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

DANIELLE GOGERTY, an individual, on
behalf of the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

PLAINTIFF,

v.

ATLAS LIFT TECH, INC., a Delaware
Corporation,

DEFENDANT.

**CASE NO. CVCV21-01088
CLASS ACTION AND PAGA
REPRESENTATIVE ACTION
COMPLAINT FOR:**
**(1) FAILURE TO PROVIDE OFF-DUTY
REST PERIODS TO AND/OR PAY REST
BREAK PREMIUMS (LABOR CODE §
226.7 AND IWC WAGE ORDER NO. 4);
(2) FAILURE TO PAY MINIMUM WAGES
(LABOR CODE §§ 1194, 1197);
(3) FAILURE TO PAY OVERTIME
(LABOR CODE §§ 510, 511, 1198);
(4) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210);
(5) FAILURE TO PROVIDE COMPLETE/
ACCURATE WAGE STATEMENTS IN
VIOLATION OF LABOR CODE § 226(a);
(6) FAILURE TO PAY ALL WAGES
OWED UPON TERMINATION (LABOR
CODE §§ 201-203)
(7) UCL VIOLATIONS (BUS. & PROF.
CODE §§ 17200-17204);
(8) PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2699, ET SEQ.).**

DEMAND FOR JURY TRIAL

1 Plaintiff Danielle Gogerty (“Plaintiff”), on behalf of herself, the State of California as a
2 private attorney general, the aggrieved employees and all others similarly situated (hereinafter
3 “Class Members” and/or “aggrieved employees” as defined below), complains and alleges as
4 follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this action on behalf of herself and all others similarly situated, as a
7 class action pursuant to California Code of Civil Procedure § 382 and as a PAGA representative
8 action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the California general public,
9 against Defendant Atlas Lift Tech, Inc. (“Defendant”) for Defendant’s (1) failure to provide off-
10 duty rest breaks and/or pay missed rest break premiums; (2) failure to pay minimum wages; (3)
11 failure to pay overtime wages; (4) failure to pay timely wages; (5) failure to provide complete and
12 accurate wage statements within one year prior to the filing of this Complaint; (6) failure to pay
13 all wages owed upon termination, based on the foregoing; (7) unfair business practices based on
14 the foregoing; and (8) PAGA and other penalties based on the foregoing. As a result of the
15 foregoing, Defendant has violated California statutory laws as described below.

16 2. The “Class Period” is designated as the period from April 14, 2020 through the
17 date of class certification. The PAGA period is the period from April 14, 2020, i.e., one year prior
18 to Plaintiff’s sending of her PAGA letter to the LWDA, and ongoing (the “PAGA Period”).
19 Defendant’s violations of California’s wage and hour laws and unfair competition laws, as
20 described more fully below, have been ongoing throughout the Class Period and throughout the
21 PAGA period and are ongoing.

22 **II. JURISDICTION AND VENUE**

23 3. This Court has subject matter jurisdiction over any and all causes of action
24 asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of
25 Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
26 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
27 arises under the laws of the State of California or is subject to adjudication in the courts of the
28 State of California.

1 4. This Court has personal jurisdiction over Defendant because Defendant has caused
2 injuries in the County of Yuba and State of California through its acts, and by its violation of the
3 California Labor Code and California state common law. Defendant transacts millions of dollars
4 of business within the state of California by providing mobility coaches to healthcare facilities.

5 5. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil
6 Procedure § 395. Defendant operates within California and does business within Yuba County,
7 California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
8 Defendant's employees within Yuba County.

9 6. Further, this action is not amenable to federal jurisdiction pursuant to 28 U.S.C.
10 §1332, as Plaintiff is informed and believes the aggregate amount in controversy for Plaintiff and
11 the Class Members, including any attorneys' fees, does not exceed \$5,000,000.

12 **III. THE PARTIES**

13 **A. PLAINTIFF**

14 7. Plaintiff is a citizen of California, a resident of Yuba County, and, at all times
15 relevant hereto, worked for Defendant in Yuba County as a mobility coach.

16 8. Plaintiff represents the state of California as well as a group of aggrieved
17 employees defined as: all individuals who are or were employed as hourly, non-exempt,
18 employees by Defendant Atlas Lift Tech, Inc., or its predecessor or merged entities in interest in
19 the State of California from April 14, 2020 and ongoing ("Aggrieved Employees").

20 9. Plaintiff also seeks to represent a class of employees defined as: all individuals
21 who are or were employed as hourly, non-exempt, employees by Defendant Atlas Lift Tech, Inc.,
22 or its predecessor or merged entities in interest in the State of California from April 14, 2020 and
23 ongoing (the "Class" or "Class Members").

24 10. Plaintiff, Class Members, and all aggrieved employees at all times pertinent
25 hereto, are, or were, employees of Defendant.

26 11. Upon information and belief, Plaintiff, Class Members and the Aggrieved
27 Employees are covered by California Industrial Welfare Commission Occupational Wage Order
28 No. 4-2001.

1 **B. DEFENDANT**

2 12. Defendant is a Delaware Corporation that does business in the State of California.
3 Defendant provides mobility coaches to healthcare facilities in California. Defendant employed
4 Plaintiff, Class Members and the Aggrieved Employees within California. Defendant has done
5 and does business throughout the State of California including Yuba County.

6 **IV. FACTUAL BACKGROUND**

7 13. Plaintiff, Class Members, and the Aggrieved Employees are, and were at all times
8 pertinent hereto, classified as hourly, non-exempt employees by Defendant.

9 14. Pursuant to IWC Wage Order 4-2001, section 12, an employer must authorize and
10 permit all employees to take ten (10) minute **duty free** rest periods for every major fraction of
11 four hours worked. Labor Code § 226.7 provides “an employer shall not require an employee to
12 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
13 applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). *See*
14 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest
15 periods employers must relieve employees of all duties and relinquish control over how
16 employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s assertion
17 that it could provide an on-duty rest period to employees who worked as security guards and
18 further explained “that employers [must] relinquish any control over how employees spend their
19 break time, and relieve their employees of all duties.” *Id.* at 273.

20 15. The California Supreme Court made plain in *Brinker Rest. Corp. v. Superior*
21 *Court*, 53 Cal. 4th 1004 (2012) that the adoption of an unlawful policy gives rises to liability for
22 violation of the wage order:

23 An employer is required to authorize and permit the amount of rest break time
24 called for under the wage order for its industry. If it does not—if, for example, it
25 adopts a uniform policy authorizing and permitting only one rest break for
 employees working a seven-hour shift when two are required—it has violated the
 wage order and is liable.

26 *Id.* at 1033. (Emphasis added.). The Court held further that “[n]o issue of waiver ever arises for a
27 rest break that was required by law but never authorized; if a break is not authorized, an
28

1 employee has no opportunity to decline to take it.” *Id.*; accord *Alberts v. Aurora Behavioral*
2 *Health Care*, 241 Cal. App. 4th 388, 410 (2015) (“If an employer fails to provide legally
3 compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip
4 those breaks.”).

