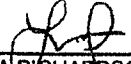


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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

MAR 10 2021

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

KARINA MORALES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

VPET USA, LLC, a Delaware Limited
Liability Company; WORKFORCE
PERSONNEL, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: **CIV SB 2108161**

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;
- (14) Failure to Provide Accurate Itemized Wage Statements; and
- (15) Failure to Provide Suitable Seating

JURY TRIAL DEMANDED

Plaintiff Karina Morales (“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 VPet USA, LLC, Workforce Personnel, 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”)¹, 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, failure to provide accurate itemized wage statements, and failure to provide suitable seating.

2. Plaintiff was employed by Defendants, a warehouse manufacturing operation, from approximately 2018 through November 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, Plaintiff and the Represented Employees were denied 30-minute off-duty meal periods, as mandated by California law. As a result of Defendants’ policies and practices, 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, and (4) not provided mandated second meal periods for shifts over 10 hours.

6. Moreover, Plaintiff and the Represented Employees were often subjected to short meal periods (less than 30 minutes in length) because Defendants only provided 30 minutes for

¹ This definition specifically includes direct hires and employees placed by a staffing agency; Plaintiff alleges that all staffed employees were jointly employed by Defendants and the staffing agency.

1 mandated meal periods, yet Plaintiff and the Represented Employees were required to leave the
2 work area and walk a long distance to the break room and back at the end of lunch – all within
3 those 30 minutes. Due to this walking time, Plaintiff and the Represented Employees were
4 regularly not provided with uninterrupted meal periods of at least 30 minutes, as required by
5 California law.

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

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

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

22 10. Finally, Plaintiff also alleges that Defendants failed to comply with California's
23 mandate to provide employees "with suitable seats when the nature of the work reasonably
24 permits the use of seats."

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

12. 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.

13. 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, 256, 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.

14. Pursuant to Labor Code § 2699.3(a), on July 20, 2020, Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff is currently complying with the procedures for bringing suit specified in California Labor Code § 2699.3, and this Complaint will be deemed amended to include the PAGA allegations enumerated below when more than sixty-five (65) days have passed since the Notice was mailed to Defendants and the LWDA chooses not to investigate the allegations herein.

II. JURISDICTION

15. 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

16. Venue as to each Defendant is proper in this Court pursuant to Code of Civil Procedure § 395(a) and § 395.5. Defendants transact business in San Bernardino County and the unlawful acts alleged herein have a direct effect on Plaintiff and the Represented Employees in

San Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented Employees in San Bernardino County.

IV. **PARTIES**

Plaintiff

17. Plaintiff and Class Representative Karina Morales was employed by Defendants from approximately 2018 through November 2020 and performed work for Defendants in San Bernardino County.

Defendants

18. Plaintiff is informed and believes and thereon alleges that Defendant VPet USA, LLC, is a Delaware limited liability company authorized to and doing business in San Bernardino County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

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

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

21. 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.

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

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

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

V. CLASS ACTION ALLEGATIONS

25. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

5 28. Plaintiff seeks to represent a Class (“Represented Employees”) defined as:

6 **California Class**²

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

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

10 **Meal Break Subclass**

11 All Represented Employees who worked a shift in excess of
12 5 hours during the Relevant Time Period.

13 **Rest Break Subclass**

14 All Represented Employees who worked a shift of at least
15 3.5 hours during the Relevant Time Period.

16 **Waiting Time Penalties Subclass**

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

21 **Wage Statement Penalties Subclass**

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

25 30. Plaintiff reserves the right to amend or modify the class description with greater
26 specificity or further division into subclasses or limitation to particular issues as appropriate.
27

28

² This definition specifically includes direct hires and employees placed by a staffing agency; Plaintiff alleges that all staffed employees were jointly employed by Defendants and the staffing agency.

1 31. Plaintiff, as Class Representative, is a member of the class and subclasses that she
2 seeks to represent.

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

7 33. **Numerosity:** The potential members of the Class as defined are so numerous that
8 a joinder of all Represented Employees is impracticable. Although the exact number is currently
9 unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and
10 personnel records.

11 34. **Commonality:** There are questions of law and fact common to the class which
12 predominate over any questions affecting only individual members of the class, including
13 without limitation:

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

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

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

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

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

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

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

9 vii. Whether Defendants violated California Business & Professions Code §§
10 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
11 breaks, failure to provide mandated meal periods, and failure to timely pay final wages; and

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

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

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

25 37. **Superiority of Class Action.** Class certification is appropriate because a class
26 action is superior to other available means for the fair and efficient adjudication of this
27 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
28 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

38. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

39. 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.

40. 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.

