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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

JOSE MALDONADO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

ADD-ON COMPUTER PERIPHERALS
LLC, a California Limited Liability
Company; and DOES 1 through 20, inclusive;

Defendants.

Case No.: 30-2021-0206062-CU-OE-CXC
*[Assigned to Hon. James J. Di Cesare, Dept.
C-16, for all purposes]*

**FIRST AMENDED CLASS AND
REPRESENTATIVE COMPLAINT**

CLASS 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 Pay Vested Vacation;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition

PAGA CLAIMS

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

JURY TRIAL DEMANDED

1 Plaintiff Jose Maldonado (“Plaintiff”) on behalf of himself, on a representative basis, and
2 on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), Defendants Add-On
5 Computer Peripherals LLC and DOES 1 through 20, inclusive, (collectively, “Defendants”) on
6 behalf of all current and former nonexempt employees employed by Defendants in California
7 (the “Class” or “Represented Employees”), for Labor Code violations stemming from
8 Defendants’ failure to pay all wages owed, including minimum, regular, and overtime wages,
9 failure to provide meal periods, failure to provide rest breaks, failure to pay vested vacation,
10 failure to timely pay wages, and failure to provide accurate itemized wage statements.

11 2. Plaintiff was employed by Defendants from approximately 2015 through
12 February 2021.

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

16 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
17 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
18 worked. For example, Defendants paid Plaintiff and the Represented Employees on an hourly
19 basis but also paid additional earned compensation and/or bonuses. However, during workweeks
20 where the Represented Employees worked overtime hours and earned additional
21 nondiscretionary compensation and/or bonuses, Defendants failed to include that compensation
22 in the calculations for the regular rate of pay and instead paid overtime at only 1.5 times the base
23 rate of pay – violating the well-established rule that overtime must always be paid at time and
24 one-half the regular rate of pay.

25 5. Plaintiff and the Represented Employees were also denied 30-minute off-duty
26 meal periods, as mandated by California law. As a result of Defendants’ policies and practices,
27 the Represented Employees were subjected to meal period violations when they were: (1) unable
28 to take meal periods due to workload, (2) forced to take on-duty meal periods while under

1 Defendants' control, (3) forced to take meal periods, if such a meal occurred, after the 5th hour
2 of work, (4) not provided a mandated first meal period for shifts in excess of 6 hours, and (5) not
3 provided mandated second meal periods for shifts over 10 hours.

4 6. Defendants also failed to provide Plaintiff and the Represented Employees with
5 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
6 mandated by California law. Defendants did not schedule rest breaks and the Represented
7 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
8 overwhelmed by their hectic workload. Additionally, Plaintiff and the Represented Employees
9 were not permitted to leave the premises for rest breaks, in violation of California law.
10 Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of
11 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

12 7. Also, at all relevant times, Defendants utilized a policy and practice through
13 which Plaintiff and the Represented Employees accrued vacation and/or PTO hours (collectively,
14 "vacation hours"). However, on occasions when Plaintiff and the Represented Employees had
15 accrued but unused vacation hours upon separation of employment, Defendants failed to pay
16 these wages and, further, failed to pay them at the "final rate" required by Labor Code § 227.3.

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

23 9. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
24 statements that fully complied with the requirements of Labor Code § 226(a). This claim is
25 detailed below, but one example relates to Defendants' practice of paying Plaintiff and the
26 Represented Employees "Hazard Pay" and "Hazard Pay OT." These amounts were calculated on
27 an hourly basis, yet Defendants' wage statements failed to state the corresponding rates of pay or
28 applicable hours worked for each category, in direct violation of Labor Code § 226(a)(9).

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

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

11 12. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
12 monetary relief against Defendants and each of them, on behalf of himself and the Represented
13 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
14 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
15 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and
16 1199, among possibly other sections inadvertently omitted. Plaintiff also reserves the right to
17 name additional representatives throughout the State of California.

18 **II. JURISDICTION**

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

21 **III. VENUE**

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

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1 **IV. PARTIES**

2 **Plaintiff**

3 15. Plaintiff and Class Representative Jose Maldonado was employed by Defendants
4 from approximately 2015 through February 2021 and performed work for Defendants in Orange
5 County.

6 **Defendants**

7 16. Plaintiff is informed and believes and thereon alleges that Defendant Add-On
8 Computer Peripherals LLC is a California Limited Liability Company, with its principal place of
9 business in Tustin, California, authorized to and doing business in Orange County, California,
10 and is and/or was the legal employer of Plaintiff and the Represented Employees during the
11 applicable statutory periods.

12 17. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
13 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
14 inclusive, but on information and belief alleges that those Defendants are legally responsible for
15 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
16 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
17 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
18 Defendants when ascertained.

