

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder, Esq. (State Bar No. 170131)
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
Tel: (831) 531-4214
Fax: (831) 634-0333

Attorneys for Plaintiff Jodie Blanton Jr. and the Class

[Additional Counsel on following page]

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

JODIE BLANTON JR., YAZMIN CORTES,
and GABRIELA ESCRIBA, individually, on
a representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

COMMUNICATIONS TEST DESIGN, INC.,
a Pennsylvania Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: STK-CV-UOE-2021-0005136
*[Assigned to Hon. Judge Robert T. Waters,
Dept. 11B, for all purposes]*

CONSOLIDATED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Timely Pay Final Wages;
- (6) Failure to Provide Accurate Itemized Wage Statements;
- (7) Unfair and Unlawful Competition;

PAGA CLAIMS

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

1 Brian J. Mankin, Esq. [CSB No. 216228]
2 *brian@lmlfirm.com*
3 Misty M. Lauby, Esq. [CSB No. 243009]
4 *misty@lmlfirm.com*
5 LAUBY, MANKIN & LAUBY LLP
6 5198 Arlington Avenue, PMB 513
7 Riverside, CA 92504
8 Tel: (951) 320-1444 | Fax: (951) 320-1445

9 Attorneys for Plaintiff Yazmin Cortes, on a representative basis and on behalf of all others
10 similarly situated

11 David G. Spivak (SBN 179684)
12 *david@spivaklaw.com*
13 THE SPIVAK LAW FIRM
14 16530 Ventura Blvd., Ste 203
15 Encino, CA 91436
16 Telephone (213) 725-9094
17 Facsimile (213) 634-2485

18 Louis M. Benowitz, Esq. (SBN 262300)
19 BENOWITZ LAW CORPORATION
20 8605 Santa Monica Blvd., PMB 97638
21 West Hollywood, CA 90069-4109
22 Tel: (818) 839-9610

23 Attorneys for Plaintiff Gabriela Escriba, and all others similarly situated
24
25
26
27
28

1 Plaintiff Jodie Blanton Jr (“Plaintiff Blanton”), Plaintiff Yazmin Cortes (“Plaintiff
2 Cortes”), and Plaintiff Gabriela Escriba (“Plaintiff Escriba”) (collectively “Plaintiffs”) on behalf
3 of themselves, on a representative basis, and on behalf of others similarly situated, complain and
4 allege as follows.

5 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

6 1. Plaintiffs bring this action against their current and/or former employer(s),
7 Defendants Communications Test Design, Inc. (“Defendant CTDI”), a Pennsylvania
8 Corporation, Protech Staffing Services, Inc. (“Defendant Protech”), and DOES 1 through 20,
9 inclusive, (collectively, “Defendants”) on behalf of all current and former employees employed
10 by Defendants in California (the “Class” or “Represented Employees”), for California Labor
11 Code violations stemming from Defendants’ failure to pay all wages owed, including minimum,
12 regular, and overtime wages, failure to provide meal periods, failure to provide rest breaks,
13 failure to timely pay wages, and failure to provide accurate itemized wage statements, and failure
14 to provide safe and healthful working conditions.

15 2. Plaintiff Blanton has been employed by Defendant CTDI since approximately
16 October 2019.

17 3. Plaintiff Cortes was employed by Defendant CTDI from approximately February
18 2019 through present.

19 4. Plaintiff Escriba was jointly employed by Defendant CTDI and Defendant
20 Protech from approximately February 12, 2020 through May 25, 2020.

21 5. Plaintiffs allege on information and belief that the Represented Employees were
22 subjected to the same policies, working conditions, and corresponding wage and hour violations
23 to which Plaintiffs were subjected during their employment.

24 6. Plaintiffs and the Represented Employees were not provided proper minimum,
25 regular, and overtime wages due to Defendants’ failure to accurately record and compensate for
26 all hours worked.