5 16. In *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257 (2016), the California
6 Supreme Court held that ABM’s on-call policy of requiring security guards to keep their radios
7 and pagers on at all times, and to remain vigilant and respond when needs arise, including during
8 rest breaks, violated the its duty to provide duty-free rest breaks as required by § 226.7 and § 12
9 of the applicable Wage Order. *Id.* at 260-61, 270. With strong implications for the issue here, the
10 Court declared “. . . one cannot square the practice of compelling employees to remain at the
11 ready, *tethered by time and policy to particular locations or communication devices*, with the
12 requirement to relieve employees of all work duties and employer control during 10-minute rest
13 breaks.” *Augustus*, 2 Cal. 5th at 269 (emphasis added). The on-call rule in *Augustus* expressly
14 tethered employees to their communication devices by requiring them *inter alia* to keep their
15 radios and pagers turned on and to respond as needs arose. Although the on-call rule did not
16 expressly require employees to remain on-site, it did as a practical matter tether them by location
17 to the immediate vicinity. As the Court explained, “an employee on-call cannot *take a brief*
18 *walk—five minutes out, five minutes back—if at the farthest extent of the walk he or she is not*
19 *in a position to respond.*” *Augustus*, Cal. 5th at 272 (emphasis added).

20 17. Subsequent to the decision in *Augustus*, the DLSE in November 2017 revised its
21 website so as to specifically address the issue of on-premises rest break policies. Through the
22 amendment, the DLSE subscribed to the clear implication of *Augustus* that requiring employees
23 to stay on the work premises during rest periods does not relinquish control and accordingly does
24 not comply with California law. Specifically, following a summary of California’s rest break
25 laws, the DLSE’s website states a series of questions and answers, including the following
26 Question and Answer No. 5:

27 5. Q. Can my employer *require that I stay on the work premises during my rest*
28 *period?*

1 A. No, your employer cannot impose any restraints not inherent in the rest
2 period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5
3 Cal.5th 257, 269, the California Supreme Court held that the rest period
4 requirement “obligates employers to permit-and authorizes employees to take-
5 off-duty rest periods. That is, during rest periods employers must relieve
6 employees of all duties and relinquish control over how employees spend their
7 time.” (citation omitted) *As a practical matter, however, if an employee is*
8 *provided a ten minute rest period, the employee can only travel five minutes*
9 *from a work post before heading back to return in time.*

10 See California Department of Industrial Relations, Rest Periods/Lactation Accommodation,
11 available at www.dir.ca.gov/dlse/faq_restperiods.htm (November 2017) (Question 5). (Emphasis
12 added.)

13 18. Prior to the *Augustus* in 2016, at least one California Court of Appeals as well as
14 the California Supreme Court had held that California employers exercise sufficient “control”
15 over workers such that they are “on-duty” and must be paid for their “hours worked” for all time
16 during which the employer merely requires them to remain on its premises, including time
17 associated with meal breaks and travel time on a company bus, even when they are not
18 performing job duties. *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968 (1995);
19 *Morillion v. Royal Packing*, 22 Cal. 4th 575 (2000).

20 19. The California Supreme Court’s recent decision in *Frlekin v. Apple Inc.*, 8 Cal. 5th
21 1038 (Cal. Feb. 13, 2020), by its logic also indicates that an on-premises rest break policy will not
22 pass muster. The Court in *Frlekin* reaffirmed its holding in *Morillion* that “[t]he level of the
23 employer’s control over its employees, rather than the mere fact that the employer requires the
24 employees’ activity, is determinative’ concerning whether an activity is compensable under the
25 Wage Order’s ‘hours worked’ control clause. *Frlekin v. Apple Inc.*, 8 Cal. 5th at 1056, quoting
26 *Morillion*, 22 Cal. 4th at 587. By that measure, the time spent by employees undergoing theft-
27 prevention-related bag searches after the end of their shifts was subject to the employer’s control
28 and counted as “hours worked” and compensable. *Id.* at 1056-57. With unmistakable implications
for the issue here, the Court, again embracing *Bono*, stated:

 Thus, “[w]hen an employer directs, commands ***or restrains an employee from***
leaving the work place . . . and thus prevents the employee from using the time
effectively for his or her own purposes, that employee remains subject to the

1 employer's control[and a]ccording to [the applicable Wage Order], that employee
2 must be paid."

3 *Frlekin*, 8 Cal.5th at 1057, *quoting Bono*, 32 Cal. App. 4th at 975.

4 20. Here, Defendant failed to provide Plaintiff, the Class, and the other Aggrieved
5 Employees with duty-free rest periods of not less than ten (10) minutes for every major fraction
6 of four (4) hours worked as required by Labor Code § 226.7 and Wage Order 7-2001. Plaintiff,
7 the Class, and the Aggrieved Employees are not relieved of all duties during their rest periods, **as**
8 **they are required to remain on premises during all rest periods** in violation of Labor Code §
9 226.7, Wage Order 7-2001 and *Augustus*, 2 Cal. 5th at 269.

10 Defendant's April 2020 Employee Handbook, attached hereto as **Exhibit 1**, states:

11 **A rest break is paid time when employees are relieved of all work duties and**
12 **responsibilities, although they must remain on the facility premises.**

13 21. On information and belief, Defendant's on-premises rest break policy was
14 promulgated for all employees working at Defendant's hospital client's sites in California. This
15 on premises rest break policy violates California law, as outlined above. *See also Roman Diaz v.*
16 *Medline Industries, Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2019-5651 (Order
17 Denying in Part and Granting in Part Defendant's Motion for Judgment on the Pleadings, entered
18 on December 5, 2019 where the Court held that an on-premises rest break policy is facially
19 invalid under California law).

20 22. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
21 Class, and the other Aggrieved Employees were not compensated with one (1) hour's worth of
22 pay at their regular rate of compensation when they were not provided with a compliant rest
23 period in accordance with Labor Code § 226.7(b). Thus, Defendant has violated Labor Code §
24 226.7 and IWC Wage Order 4-2001.

25 23. Labor Code § 1197 states the California requirement that employees must be paid
26 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
27 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
28 "any employee receiving less than the legal minimum wage...to recover in a civil action the

1 unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 4-2001
2 obligates employers to pay each employee minimum wages for all hours worked.

3 24. These minimum wage standards apply to each hour employees worked for which
4 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
5 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked,
6 paid or not, results in an average hourly wage above minimum wage. *Armenta*, 135 Cal.App.4th
7 at 324.

8 25. Defendant required Plaintiff, the Class, and all Aggrieved Employees to regularly
9 perform work-off-the-clock for which they did not receive any compensation. Specifically, as part
10 of their employment, from March 2020 to the present, Defendant required Plaintiff, the Class, and
11 all Aggrieved Employees to undergo COVID-19 temperature checks when entering Defendant’s
12 hospital client’s sites at the start of their shift. Although Defendant maintained a common policy
13 and practice of requiring Plaintiff, the Class, and the Aggrieved Employees to stand/wait in line
14 for COVID-19 temperature checks, Defendant failed to compensate Plaintiff, the Class, and the
15 other Aggrieved Employees for such time.