41. As a result of Defendants' policies or practices described above, Plaintiff and the Represented Employees, a were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

42. 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).

43. 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.

44. 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

1 them in accordance thereto.

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

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

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

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

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME WAGES**

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

18 *Plaintiff and the Represented Employees Against All Defendants*

19 49. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
20 alleged herein.

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

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

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

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

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

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

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

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

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 herself 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.

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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 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 period while under the control of Defendants, (3) forced to take meal periods, if such a meal occurred, after the 5th hour of work, and (4) not provided a mandated second meal period for shifts in excess of 10 hours.

1 66. Moreover, Plaintiff and the Meal Break Subclass were often subjected to short
2 meal periods (less than 30 minutes in length) because Defendants only provided 30 minutes for
3 mandated meal periods, yet Plaintiff and the Meal Break Subclass were required to leave the
4 work area and walk a long distance to the break room and back at the end of lunch – all within
5 those 30 minutes. Due to this walking time, Plaintiff and the Meal Break Subclass were
6 regularly not provided with uninterrupted meal periods of at least 30 minutes, as required by
7 California law.

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

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

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

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

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28 ///

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

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE REST BREAKS**

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

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

8 72. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

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

12 74. 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 75. 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 76. 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 77. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
23 Break Subclass 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 Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due
26 to being overwhelmed by their hectic workload. Additionally, Plaintiff and the Rest Break
27 Subclass were often not permitted to leave the premises for rest breaks, in violation of California
28 law. Furthermore, on occasions when Plaintiff and the Rest Break Subclass worked in excess of

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

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

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

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

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

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO TIMELY PAY FINAL WAGES**

20 (Labor Code §§ 201 – 203)

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

22 82. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
23 alleged herein.

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

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

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

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

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

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

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

20 **SIXTH CAUSE OF ACTION**

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

22 (Labor Code § 226)

23 *Plaintiff and the Wage Statement Penalties Subclass against All Defendants*

24 90. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
25 alleged herein.

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

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

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

11 94. Specifically, due to violations discussed herein, Defendants' wage statements
12 failed to accurately state total hours worked, the hours worked at each hourly rate, and the
13 accurate overtime rate of pay, and further failed to accurately state gross wages earned, all
14 deductions, and net wages earned.

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

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

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

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

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

19 **SEVENTH CAUSE OF ACTION**

20 **UNFAIR AND UNLAWFUL COMPETITION**

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

22 *Plaintiff and the Represented Employees against All Defendants*

23 100. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
24 alleged herein.

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

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

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

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

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

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

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

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

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

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

110. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to, and does, seek such relief as may be necessary to disgorge the profits which Defendants have acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the Represented Employees are not obligated to establish individual knowledge of the unfair practices of Defendants in order to recover restitution.

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

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

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

113. Plaintiff is an "aggrieved employee" under the PAGA as she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil action filed on behalf of herself and all other similarly situated current and former aggrieved

employees in California against whom one or more of the alleged violations was committed (hereinafter the “Aggrieved Employees”).

114. Pursuant to Labor Code § 2699.3(a), on March 5, 2021, Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

115. Therefore, once more than sixty-five (65) days have passed since that date, Plaintiff will have fully satisfied the administrative prerequisites to suit under the PAGA and this Complaint will be deemed amended to include the PAGA allegations enumerated below. Once this occurs, Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

EIGHTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

Plaintiff and the Aggrieved Employees against All Defendants

116. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

118. Plaintiff and the Aggrieved Employees were not provided proper minimum and regular wages due to Defendants’ failure to accurately record and compensate for hours worked.

119. As a result of Defendants’ policies or practices described above, Plaintiff and the Aggrieved Employees were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

120. 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).

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

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

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

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

Plaintiff and the Aggrieved Employees against All Defendants

123. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

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

1 127. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
2 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because
3 Defendants failed to pay Plaintiff and the Aggrieved Employees for all overtime hours worked,
4 and required Plaintiff and the Aggrieved Employees to work without being properly
5 compensated for all overtime wages earned.

6 128. Plaintiff is informed and believes and thereon alleges that Defendants
7 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
8 Employees for each hour worked in violation of Labor Code §§ 204, 221-223, 510, 1194 and
9 1197.

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

13 **TENTH CAUSE OF ACTION**

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

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

16 *Plaintiff and the Aggrieved Employees against All Defendants*

17 130. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
18 alleged herein.

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

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

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

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

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

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

13 136. Moreover, Plaintiff and the Aggrieved Employees were often subjected to short
14 meal periods (less than 30 minutes in length) because Defendants only provided 30 minutes for
15 mandated meal periods, yet Plaintiff and the Aggrieved Employees were required to leave the
16 work area and walk a long distance to the break room and back at the end of lunch – all within
17 those 30 minutes. Due to this walking time, Plaintiff and the Aggrieved Employees were
18 regularly not provided with uninterrupted meal periods of at least 30 minutes, as required by
19 California law.