19 18. Plaintiff is informed and believes and thereon alleges that he and the Represented
20 Employees worked under the joint direction and control of Defendants and that Defendants, and
21 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
22 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
23 each Defendant are legally attributable to the other Defendants. On information and belief, a
24 unity of interest and ownership between each Defendant exists such that all Defendants acted as
25 a single employer of Plaintiff and other Represented Employees.

26 19. Furthermore, Plaintiff is informed and believes and thereon alleges that
27 Defendants, and each of them, are an integrated enterprise and should be treated as a single
28 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.

20. 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.

21. 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

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

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

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

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1 25. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
2 represent is defined as follows:

3 **California Class**

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

6 26. Plaintiff also seeks to represent the following subclasses:

7 **Meal Break Subclass**

8 All Represented Employees who worked a shift in excess of
9 5 hours during the Relevant Time Period.

10 **Rest Break Subclass**

11 All Represented Employees who worked a shift of at least
12 3.5 hours during the Relevant Time Period.

13 **Vested Vacation Subclass**

14 All Represented Employees who had accrued but unused
15 vacation upon separation of employment during the period
16 four years before the filing of this action and ending when
17 final judgment is entered.

18 **Waiting Time Penalties Subclass**

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

23 **Wage Statement Penalties Subclass**

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

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

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

3 29. 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' records.

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

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

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

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

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

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

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1 v. Whether Defendants violated the California Labor Code by failing to
2 compensate Plaintiff and the Vested Vacation Subclass for all accrued but unused vacation hours
3 upon separation of employment;

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

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

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

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

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

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

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

1 law and fact common to the Class predominate over any questions affecting only individual
2 members of the Class. Each Represented Employee has been damaged and is entitled to
3 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
4 treatment will allow those similarly situated persons to litigate their claims in the manner that is
5 most efficient and economical for the parties and the judicial system.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**

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

9 *Plaintiff and the Represented Employees Against All Defendants*

10 35. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
11 as if fully alleged herein.

12 36. Plaintiff and the Represented Employees were not exempt from the requirement
13 to be paid at least the applicable California minimum wage throughout the statutory period for
14 each hour worked.

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

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

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

26 40. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
27 Represented Employees were entitled to be paid wages throughout the statutory period for each
28 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay

1 them in accordance thereto.

2 41. 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 42. 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 43. 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 44. Plaintiff, on behalf of himself 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 45. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
20 as if fully alleged herein.

21 46. 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 47. 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.

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

5 49. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
6 Represented Employees due to the failure to include all earned and nondiscretionary
7 compensation in the calculation for the regular rate of pay and overtime rate.

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

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

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

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

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

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

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

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

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

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

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

25 62. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
26 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
27 practices, Plaintiff and the Represented Employees were subjected to meal period violations
28 when they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal

periods while under Defendants' control, (3) forced to take meal periods, if such a meal occurred, after the 5th hour of work, (4) not provided a mandated first meal period for shifts in excess of 6 hours, and (5) not provided mandated second meal periods for shifts over 10 hours.

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

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

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

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

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

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1 68. 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 69. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

10 70. 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 71. 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 72. 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 73. 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 74. 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 75. 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 76. 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 77. 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 78. 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 PAY VESTED VACATION**

20 (Labor Code § 227.3)

21 *Plaintiff and the Vested Vacation Subclass Against All Defendants*

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

24 80. Plaintiff and the Vested Vacation Subclass were employees of Defendants who
25 did not receive proper protections and benefits of the laws governing the payment of vested
26 vacation time and/or paid time off upon separation of employment.

27 81. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
28 vacation, paid time off, or compensated time off policy must, upon an employee's separation

1 from employment, pay to the employee all vested but unused vacation and/or paid time off at her
2 final rate of pay.

3 82. At all relevant times, Defendants utilized a policy and practice through which
4 Plaintiff and the Vested Vacation Subclass accrued vacation hours. However, on occasions
5 when Plaintiff and the Vested Vacation Subclass had accrued but unused vacation hours upon
6 separation of employment, Defendants failed to pay these wages and, further, failed to pay them
7 at the “final rate” required by Labor Code § 227.3.

8 83. As a result, Plaintiff and the Vested Vacation Subclass did not receive
9 compensation for all accrued but unused vacation hours as required by Labor Code § 227.3.

10 84. At all relevant times herein, Defendants failed to pay the Vested Vacation
11 Subclass, including Plaintiff, all vested but unused vacation time and/or paid time off upon
12 separation from employment, thereby receiving an economic benefit.

13 85. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
14 them, knowingly refused to perform their obligations to compensate the Vested Vacation
15 Subclass for all vested but unused vacation time and/or paid time off upon separation from
16 employment.