16 26. Employees must be paid for all “hours worked.” Hours worked is “the time during
17 which an employee is subject to the control of an employer, and includes all the time the
18 employee is suffered or permitted to work, whether or not required to do so.” *See* Wage Order 9-
19 2001, Subd. 2(K); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal. 4th 833. “[I]t
20 is only necessary that the worker be subject to the control of the employer in order to be entitled
21 to compensation.” *Morillion v. Royal Packing Co.* 22 Cal. 4th 575, 584 (2000). An employee is
22 under the employer’s control and entitled to compensation when the employer ““directs,
23 commands or restrains’ an employee.” *Morillion*, 22 Cal. 4th at 583 (citation omitted).

24 27. As the California Supreme Court made clear in *Morillion*, when determining
25 whether an employee’s activity is under the employer’s control entitling him or her to
26 compensation, the import is not whether the employer requires the activity and thus whether
27 employees can avoid it, but the level of control employers exert over employees during the
28 activity: “The level of the employer’s control, *rather than the mere fact that the employer*

1 requires the employees' activity is determinative." *Morillion*, 22 Cal.4th at 587 (emphasis added).

2 28. In *Frlekin v. Apple Inc.*,¹ the California Supreme Court reaffirmed its holding in
3 *Morillion* that "[t]he level of the employer's control over its employees, rather than the mere fact
4 that the employer requires the employees' activity, is determinative" concerning whether an
5 activity is compensable under the "hours worked" control clause. In *Frlekin*, the California
6 Supreme Court found that time employees spent undergoing bag searches at the end of their shifts
7 was compensable. The Court reasoned its decision by analyzing factors in determining whether
8 an employer has exerted compensable control over employees:

9 We also emphasize that whether an activity is required remains probative in
10 determining whether an employee is subject to the employer's control. But, at least
11 with regard to cases involving *onsite* employer-controlled activities, the mandatory
12 nature of an activity is not the only factor to consider. We conclude that courts
13 may and should consider additional relevant factors—including, but not limited to,
14 the location of the activity, the degree of the employer's control, whether the
15 activity primarily benefits the employee or employer, and whether the activity is
16 enforced through disciplinary measures—when evaluating such employer-
17 controlled conduct.

18 29. To be free of the employer's control for purposes of "hours worked," the employee
19 must be free to use his or her time "effectively for his or her own purposes." *Morillion*, 22 Cal.4th
20 at 583.

21 30. Here, as in *Frlekin*, Defendant's aggrieved employees could not avoid Defendant's
22 COVID-19 temperature checks (which took place at Defendant's hospital client sites before they
23 could clock in) and could not then use their time effectively for their own purposes. As such,
24 Defendant exercised compensable control over Class Members and aggrieved employees
25 undergoing and who underwent COVID-19 temperature checks and owes wages to the Aggrieved
26 Employees for this time. Notably, there is no de minimis defense for such time. *See, Troester v.*
27 *Starbucks Corp.*, 5 Cal.5th 829 (2018) (the California Supreme Court held that the de minimis
28 principle was not applicable in the context of an alleged policy requiring employees to work
minutes off the clock routinely; *see also, Frlekin*, 2020 Cal. LEXIS 547 (February 13, 2020)
(hours work is defined as the time during which an employee is subject to the control of an

¹(2020) 8 Cal. 5th 1038, 1051 (citing *Morillion*, 22 Cal.4th at 587).

1 employer, and includes all the time the employee is suffered or permitted to work, whether or not
2 required to do so).

3 31. Notably, through its policy and practice of requiring Plaintiff, the Class, and the
4 Aggrieved Employees to undergo pre-shift COVID-19 temperature checks, Defendant clearly
5 violated Labor Code § 1194. As a result of Defendant's policy and practices described above,
6 Defendant regularly failed to pay Plaintiff, the Class, and all aggrieved employees for all hours
7 worked in violation of Labor Code § 1194 and 1197. Accordingly, Defendant has violated Labor
8 Code §§ 1194 and 1197 with respect to Plaintiff, the Class, and the Aggrieved Employees.

9 32. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
10 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
11 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
12 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
13 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
14 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
15 period for which the employee is underpaid regardless of whether the initial violation is
16 intentionally committed. As set forth above, Defendant failed to compensate Plaintiff, the Class,
17 and all aggrieved employees for all hours worked. Accordingly, through PAGA and to the extent
18 permitted by law Plaintiff, the Class, and all aggrieved employees are entitled to recover
19 liquidated damages for violations of Labor Code § 1197.1. Based upon these same factual
20 allegations, Plaintiff, the Class, and the other aggrieved employees are entitled to penalties under
21 Labor Code § 1199.

22 33. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover
23 liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff, the
24 Class, and the other aggrieved employees experienced on a regular basis, are not paid for all
25 hours worked under Labor Code § 1194, the employees may recover minimum wages for the time
26 for which they received no compensation.

27 34. Section 510 of the California Labor Code and Section 3 of IWC Wage Order No. 4
28 require the payment of overtime wages at the rate of one and one-half times the regular rate of

1 pay for all hours worked over eight hours per day. Under section 511 of the California Labor
2 Code and IWC Wage Order 4-2001, employers can avoid having to pay overtime for shifts up to
3 twelve hours in a day by implementing a valid alternative workweek schedule. In order to validly
4 adopt an alternative workweek schedule, however, an employer must comply with various strict
5 requirements in section 3(B) of IWC Wage Order No. 4 and Labor Code section 511.

6 35. Here, Plaintiff, the Class, and Aggrieved Employees were classified as non-exempt
7 employees, paid on an hourly basis, and elected an 3x12 alternative workweek schedule. In
8 practice, however, Plaintiff, the Class, and the Aggrieved Employees worked, on average, only
9 one to two shifts per week, in 12 hour shifts per day. Labor Code section 511 specifically requires
10 a “**regularly scheduled**” alternative workweek to be valid. Therefore, in a 3x12 schedule as
11 elected here, there can be variations from time to time (a fourth or fifth unscheduled day where
12 needed), but the regular schedule needs to remain as voted, a 3x12 workweek. *See* Cal. Code
13 Regs. Tit. 8, section 11050(3)(B)(2) (“If an employer whose employees have adopted an
14 alternative workweek agreement permitted by this order requires an employee to work fewer
15 hours than those that are regularly scheduled by the agreement, the employer shall pay the
16 employee overtime compensation at a rate of one and one-half (1 1/2) times the employee's
17 regular rate of pay for all hours worked in excess of eight (8) hours, and double the employee's
18 regular rate of pay for all hours worked in excess of 12 hours for the day the employee is required
19 to work the reduced hours.”); *see also, Huntington Memorial Hospital v. Superior Court*, 131
20 Cal. App. 4th 893, 909 (2005) (“Under the wage order, an employer and its employees may adopt
21 an AWS that, for example, establishes a regular work schedule of 10 hours per day, four days a
22 week, and obligates the employer to pay overtime for work exceeding 10 hours in one day. If the
23 employer requires only nine hours of work on a particular day, the employees must be paid
24 overtime for the ninth hour—as if the AWS had not been adopted. Put another way, the
25 employees are entitled to one hour of overtime pay, at time and one-half—instead of straight
26 time—because they did not get to work a full shift (10 hours). In essence, the employer must pay
27 a ‘short-shift penalty.’”).