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

25 138. On information and belief, Plaintiff and the Aggrieved Employees did not
26 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
27 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
28 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 Aggrieved Employees to take meal periods in accordance with California law.

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

ELEVENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS

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

Plaintiff and the Aggrieved Employees against All Defendants

140. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

143. 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.

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

145. Defendants failed to provide Plaintiff and the Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Additionally, Plaintiff and the Aggrieved Employees were often not

permitted to leave the premises for rest breaks, in violation of California law. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

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

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

TWELFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

Plaintiff and the Aggrieved Employees against All Defendants

148. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

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

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

7 153. 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 **THIRTEENTH CAUSE OF ACTION**

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

12 (Labor Code §§ 201 – 203 and 256)

13 *Plaintiff and the Aggrieved Employees against All Defendants*

14 154. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
15 alleged herein.

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

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

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

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

27 159. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
28 Employees with all wages due and owing upon separation of employment, including, but not

1 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
2 within the time specified by Labor Code §§ 201 – 203.

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

6 161. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
7 the assessment of all applicable and available PAGA remedies pursuant to Labor Code §§256
8 and 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted
9 under PAGA.

10 **FOURTEENTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR**

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

13 (Labor Code § 226)

14 *Plaintiff and the Aggrieved Employees against All Defendants*

15 162. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
16 alleged herein.

17 163. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
18 who did not receive proper protections and benefits of the laws governing the provision of
19 accurate itemized wage statements.

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

26 165. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
27 and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff
28 and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

1 166. Specifically, due to violations discussed herein, Defendants’ wage statements
2 failed to accurately state total hours worked, the hours worked at each hourly rate, and the
3 accurate overtime rate of pay, and further failed to accurately state gross wages earned, all
4 deductions, and net wages earned.

5 167. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
6 to Plaintiff and the Aggrieved Employees because Defendants failed to provide complete and
7 accurate wage statements to Plaintiff and the Aggrieved Employees that complied with the
8 requirements of Labor Code § 226(a).

9 168. As a result of the Defendants’ violations of Labor Code §226(a)(9), Plaintiff seeks
10 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
11 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.
12 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 (“Section
13 226.3 provides the civil penalty for failure to comply” with Labor Code § 226).

14 **FIFTEENTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE SUITABLE SEATING**

16 (Labor Code §§ 1198, 1199; IWC Wage Order § 14)

17 169. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
18 alleged.

19 170. Section 14 of the applicable IWC Wage Order states: “All working employees
20 shall be provided with suitable seats when the nature of the work reasonably permits the use of
21 seats.” Furthermore, “When employees are not engaged in the active duties of their employment
22 and the nature of the work requires standing, an adequate number of suitable seats shall be
23 placed in reasonable proximity to the work area and employees shall be permitted to use such
24 seats when it does not interfere with the performance of their duties.”

25 171. Here, Defendants failed to provide suitable seating to Plaintiff and the Aggrieved
26 Employees, in violation of IWC Wage Order § 14.

27 172. Penalties for the failure to provide suitable can be enforced both through Labor
28 Code §§ 1198 and 1199.

1 173. Labor Code § 1198 states that the “standard conditions of labor fixed by the
2 commission shall be the ... standard conditions of labor for employees. The employment of any
3 employee ... under conditions of labor prohibited by the order is unlawful.”

4 174. Labor Code § 1199 makes it unlawful for an employer to work under conditions
5 of labor prohibited by an IWC Wage Order. Labor Code § 1199 also makes it unlawful for an
6 employer to violate, refuse, or neglect to comply with any provision of the IWC Wage Orders.

7 175. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to
8 which the civil penalties under the PAGA apply.

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

12 **VII. PRAYER FOR RELIEF**

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

16 1. As to the Eighth through Fifteenth Causes of Action, the assessment of all
17 applicable and available remedies under the PAGA;

18 2. For reasonable attorneys’ fees and costs as permitted under the PAGA;

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

20 4. That Plaintiff be appointed as Class Representative;

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

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

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

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

1 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
2 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1194,
3 1197, 1198, 1199, among other sections inadvertently omitted;

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

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

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

9 **DEMAND FOR JURY TRIAL**

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

12
13 Dated: March 9, 2021

LAUBY, MANKIN & LAUBY LLP

14
15 BY: 

16 Brian J. Mankin, Esq.
17 Misty M. Lauby, Esq.
18 Attorneys for Plaintiff
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