2021

DAILY ALJIAN LLP  
LAW OFFICE OF DANIEL J. HYUN

By: /s/ Simon Kwak

Justin E. D. Daily  
Simon Kwak  
Daniel J. Hyun  
Attorneys for Plaintiff MARIA LOPEZ,  
individually and on behalf of all others  
similarly situated

**DEMAND FOR JURY TRIAL**

Plaintiff Maria Lopez, individually and on behalf of all others similarly situated, hereby requests a jury trial on all claims so triable.

Dated: May 13, 2021

DAILY ALJIAN LLP  
LAW OFFICE OF DANIEL J. HYUN

By: /s/ Simon Kwak

Justin E. D. Daily  
Simon Kwak  
Daniel J. Hyun  
Attorneys for Plaintiff MARIA LOPEZ,  
individually and on behalf of all others  
similarly situated