28 36. In this instance, Plaintiff, the Class, and the Aggrieved Employees are all regularly

1 scheduled only one or two shifts per week whereby they work 12 hour shifts and are not paid
2 overtime. As such, Defendant's alternative workweek schedule is faulty and Plaintiff, the class,
3 and Aggrieved Employees should be paid at their overtime rate for all hours beyond eight.
4 Accordingly, Defendant has violated Labor Code §§ 510 and 1198 with respect to Plaintiff, the
5 Class, and the Aggrieved Employees.

6 37. Labor Code § 204 expressly requires employers who pay employees on a weekly,
7 biweekly, or semimonthly basis to pay all wages "not more than seven calendar days following
8 the close of the payroll period." Due to Defendant's failure to pay Plaintiff, the Class, and all
9 Aggrieved Employees rest period premiums and all minimum wages associated with pre-shift
10 COVID-19 screening and overtime wages owed, as described above, Defendant failed to timely
11 pay its employees within seven calendar days following the close of payroll in accordance with
12 Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016
13 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling*
14 *vs. P.F. Chang's China Bistro, Inc.* that a failure to pay rest period premiums can support claims
15 under Labor Code §§ 203 and 204).²

16 38. Labor Code § 210 provides that "in addition to, an entirely independent and apart
17 from, any other penalty provided in this article, every person who fails to pay the wages of each
18 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
19 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
20 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
21 each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of
22 the faulty compensation policies and practices described in detail above, Plaintiff, the Class, and

23
24 ² Courts routinely find that employees who do not receive meal/rest periods premiums are entitled to waiting time
25 penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug.
26 10, 2016) (denying the defendant's motion for summary judgment on the plaintiff's claim for waiting time penalties
27 based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in
28 *Ling vs. P.F. Chang's China Bistro, Inc.* 245 Cal. App. 4th 1242 (2016) "concerned only whether 'a section 203
waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under
section 218.5'"); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying
defendant's motion for summary judgment because "the premium payments due under section 226.7 are to be
considered "wages" for purposes of sections 203 and 226.7"]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7,
2013) 2013 WL 4038617, at *3-4 [distinguishing *Kirby*, and finding "Plaintiffs' section 203 claim for failure to pay
wages...can be based on amounts owed under section 226.7."].

1 the other Aggrieved Employees are entitled to recover penalties under Labor Code § 210.

2 39. Labor Code § 226(a)(1), (2), (5) and (9), requires employers semimonthly or at the
3 time or each payment of wages, furnish each of his or her employees, an accurate itemized
4 statement in writing showing the gross wages earned, the total hours worked by the employee, the
5 net wages earned, as well as 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 40. Due to Defendant's failure to provide employees with lawful off-duty rest periods
8 and pay rest period premiums, as well as all minimum wages associated with COVID-19
9 screenings and overtime wages owed, the wage statements issued by Defendant do not indicate
10 the correct amount of gross wages earned, the correct number of hours worked, the correct net
11 wages earned, or the correct overtime rate. Thus, Defendant has violated Labor Code §226(a)(1),
12 (2), (5) and (9) with respect to Plaintiff, the Class, and all Aggrieved Employees.

13 41. As a result of Defendant's failure to pay wages to Plaintiff, the Class, and the
14 Aggrieved Employees for rest period premiums associated with on-duty rest periods as well as all
15 minimum wages for COVID-19 screening time pre-shift and overtime wages owed, Defendant
16 has violated and continue to violate Labor Code § 203. Labor Code § 203 provides "if an
17 employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the
18 wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203;
19 *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

20 42. Due to Defendant's faulty policies described above, Plaintiff, the Class, and the
21 Aggrieved Employees whose employment with Defendant concluded were not compensated for
22 each and every hour worked or at the appropriate rate. Additionally, Defendant has failed to pay
23 all Class Members and aggrieved employees for meal period premiums, and rest period
24 premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours
25 of their resignation and have failed to pay those sums for thirty (30) days thereafter.

26 43. Plaintiff fully and completely exhausted her administrative remedies under PAGA
27 prior to proceeding with this action. On April 14, 2021, Plaintiff filed her PAGA Notice online
28 with the Labor Workforce Development Agency ("LWDA") and sent a letter by certified mail to

1 Defendant setting forth the facts and theories of the violations alleged against Defendant, as
2 prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00
3 filing fee with the LWDA by regular mail.

4 **III. CLASS ACTION ALLEGATIONS**

5 44. Plaintiff brings this action, on behalf of herself and all others similarly situated, as
6 a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
7 composed of and defined as

8 all individuals who are or were employed as hourly, non-exempt,
9 employees by Defendant Atlas Lift Tech, Inc., or its predecessor or merged
10 entities in interest in the State of California from April 14, 2020 and
ongoing.

11 45. This action has been brought and may properly be maintained as a class action
12 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
13 litigation, the proposed class is easily ascertainable, and Plaintiff, is a proper representative of the
14 Class:

15 a. Numerosity: The potential members of the Class as defined are so
16 numerous that joinder of all the members of the Class is impracticable. According to Defendant,
17 the precise number of Class Members employed by Defendant during the Class Period is
18 approximately 147. The Class Members are dispersed throughout California. Joinder of all
19 members of the proposed classes is therefore not practicable.

20 b. Commonality: There are questions of law and fact common to Plaintiff and
21 the Class that predominate over any questions affecting only individual members of the Class.
22 These common questions of law and fact include, without limitation:

23 i. Whether Defendant violated Labor Code section 226.7 and Section 12 of
24 Wage Order 4-2001 by not relieving the Class Members of all duties during their statutorily
25 mandated rest periods;

26 ii. Whether Defendant violated Labor Code section 226.7 failing to pay one
27 hour of premium pay to each member of the Class for each day that an off-duty rest break was not
28 provided in California during the Class Period;

1 iii. Whether Defendant violated Labor Code sections 1194 and 1197 by failing to
2 pay all minimum wages owed to the Class during the Class Period;

3 iv. Whether Defendant violated Labor Code sections 510, 511, and 1198 by
4 failing to pay all overtime wages owed to the Class during the Class Period;

5 v. Whether Defendant violated Labor Code sections 204 and 210 by failing to
6 pay all timely wages;

7 vi. Whether Defendant failed to provide Plaintiff and the members of the Class
8 complete wage statements with information included about their total hours worked, the gross
9 wages earned, the net wages paid and premium payments for non-compliant rest periods in
10 violation of Labor Code Section 226(a) and 226.3;

11 vii. Whether Defendant failed to pay all wages owed to Plaintiff and the
12 members of the Waiting Time Penalty Class upon termination in violation of Cal. Labor Code
13 §§201-203.