27 7. Also, at all relevant times, Plaintiffs and the Represented Employees were denied
28 30-minute off-duty meal periods, as mandated by California law, during their employment with

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

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

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

20 10. Plaintiffs further allege that Defendants failed to provide accurate itemized wage
21 statements that fully complied with the requirements of Labor Code § 226(a).

22 11. Plaintiffs allege that Defendants' violations of the wage and hour components of
23 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
24 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
25 competitors.

26 12. At all material times, Defendants and DOES 1 through 20 were and/or are the
27 Represented Employees' employers or persons acting on behalf of the Represented Employees'
28 employer, within the meaning of California Labor Code § 558, who violated or caused to be

1 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
2 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
3 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
4 California law.

5 13. Plaintiffs bring this lawsuit seeking declaratory, injunctive, equitable, and
6 monetary relief against Defendants and each of them, on behalf of themselves and the
7 Represented Employees to recover, among other things, unpaid wages and benefits, interest,
8 attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201,
9 202, 203, 204, 218.6, 223, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1174, 1194, 1194.2,
10 1197, 1198, and 1199 among possibly other sections inadvertently omitted. Plaintiffs also
11 reserve the right to name additional representatives throughout the State of California.

12 **II. JURISDICTION**

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

15 **III. VENUE**

16 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
17 Procedure § 395(a). Defendants transact business in San Joaquin County and the unlawful acts
18 alleged herein have a direct effect on Plaintiffs and the Represented Employees in San Joaquin
19 County. Furthermore, Defendants employed or employ Plaintiffs and Represented Employees in
20 San Joaquin County.

21 **IV. PARTIES**

22 **Plaintiffs**

23 16. Plaintiff Blanton employed by Defendants from approximately October 2019
24 through present and performed work for Defendants in San Joaquin County.

25 17. Plaintiff Cortes was employed by Defendants from approximately February 2019
26 through present and performed work for Defendants who operate in San Joaquin County.

27 18. Plaintiff Escriba was employed by Defendants from approximately February
28 through May 2020 and performed work for Defendants who operate in San Joaquin County.

1 **Defendants**

2 19. Plaintiffs are informed and believe and thereon allege that Defendant
3 Communication Test Design, Inc. is a Pennsylvania corporation authorized to and doing business
4 in San Joaquin County, California, and is and/or was the legal employer of Plaintiffs and the
5 Represented Employees during the applicable statutory periods.

6 20. Plaintiffs are informed and believe and thereon allege that Defendant Protech
7 Staffing Services, Inc. is a corporation organized under the laws of California and authorized to
8 and doing business in San Joaquin County, California, and/or was the legal employer of
9 Plaintiffs and the Represented Employees during the applicable statutory periods.

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

17 **V. CLASS ACTION ALLEGATIONS**

18 22. Plaintiffs incorporate the preceding paragraphs of the Second Amended
19 Complaint as if fully alleged herein.

20 23. Plaintiffs bring this action on behalf of themselves and all others similarly situated
21 as a class action, pursuant to Code of Civil Procedure § 382.

22 24. The relevant time period for this class action is defined as the time period
23 beginning June 19, 2019 until class certification (the "Relevant Time Period").

24 25. The Class, also referred to as the "Represented Employees," that Plaintiffs seek to
25 represent is defined as follows:

26 ///

27 ///

28 ///

1 **California Class**

2 All current and former employees employed by Defendants
3 in the State of California during the Relevant Time Period.

4 26. Plaintiffs also seek to represent the following subclasses:

5 **Overtime Subclass**

6 All nonexempt Represented Employees who worked a
7 shift(s) in excess of 8 and/or 12 hours in a day or 40 hours
8 in a week during the Relevant Time Period.

9 **Meal Break Subclass**

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

12 **Rest Break Subclass**

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

15 **Waiting Time Penalties Subclass**

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

19 **Wage Statement Penalties Subclass**

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

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

24 28. Plaintiffs, as Class Representatives, are members of the class and subclasses that
25 they seek to represent.

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

1 records.