17 86. As a result of Defendants’ violations of Labor Code § 227.3, Plaintiff and the
18 Vested Vacation Subclass seek to recover the unpaid vacation hours, as well as penalties,
19 interest, attorneys’ fees, and costs as permitted under California law.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO TIMELY PAY FINAL WAGES**

22 (Labor Code §§ 201 – 203)

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

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

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

1 89. Labor Code § 201 requires that the employer immediately pay any wages, without
2 abatement or reduction, to any employee who is discharged.

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

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

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

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

16 94. Additionally, at all relevant times, Defendants failed to pay all mandated sick
17 wages owed to the Waiting Time Penalties Subclass at the proper rate of pay.

18 95. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees
19 must be “calculated in the same manner as the regular rate of pay for the workweek in which the
20 employee uses paid sick time, whether or not the employee actually works overtime in that
21 workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
22 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the
23 employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

24 96. Here, Plaintiff and the Waiting Time Penalties Subclass were compensated on an
25 hourly basis plus additional compensation in the form of hazard pay and/or nondiscretionary
26 bonuses. However, on the occasions that the Waiting Time Penalties Subclass took sick time
27 and received paid sick leave, Defendants only paid sick time at the base rate of pay (not factoring
28 in the additional compensation as required by Labor Code §§ 246(l)(1-2)), leading to unpaid

1 wages at the time of separation of employment.

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

8 **SEVENTH CAUSE OF ACTION**

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

10 (Labor Code § 226)

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

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

14 99. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
15 Defendants who did not receive proper protections and benefits of the laws governing the
16 provision of accurate itemized wage statements.

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

23 101. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
24 and the Wage Statement Penalties Subclass because Defendants failed to provide a wage
25 statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
26 requirements of Labor Code § 226(a).

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1 102. Defendants' wage statements failed to accurately state total hours worked, the
2 hours worked at each hourly rate, the accurate rates of pay, and further failed to accurately state
3 gross wages earned, all deductions, and net wages earned.

4 103. Additionally, Defendants' wage statements violated Labor Code § 226(a)(9) each
5 period. At all relevant times, Defendants paid Plaintiff and the Represented Employees hourly
6 wages in the form of "Hazard Pay" and "Hazard Pay OT." Yet, despite that these amounts were
7 calculated on an hourly basis, Defendants' wage statements failed to state the corresponding
8 rates of pay or applicable hours worked for each category.

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

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

23 106. As a result of Defendants' knowing and intentional failure to comply with Labor
24 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
25 that each was prevented from knowing, understanding and disputing the wage payments paid to
26 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
27 injury in that the failure to show all wages earned on the itemized wage statements resulted in
28 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and

1 withholdings owed by the employer, including, but not limited to, the failure to make all
2 necessary contributions for unemployment benefits, social security benefits, proper payment of
3 taxes and withholdings, and other mandated state and federal benefits.

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

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

13 **EIGHTH CAUSE OF ACTION**

14 **UNFAIR AND UNLAWFUL COMPETITION**

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

16 *Plaintiff and the Represented Employees against All Defendants*

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

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

23 111. Defendants, and each of them, are "persons" as defined under Business &
24 Professions Code § 17021.

25 112. As alleged herein, Defendants engaged in conduct that violated California's wage
26 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
27 mandated meal periods and rest breaks, failure to pay vested vacation, and failure to timely pay
28 final wages, all to decrease their costs and increase their profits.

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

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

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

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

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

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

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

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

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

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

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

26 123. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
27 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
28 PAGA through a representative action pursuant to the PAGA and the California Supreme Court

1 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
2 does she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

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

10 **NINTH CAUSE OF ACTION**

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

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

13 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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129. 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.

130. 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.

TENTH 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

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

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

133. 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.

134. 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.

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

/ / /

1 136. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees on
2 an hourly basis but also paid additional earned nondiscretionary compensation and/or bonuses.
3 However, during workweeks where the Aggrieved Employees worked overtime hours and
4 earned additional nondiscretionary compensation and/or bonuses, Defendants failed to include
5 the bonuses in the calculations for the regular rate of pay and instead paid overtime at only 1.5
6 times the base rate of pay – violating the well-established rule that overtime must always be paid
7 at time and one-half the regular rate of pay.

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

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

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

18 **ELEVENTH CAUSE OF ACTION**

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

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

21 *Plaintiff and the Aggrieved Employees against All Defendants*

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

24 141. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
25 who did not receive proper protections and benefits of the laws governing mandatory meal
26 periods.

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

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

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

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

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

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

26 148. On information and belief, Plaintiff and the Aggrieved Employees did not
27 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
28 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not

1 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
2 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
3 Employees to take meal periods in accordance with California law.