14 viii. Whether Defendant engaged in an unfair practice and violated section
15 17200 of the California Business and Professions Code by failing to provide Plaintiff and the
16 Class with rest periods free of all duties;

17 ix. Whether Defendant engaged in an unfair practice and violated section
18 17200 et seq. of the California Business and Professions Code by failing to provide pay rest break
19 premiums for all on-duty rest breaks taken by members of the Class in violation of Section 12 of
20 IWC Wage Order No. 4;

21 x. Whether Plaintiff and the Class are entitled to restitution under Business
22 and Professions Code § 17200 et seq.;

23 xi. The proper formula(s) for calculating damages, interest, and restitution
24 owed to Plaintiff and the Class Members; and

25 xii. The nature and extent of class-wide damages.

26 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
27 Plaintiff and Class Members sustained injuries and damages, and were deprived of property
28 rightly belonging to them, arising out of and caused by Defendant's common course of conduct in

1 violation of law as alleged herein, in similar ways and for the same types of expenses.

2 d. Adequacy of Representation: Plaintiff is a member of the Class and will
3 fairly and adequately represent and protect the interests of the Class and Class Members.
4 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who
5 represents Plaintiff are competent and experienced in litigating large wage and hour class actions,
6 including numerous cases virtually identical to this one, and other employment class actions, and
7 will devote sufficient time and resources to the case and otherwise adequately represent the Class
8 and Class Members.

9 e. Superiority of Class Action: A class action is superior to other available
10 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
11 Members is not practicable, and questions of law and fact common to the Class predominate over
12 any questions affecting only individual members of the Class. Each Class Member has been
13 damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or
14 practices as described herein. Certification of this case as a class action will allow those similarly
15 situated persons to litigate their claims in the manner that is most efficient and economical for the
16 parties and the judicial system. Certifying this case as a class action is superior because it allows
17 for efficient and full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining
18 its unlawful compensation policies and will thereby effectuate California's strong public policy of
19 protecting employees from deprivation or offsetting of compensation earned in their employment.
20 If this action is not certified as a Class Action, it will be impossible as a practical matter, for many
21 or most Class Members to bring individual actions to recover monies unlawfully withheld from
22 their lawful compensation due from Defendant, due to the relatively small amounts of such
23 individual recoveries relative to the costs and burdens of litigation.

24 **FIRST CAUSE OF ACTION**
25 **FAILURE TO PROVIDE OFF-DUTY REST PERIODS**
26 **AND PAY MISSED REST PERIOD PREMIUMS**
27 **[Cal. Labor Code §§ 226.7; Section 12 OF IWC Wage Order No. 4-2001]**
28 **On behalf of Plaintiff and the Class Against Defendant**

46. Plaintiff re-alleges and incorporates by reference each and every allegation set

1 forth in the preceding paragraphs.

2 47. Under IWC Wage Order 4-2001 an employer must authorize and permit all
3 employees to take ten (10) minute duty free rest periods for every major fraction of four hours
4 worked. Labor Code § 226.7 provides “an employer shall not require an employee to work during
5 a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
6 regulation, standard, or order of the Industrial Welfare Commission.” By operation of law,
7 Defendant had a duty to provide Plaintiff and Class with rest periods completely free of all duties,
8 and enable Plaintiff and the Class to leave the worksite during those rest periods if they so
9 desired. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that
10 “during rest periods employers must relieve employees of all duties and relinquish control over
11 how employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s
12 assertion that it could provide an on-duty rest period to employees who worked as security guards
13 and further explained “that employers [must] relinquish any control over how employees spend
14 their break time, and relieve their employees of all duties.” *Id.* at 273. But in violation of §226.7,
15 and Wage Order 4-2001, Defendant did not provide Plaintiff, the Class Members and the
16 Aggrieved Employees with rest periods completely free of all duties, since they maintained
17 control by virtue of their on-premises rest break policy, nor did Defendant’s written policy allow
18 or authorize Plaintiff, the Aggrieved Employees, or the Class Members to leave the worksite
19 during any rest period.

20 48. By way of their policies requiring employees to stay on site during their shifts, and
21 stay on-call during their rest periods, Defendant failed to provide Plaintiff and the Class with
22 duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours
23 worked. Specifically, Defendant did not permit Plaintiff or the Class to leave the premises during
24 rest periods as required by Labor Code § 226.7 and Wage Order 4-2001 and in violation of
25 *Augustus*, 2 Cal. 5th at 269. Accordingly, as a result of its rest period policies, Defendant
26 regularly and consistently failed to authorize and permit Plaintiff and the Class to take compliant
27 off duty rest periods.

28 49. In addition to failing to authorize and permit compliant rest periods, and instead

1 requiring on-premises rest breaks, Plaintiff and the Class were not compensated with one (1)
2 hours' worth of pay at their regular rate of compensation when they were not provided with a
3 compliant rest period in accordance with Labor Code § 226.7(b) and IWC Wage Order 4-2001
4 Section 12(B).

5 50. As a result of the unlawful acts of Defendant, Plaintiff and the Class were not
6 provided off duty rest periods, and are entitled to recovery under Cal. Labor Code §226.7 in the
7 amount of one additional hour of pay at the employee's regular rate of compensation for each
8 work period during each day in which Defendant failed to provide duty-free rest periods as
9 required by California law.

10 **SECOND CAUSE OF ACTION**
11 **FAILURE TO PAY MINIMUM WAGES**
12 **[Cal. Labor Code §§ 1194, 1197]**

13 **On Behalf of Plaintiff and the Class Against Defendant**

14 51. Plaintiff re-alleges and incorporates by reference each and every allegation set
15 forth in the preceding paragraphs.

16 52. Labor Code § 1197 states the California requirement that employees must be paid
17 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
18 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
19 "any employee receiving less than the legal minimum wage...to recover in a civil action the
20 unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 4-2001
21 obligates employers to pay each employee minimum wages for all hours worked.

22 53. Defendant required Plaintiff and Class Members to regularly perform work-off-
23 the-clock for which they did not receive any compensation. Specifically, as part of their
24 employment, from March 2020 to the present, Defendant required Plaintiff and Class Members to
25 undergo COVID-19 temperature checks when entering Defendant's hospital client's sites at the
26 start of their shift. Although Defendant maintained a common policy and practice of requiring
27 Plaintiff and the Class to stand/wait in line for COVID-19 temperature checks, Defendant failed
28 to compensate Plaintiff and the Class Members for such time.