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

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

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

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

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

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

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

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

4 vii. Whether Defendants violated California Business & Professions Code §§
5 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
6 breaks, failure to provide mandated meal periods, failure to pay vested vacation, failure to
7 reimburse business expenses, and failure to timely pay final wages; and

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

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

16 33. **Adequacy of Representation.** Plaintiffs, as the Class Representatives, will fairly
17 and adequately represent and protect the interests of the Class. Plaintiffs' interests are not in
18 conflict with those of the Class. Class Representatives' counsel are competent and experienced in
19 litigating large employment class actions and other complex litigation matters, including cases
20 like this case.

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

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

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

4 (*Plaintiffs and the Represented Employees Against All Defendants*)

5 35. Plaintiffs incorporate the preceding paragraphs of the Second Amended
6 Complaint as if fully alleged herein.

7 36. Plaintiffs and the Represented Employees were not exempt from the requirement
8 to be paid at least the applicable California minimum wage throughout the statutory period for
9 each hour worked.

10 37. Plaintiffs and the Represented Employees were not provided proper minimum and
11 regular wages due to Defendants' failure to accurately record and compensate for all hours
12 worked.

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

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

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

22 41. Defendants' conduct was willful, as Defendants knew that Plaintiffs and the
23 Represented Employees were entitled to be paid wages throughout the statutory period for each
24 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
25 accordance thereto.

26 42. At all material times, Defendants DOES 1 through 20 were and/or are the
27 employer of Plaintiffs and the Represented Employees were persons acting on behalf of said
28 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be

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

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

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

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

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME WAGES**

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

14 (*Plaintiffs and the Overtime Subclass Against All Defendants*)

15 46. Plaintiffs incorporate the preceding paragraphs of the Second Amended
16 Complaint as if fully alleged herein.

17 47. Plaintiffs, the Represented Employees, and the Overtime Subclass were
18 employees of Defendants who did not receive proper protections and benefits of the laws
19 governing payment of overtime wages.

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

26 49. At all relevant times, Plaintiffs and the Represented Employees were required by
27 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
28 Defendants' failure to accurately record and compensate for all hours, Plaintiffs and the

1 Represented Employees did not receive proper overtime compensation.

2 50. Defendants also failed to properly calculate the regular rate of pay, and
3 corresponding overtime rate and wages, on occasions that Plaintiff and the Overtime Subclass
4 earned multiple rates of pay during the same workweek. Defendants failed to pay proper
5 overtime compensation for hours worked in excess of 8 and/or 12 per day and/or 40 per week to
6 the Overtime Subclass on such occasions.

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

11 52. Plaintiffs are informed and believe and thereon allege that Defendants
12 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiffs, the
13 Represented Employees, and the Overtime Subclass in violation of Labor Code §§ 204, 221-223,
14 510, 1194 and 1197.

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

19 54. At all material times, Defendants DOES 1 through 10 were and/or are the
20 employer of Plaintiffs, the Represented Employees, and the Overtime Subclass or were persons
21 acting on behalf of said employer(s), within the meaning of California Labor Code § 558, who
22 violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2,
23 Chapter 1 of the California Labor Code regulating hours and days of work respectively.

24 55. During the employment of Plaintiffs, the Represented Employees, and the
25 Overtime Subclass, Defendants failed to pay them all wages to which they were entitled, thereby
26 receiving an economic benefit.

27 56. As a result of Defendants' wrongful conduct, Plaintiffs, the Represented
28 Employees, and the Overtime Subclass have been damaged in amounts to be proven at trial.

1 57. Plaintiffs, on behalf of themselves, the Represented Employees, and the Overtime
2 Subclass, seek recovery of all unpaid overtime wages, penalties, interest, attorneys' fees, and
3 costs of suit against 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 58. Plaintiffs incorporate the preceding paragraphs of the Second Amended
9 Complaint as if fully alleged herein.

10 59. Plaintiffs 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 60. Labor Code § 226.7 requires employers, including Defendants, to provide
14 employees with meal periods as mandated by the Industrial Welfare Commission.