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

7 **TWELFTH CAUSE OF ACTION**

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

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

10 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

25 155. At all relevant times, Defendants also failed to provide Plaintiff and the
26 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
27 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
28 Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks

1 due to being overwhelmed by their hectic workload. Additionally, Plaintiff and the Aggrieved
2 Employees were often not permitted to leave the premises for rest breaks, in violation of
3 California law. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked
4 in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated
5 rest break.

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

10 157. 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 **THIRTEENTH CAUSE OF ACTION**

14 **PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION**

15 (Labor Code § 227.3)

16 *Plaintiff and the Aggrieved Employees Against All Defendants*

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

19 159. Plaintiff and the Aggrieved Employees were employees of Defendants who did
20 not receive proper protections and benefits of the laws governing the payment of vested vacation
21 time and/or paid time off upon separation of employment.

22 160. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
23 vacation, paid time off, or compensated time off policy must, upon an employee's separation
24 from employment, pay to the employee all vested but unused vacation and/or paid time off at her
25 final rate of pay.

26 161. At all relevant times, Defendants utilized a policy and practice through which
27 Plaintiff and the Aggrieved Employees accrued vacation hours. However, on occasions when
28 Plaintiff and the Aggrieved Employees had accrued but unused vacation hours upon separation

1 of employment, Defendants failed to pay these wages and, further, failed to pay them at the
2 “final rate” required by Labor Code § 227.3.

3 162. As a result, Plaintiff and the Aggrieved Employees did not receive compensation
4 for all accrued but unused vacation hours as required by Labor Code § 227.3.

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

8 **FOURTEENTH CAUSE OF ACTION**

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

10 (Labor Code § 204)

11 *Plaintiff and the Aggrieved Employees against All Defendants*

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

14 165. Plaintiff and the Aggrieved Employees are and/or were “nonexempt” employees
15 of Defendants who did not receive proper protections and benefits of the laws regarding the
16 timing of payment of wages each period.

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

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

25 168. At all relevant times herein, Defendants did not provide Plaintiff and the
26 Aggrieved Employees with all wages due and owing each period within the time required by
27 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
28 Employees with all wages due and owing each pay period, including, but not limited to,

1 minimum, regular, and overtime wages, as well as meal and rest period premiums, within the
2 time specified by Labor Code § 204.

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

6 **FIFTEENTH CAUSE OF ACTION**

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

8 (Labor Code §§ 201 – 203 and 256)

9 *Plaintiff and the Aggrieved Employees against All Defendants*

10 170. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
11 as if fully alleged herein.

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

15 172. Labor Code § 201 requires that the employer immediately pay any wages, without
16 abatement or reduction, to any employee who is discharged.

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

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

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

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

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

7 **SIXTEENTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR**
9 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

10 (Labor Code § 226)

11 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

23 181. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
24 and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff
25 and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a),
26 including the failure to accurately state total hours worked, the hours worked at each hourly rate,
27 the accurate rates of pay, and further failed to accurately state gross wages earned, all deductions,
28 and net wages earned.

1 182. Additionally, Defendants’ wage statements violated Labor Code § 226(a)(9) each
2 period. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees hourly
3 wages in the form of “Hazard Pay” and “Hazard Pay OT.” Yet, despite that these amounts were
4 calculated on an hourly basis, Defendants’ wage statements failed to state the corresponding
5 rates of pay or applicable hours worked for each category.

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

10 184. As a result of the Defendants’ violations of Labor Code §226(a)(9), 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 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 (“Section
14 226.3 provides the civil penalty for failure to comply” with Labor Code § 226).

15 **VII. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
17 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
18 follows:

- 19 1. As to the Ninth through Sixteenth Causes of Action, the assessment of all
20 applicable and available remedies under the PAGA;
- 21 2. For reasonable attorneys’ fees and costs as permitted under the PAGA;
- 22 3. That the First through Eighth Causes of Action be certified as a class action;
- 23 4. That Plaintiff be appointed as Class Representative;
- 24 5. That counsel for Plaintiff be appointed Class Counsel;
- 25 6. For all applicable statutory penalties recoverable under the First through Eighth
26 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
27 Orders of the Industrial Welfare Commission;

28 ///

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

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

5 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
6 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198,
7 1199, among other sections inadvertently omitted;

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

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

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

13 **DEMAND FOR JURY TRIAL**

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

16
17 Dated: August 20, 2021

LAUBY, MANKIN & LAUBY LLP

18
19 BY:



20 Brian J. Mankin, Esq.
21 Peter J. Carlson, Esq.
22 Attorneys for Plaintiff
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26
27
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PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On August 24, 2021, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT AND REPRESENTATIVE COMPLAINT

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

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

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

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

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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 24, 2021, Riverside, California.

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



Tracie Chiarito, Declarant

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