1 54. Therefore, through its policy and practice of requiring Plaintiff and the Class to
2 undergo pre-shift COVID-19 temperature checks, Defendant clearly violated Labor Code § 1194.
3 As a result of Defendant’s policy and practices described above, Defendant regularly failed to pay
4 Plaintiff and Class Members for all hours worked in violation of Labor Code § 1194 and 1197.

5 **THIRD CAUSE OF ACTION**
6 **FAILURE TO PAY OVERTIME WAGES**
7 **[Cal. Labor Code §§ 510, 511, 1198]**

8 **On Behalf of Plaintiff and Class Members Against Defendant**

9 55. Plaintiff re-alleges and incorporates by reference each and every allegation set
10 forth in the preceding paragraphs.

11 56. Section 510 of the California Labor Code and Section 3 of IWC Wage Order No. 4
12 require the payment of overtime wages at the rate of one and one-half times the regular rate of
13 pay for all hours worked over eight hours per day. Under section 511 of the California Labor
14 Code and IWC Wage Order 4-2001, employers can avoid having to pay overtime for shifts up to
15 twelve hours in a day by implementing a valid alternative workweek schedule. In order to validly
16 adopt an alternative workweek schedule, however, an employer must comply with various strict
17 requirements in section 3(B) of IWC Wage Order No. 4 and Labor Code section 511.

18 57. Here, Plaintiff and Class Members were classified as non-exempt employees, paid
19 on an hourly basis, and elected an 3x12 alternative workweek schedule. In practice, however,
20 Plaintiff and the Class worked, on average, only one to two shifts per week, in 12 hour shifts per
21 day. Labor Code section 511 specifically requires a “**regularly scheduled**” alternative workweek
22 to be valid. Therefore, in a 3x12 schedule as elected here, there can be variations from time to
23 time (a fourth or fifth unscheduled day where needed), but the regular schedule needs to remain
24 as voted, a 3x12 workweek. *See* Cal. Code Regs. Tit. 8, section 11050(3)(B)(2) (“If an employer
25 whose employees have adopted an alternative workweek agreement permitted by this order
26 requires an employee to work fewer hours than those that are regularly scheduled by the
27 agreement, the employer shall pay the employee overtime compensation at a rate of one and one-
28 half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8)
hours, and double the employee's regular rate of pay for all hours worked in excess of 12 hours

1 for the day the employee is required to work the reduced hours.”); *see also*, *Huntington Memorial*
2 *Hospital v. Superior Court*, 131 Cal. App. 4th 893, 909 (2005) (“Under the wage order, an
3 employer and its employees may adopt an AWS that, for example, establishes a regular work
4 schedule of 10 hours per day, four days a week, and obligates the employer to pay overtime for
5 work exceeding 10 hours in one day. If the employer requires only nine hours of work on a
6 particular day, the employees must be paid overtime for the ninth hour—as if the AWS had not
7 been adopted. Put another way, the employees are entitled to one hour of overtime pay, at time
8 and one-half—instead of straight time—because they did not get to work a full shift (10 hours). In
9 essence, the employer must pay a ‘short-shift penalty.’”).

10 58. In this instance, Plaintiff and the Class are all regularly scheduled only one or two
11 shifts per week whereby they work 12 hour shifts and are not paid overtime. As such,
12 Defendant’s alternative workweek schedule is faulty and Plaintiff and Class Members should be
13 paid at their overtime rate for all hours beyond eight. Accordingly, Defendant has violated Labor
14 Code §§ 510 and 1198 with respect to Plaintiff and the Class.

15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO PAY TIMELY WAGES**
17 **[Cal. Labor Code §§ 204 and 210]**

18 **On Behalf of Plaintiff and the Class Against Defendant**

19 59. Plaintiff re-alleges and incorporates by reference each and every allegation set
20 forth in the preceding paragraphs.

21 60. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
22 any employment are due and payable twice during each calendar month, on days designated in
23 advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these
24 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or
25 semimonthly payroll if the wages are paid not more than seven calendar days following the close
26 of the payroll period.

27 61. Due to Defendant’s failure to pay Plaintiff and the Class all minimum wages,
28 overtime wages, and rest break period premiums owed,³ Defendant violated Labor Code § 204 by

³ Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.

1 failing to pay all wages due within seven (7) days of the close of the payroll period on a regular
2 and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016
3 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period
4 premiums can support claims under Labor Code §§ 203 and 204).

5 62. Labor Code § 210 provides that “in addition to, an entirely independent and apart
6 from, any other penalty provided in this article, every person who fails to pay the wages of each
7 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
8 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
9 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
10 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
11 the faulty compensation policies and practices described in detail above, Plaintiff and the Class
12 are entitled to recover penalties under Labor Code § 210

13 **FIFTH CAUSE OF ACTION**
14 **FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS**
15 **[Cal. Labor Code §§ 226 And 226.3]**
16 **On Behalf of Plaintiff and Wage Statement Subclass Members Against Defendant**

17 63. Plaintiff re-alleges and incorporates by reference each and every allegation set
18 forth in the preceding paragraphs.

19 64. Section 226(a) of the California Labor Code provides, in relevant part:

20 Every employer shall.... furnish each of his or her employees...an accurate
21 statement in writing showing (1) gross wages earned, (2) total hours worked by the
22 employee, except for any employee whose compensation is solely based in a salary

23 (continued...)

24 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time
25 penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals
26 decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a
27 section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of
28 wages under section 218.5”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at
*3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under
Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19
[denying defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to
be considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar.
7, 2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to
pay wages...can be based on amounts owed under section 226.7.”). The issue is currently before the California
Supreme Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No.
S258966.

1 and who is exempt from payment of overtime under subdivision (a) of Section 515
2 or any applicable order of the Industrial Welfare Commission, (3) the number of
3 piece-rate units earned, and any applicable piece rate if the employee is paid on a
4 piece-rate basis, (4) all deductions, provided that all –deductions made on written
5 orders of the employee may be aggregated and shown as one item, (5) net wages
6 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
7 name of the employee and only the last four digits of his or her social security
8 number or an employee identification number other than a social security number,
9 (8) the name and address of the legal entity that is the employer, and (9) all
10 applicable hourly rates in effect during the pay period and the corresponding
11 number of the hours worked at each hourly rate by the employee...

12 65. Section 226(e) provides that an employee is entitled to recover \$50 for initial pay
13 period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to
14 exceed \$4,000, as well as an award of costs and reasonable attorney’s fees, for all pay periods in
15 which the employer fails to provide accurate itemized statements to the employee causing the
16 employee to suffer injury.

17 66. Due to Defendant’s failure to provide employees with lawful off-duty rest periods
18 and pay rest period premiums, as well as all minimum wages associated with COVID-19
19 screenings and overtime wages owed, the wage statements issued by Defendant do not indicate
20 the correct amount of gross wages earned, the correct number of hours worked, the correct net
21 wages earned, or the correct overtime rate. Thus, Defendant has violated Labor Code §226(a)(1),
22 (2), (5) and (9) with respect to Plaintiff and all Class Members.

23 67. Defendant’s failure to provide Plaintiff and Class Members with accurate itemized
24 wage statements during the Class Period has caused Plaintiff and Class Members who worked
25 within the actionable period for this cause of action (the “Subclass Members”) to incur economic
26 damages in that they were not aware that they were owed and not paid compensation for their
27 time spent on statutory rest breaks and pre-shift COVID-19 screenings. *See Cicairos v. Summit*
28 *Logistics*, 133 Cal. App. 4th 949, 954 (“If it is left to the employee to add up the daily hours
shown on the time cards or other records so that the employee must perform arithmetic
computations to determine the total hours worked during the pay period, the requirements of
section 226 would not be met”); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D.
Cal. 2011) (wage statements violated California Labor Code by not including, inter alia, total

1 hours worked giving rise to claims under both Section 226 and for PAGA penalties); *Cicairos v.*
2 *Summit Logistics, Inc.*, 133 Cal. App. 4th 949, 960-961 (2005) (reversing summary judgment for
3 defendants where wage statements did not “give an accurate report of the hours plaintiff worked,
4 at least not on its face”); Cal. Labor Code § 226(e)(2)(B) (clarifying that injury is established
5 where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and
6 where employees cannot easily determine the gross or net wages earned by the employee during
7 the pay period).

8 68. As a result of Defendant’s failure to issue accurate and complete itemized wage
9 statements to Plaintiff and Class Members in violation of section 226(a) of the California Labor
10 Code, Plaintiff Class Members who worked for Defendant within the one year preceding the
11 filing of this Complaint are each entitled to recover an initial penalty of \$50, and subsequent
12 penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 for each
13 member of the Class, including Plaintiff, from Defendant pursuant to section 226(e) of the
14 California Labor Code.

15 **SIXTH CAUSE OF ACTION**
16 **WAITING TIME PENALTIES FOR**
17 **FAILURE TO PAY WAGES DUE ON TERMINATION**
18 **[Cal. Labor Code §§ 201-203]**

19 **On Behalf of Plaintiff and the Waiting Time Penalty Subclass Against Defendant**

20 69. Plaintiff re-alleges and incorporates by reference each and every allegation set
21 forth in the preceding paragraphs.

22 70. Sections 201 and 202 of the California Labor Code requires Defendant to pay all
23 compensation due and owing to former employees in the Class during the actionable period for
24 this cause of action at or around the time that their employment is or was terminated or ended.

25 71. Section 203 of the California Labor Code provides that if an employer willfully
26 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201
27 and 202, then the employer is liable for penalties in the form of continued compensation up to
28 thirty (30) workdays.

72. Defendant willfully failed to pay Plaintiff and other members of the Waiting Time
Penalty Subclass (i.e., those members of the class whose employment with Defendant ended

1 during the actionable period for this cause of action) who are no longer employed by Defendant,
2 rest period premiums for their on-duty rest periods and all minimum and overtime wages owed,
3 upon termination or separation from employment with Defendant as required by California Labor
4 Code §§ 201 and 202.

5 73. As a result, Defendant is liable to Plaintiff and other members of the Waiting Time
6 Penalty Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and
7 each such Class member pursuant to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4
8 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting
9 time penalties).

10 **SEVENTH CAUSE OF ACTION**
11 **UNFAIR COMPETITION LAW VIOLATIONS**
12 **[Bus. & Prof. Code §§ 17200]**
13 **On Behalf of Plaintiff and the Class Against Defendant**

14 74. Plaintiff re-alleges and incorporates by reference each and every allegation set
15 forth in the preceding paragraphs.

16 75. Section 17200 of the California Business & Professions Code prohibits any
17 unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows
18 “any person who has suffered injury in fact and has lost money or property” to prosecute a civil
19 action for violation of the UCL. Such a person may bring such an action on behalf of herself and
20 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

21 76. Under section 17208 of the California Business and Professions Code, the statute
22 of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period
23 for this cause of action is four years prior to the filing of this Complaint through the present, and
24 on-going until the violations are corrected, and/or the class is certified.

25 77. Section 90.5(a) of the Labor Code states that it is the public policy of California to
26 enforce vigorously minimum labor standards in order to ensure employees are not required to
27 work under substandard and unlawful conditions, and to protect employers who comply with the
28 law from those who attempt to gain competitive advantage at the expense of their workers by
failing to comply with minimum labor standards.

1 78. As a direct and proximate result of Defendant's unlawful business practices,
2 Plaintiff and the Class Members have suffered economic injuries. Defendant has profited from its
3 unlawful, unfair, and/or fraudulent acts and practices.

4 79. Plaintiff and similarly situated Class Members are entitled to monetary relief
5 pursuant to Business & Professions Code § 17203 and 17208 for all unpaid wages due and
6 interest thereon, from at least four years prior to the filing of this Complaint through the date of
7 such restitution, at rates specified by law. Defendant should be required to disgorge all the profits
8 and gains it has reaped and restore such profits and gains to Plaintiff and Class Members, from
9 whom they were unlawfully taken.

10 80. Through its action alleged herein, Defendant has engaged in unfair competition
11 within the meaning of section 17200 of the California Business & Professions Code, because
12 Defendant's conduct, as herein alleged has damaged Plaintiff and the Class Members by
13 wrongfully denying them minimum and overtime wages and/or penalties due for rest period
14 premiums and therefore was substantially injurious to Plaintiff and the Class Members.

15 81. Defendant engaged in unfair competition in violation of Section 17200 *et seq.* of
16 the California Business & Professions Code by violating section 226.7 of the California Labor
17 Code, and Section 12 of the Wage Order No. 4-2001.

18 82. Defendant's course of conduct, act and practice in violation of the California laws
19 mentioned above constitute independent violations of Sections 17200 *et seq.* of the California
20 Business & Professions Code.

21 83. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
22 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

23 84. Plaintiff has assumed the responsibility of enforcement of the laws and public
24 policies specified herein by suing on behalf of themselves and other similarly situated Class
25 Members previously or presently employed by Defendant. Plaintiff's success in this action will
26 enforce important rights affecting the public interest. Plaintiff will incur a financial burden in
27 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
28 Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5.

EIGHTH CAUSE OF ACTION
FOR PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ. FOR
VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 511,
1194, 1197, 1198; as well as IWC WAGE ORDER 4-2001
On Behalf of Plaintiff and All Aggrieved Employees Against Defendant

85. Plaintiff, on behalf of herself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

86. Based on the above allegations incorporated by reference, Defendant violated Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 511, 1194, 1197, 1198, as well as IWC Wage Order 4-2001.

87. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

\$100 for the initial violation per employee per pay period; and

\$200 for each subsequent violation per employee per pay period.

These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

88. In addition, as set forth above, Defendant failed to provide Plaintiff and all aggrieved employees with accurate itemized wage statements in compliance with Labor Code § 226(a). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

89. Further, Plaintiff, as an aggrieved employee, need not demonstrate or prove that Defendant’s conduct in refusing to provide accurate and itemized wage statements was knowing, intentional, or willful. *Lopez v. Friant & Assocs., LLC*, (2017) 15 Cal. App. 5th 773, 788, (“Consistent with the PAGA statutory framework and the plain language and legislative history of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section

226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1).”); *see Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).⁴

90. As a result of the acts alleged above, Plaintiff and the aggrieved employees seek penalties under Labor Code § 2699, et seq. because of Defendant’s violation of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 511, 1194, 1197, 1198, as well as IWC Wage Order 4-2001.

RELIEF REQUESTED

Wherefore, Plaintiff, on behalf of herself and the members of the Class, pray for judgment against Defendant as follows:

1. An Order that this action may proceed and be maintained as a class action;

2. On the First Cause of Action:

a. A declaratory judgment that Defendant has violated California Labor Code § 226.7, and Section 12 of IWC Wage Order No. 4-2001;

b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class

⁴ See also *York v. Starbucks Corp.*, No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *2 (C.D. Cal. Nov. 1, 2012) (granting summary adjudication to the plaintiff on his PAGA claim based upon violations of Lab. Code § 226(a) because “the presence or absence of injury is irrelevant to the standing inquiry under PAGA.”) *Pelton v. Panda Restaurant Group, Inc.* (C.D. Cal., May 3, 2011, CV 10-8458 MANx) 2011 WL 1743268 (“[T]he Court rejects CPS’s argument that plaintiff ‘lacks any PAGA injury.’ Pursuant to Cal. Labor Code § 2699, ‘any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ... may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself or herself and other current or former employees.’ Sections 2699.5 and 2699.3(a) provide that such a claim may be brought for a violation of § 226(a)”); *accord Lopez v. G.A.T. Airline Ground Support, Inc.* (S.D. Cal., July 19, 2010, 09-CV-2268-IEG) 2010 WL 2839417, *5-6 (“It is undisputed that GAT’s paychecks do not indicate the applicable hourly rate of pay for the employee’s regular rate, overtime rate, or double-time rate of pay...The failure to provide this information violates Section 226(a)... Because Section 226 does not provide a penalty, Section 2699(f) penalties are available.”).

Members for an hour of pay for each day that an off-premises rest period was not provided in California during the Class Period;

3. On the Second Cause of Action:

a. A declaratory judgment that Defendant violated Labor Code sections 1194 and 1197;

b. Pursuant to 1194, an award to Plaintiff and the Class for unpaid wages and penalties pursuant to Labor Code § 1194;

4. On the Third Cause of Action:

a. A declaratory judgement that Defendant violated Labor Code § 510;

b. Pursuant to 510, an award to Plaintiff and the Class for unpaid wages and penalties pursuant to Labor Code § 510.

5. On the Fourth Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code §§ 204 and 210;

b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff and the Class for penalties pursuant to Labor Code § 210.

6. On the Fifth Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code §226 and 226.3 by issuing inaccurate and/or incomplete wage statements;

b. An award to Plaintiff and Class Members of \$50 for each initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent pay period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the Class, as well as an award of costs and reasonable attorney's fees.

7. On the Sixth Cause of Action

a. A declaratory judgment that Defendant violated California Labor Code §§ 201-203;

b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and the Waiting Time Penalty Subclass members for waiting time penalties in the amount of 30 days'

1 wages per waiting time penalty subclass Class Member.

2 8. On the Seventh Cause of Action:

3 a. That the Court find and declare that Defendant violated the UCL and
4 committed unfair and unlawful business practices by failing to provide Plaintiff and the Class
5 members with all minimum and overtime wages owed and off-duty rest periods, and/or rest
6 period premiums, as required by Cal. Labor Code §226.7;

7 b. Restitution, including, but not limited to, the relief permitted by sections
8 226.7 of the California Labor Code (i.e., rest period premiums);

9 9. On the Eighth Cause of Action:

10 a. A civil penalty against Defendant in the amount of \$100 for the initial
11 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the
12 California Labor Code for Plaintiff and for the aggrieved employees during all of the pay periods
13 in the PAGA Period;

14 b. An award of reasonable attorney's fees against Defendant as specified in
15 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection
16 with the PAGA claims;

17 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
18 connection with Plaintiff's and aggrieved employees' PAGA claim against Defendant as
19 provided for in Labor Code § 2699(g)(1);

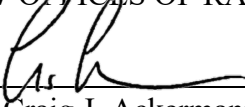
20 10. All other relief as this Court deems proper.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

23 Dated: November 11, 2021

ACKERMANN & TILAJEF, P.C.
LAW OFFICES OF RAPHAEL A. KATRI

24 By:  _____

25 Craig J. Ackermann, Esq.

26 Raphael A. Katri, Esq.

27 Attorneys for Plaintiff, the Class, the LWDA, and
28 the Aggrieved Employees

EXHIBIT 1

The meal period will not be included in the total hours of work per day and is not compensable. Non-exempt employees are strictly prohibited from performing any work while on meal breaks except as may be necessary due to an urgent or critical issue (defined later in this document).

On-Duty Meal Breaks

Employees can take on-duty meal periods only in certain limited circumstances. An on-duty meal break must meet ALL of the following conditions:

- Is permitted only when the nature of the work prevents an employee from being relieved of all duty.
- Must be agreed to in writing by the supervisor and the employee.
- Must be paid.
- Can be revoked at any time in writing by the employee.

Employees may revoke the On Duty Meal Period Agreement at any time by delivery of a written notice of termination to Human Resources.

Rest Breaks

Atlas Lift Tech, Inc. provides non-exempt employees with 10-minute paid rest breaks as required by California law. Non-exempt employees receive one rest break for each four (4) hour work period or a "major fraction" of a work period (i.e. greater than two hours); however, any non-exempt employee who works less than 3½ hours in a day is not eligible to take a rest break. The number of breaks received is as follows:

- Non-exempt employees who work between 3½ and 6 hours are entitled to 1 rest break.
- Non-exempt employees who work more than 6 and up to 10 hours are entitled to 2 rest breaks.
- Non-exempt employees who work more than 10 and up to 12 hours are entitled to 3 rest breaks.



A rest break is paid time when employees are relieved of all work duties and responsibilities, although they must remain on the facility premises. Rest breaks may not be combined, added to a meal period, or taken at the very beginning or very end of the day. Insofar as practicable, rest breaks should be in the middle of each work period. Employees must self-police their rest breaks and ensure that they take their breaks every day. If any employee is unable to take his/her rest break time, the employee must notify his/her supervisor at the time the employee is unable to take the rest break. Failure to follow this notification requirement may lead to corrective action being taken, up to and including termination, at the Company's discretion.

Employees who are not provided with a rest break as set forth in this Policy must contact their Head Coach within 24 hours so the matter can be fully investigated and appropriate corrective action taken. The company will also