15 61. 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 62. 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 63. At all relevant times herein, Plaintiffs 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, Plaintiffs 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

1 period while under the control of Defendants, (3) forced to take meal periods, if such a meal
2 occurred, after the 5th hour of work, (4) not provided a mandated second meal period for shifts
3 in excess of 10 hours, and (5) subject to shortened meal periods due to policies and practices
4 such as requiring Represented Employees to walk distances to the break room after clocking out,
5 to wait in line while off-the-clock to clock back in for meal periods, and/or to don and doff
6 personal protective equipment while off-the-clock.

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

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

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

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

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

6
7
8
9
20
21
22
23
24
25
26
27
28

9
20
21
22
23
24
25
26
27
28

26
27
28

1 Employees one additional hour of compensation in lieu thereof.

2 76. At all relevant times herein, Defendants failed to provide Plaintiffs and the Rest
3 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
4 rest periods, thereby receiving an economic benefit.

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

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

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO TIMELY PAY FINAL WAGES**

16 (Labor Code §§ 201 – 203)

17 *(Plaintiff and the Waiting Time Penalties Subclass against All Defendants)*

18 79. Plaintiffs incorporate the preceding paragraphs of the Second Amended
19 Complaint as if fully alleged herein.

20 80. Plaintiffs and the Waiting Time Penalties Subclass are and/or were employees of
21 Defendants who did not receive proper protections and benefits of the laws governing the timing
22 and payment of wages.

23 81. Labor Code § 201 requires that the employer immediately pay any wages, without
24 abatement or reduction, to any employee who is discharged.

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

28 ///

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

4 84. At all relevant times, Defendants employed a policy and practice whereby
5 Plaintiffs and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
6 separation of employment within the time required by Labor Code §§ 201 and 202.

7 85. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
8 wages due and owing to Plaintiffs and the Waiting Time Penalties Subclass upon separation of
9 employment, including, but not limited to, minimum, regular, and overtime wages, vested and
10 unused vacation/PTO wages, as well as meal and rest period premiums.

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

17 **SIXTH CAUSE OF ACTION**

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

19 (Labor Code § 226)

20 *(Plaintiffs and the Wage Statement Penalties Subclass against All Defendants)*

21 87. Plaintiffs incorporate the preceding paragraphs of the Second Amended
22 Complaint as if fully alleged herein.

23 88. Plaintiffs and the Wage Statement Penalties Subclass are and/or were employees
24 of Defendants who did not receive proper protections and benefits of the laws governing the
25 provision of accurate itemized wage statements.

26 89. Labor Code § 226(a) requires an employer to provide its employees with itemized
27 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
28 inclusive dates of the pay period, the employee's name and the last four digits of his or her

1 Social Security number (or employee identification number), the name and address of the legal
2 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.

4 90. Defendants violate Labor Code § 226(a) every pay period with respect to
5 Plaintiffs and the Wage Statement Penalties Subclass because Defendants failed to provide a
6 wage statement to Plaintiffs and the Wage Statement Penalties Subclass that complied with the
7 requirements of Labor Code § 226(a). Specifically, Defendants' wage statements failed to state
8 the overtime rate of pay, failed to state the applicable rate of pay for work at rates other than the
9 base rate, and failed to state the start date of the pay period. Additionally, the wage statements
10 also failed to accurately state gross wages earned, total hours worked, all deductions, and net
11 wages earned.

12 91. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
13 to Plaintiffs and the Wage Statement Penalties Subclass because Defendants failed to provide a
14 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
15 requirements of Labor Code § 226.2(a)(2).

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

26 93. As a result of Defendants' knowing and intentional failure to comply with Labor
27 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
28 that each was prevented from knowing, understanding and disputing the wage payments paid to

1 them. Furthermore, Plaintiffs and the Wage Statement Penalties Subclass have each suffered an
2 injury in that the failure to show all wages earned on the itemized wage statements resulted in
3 Plaintiffs and the Represented Employees being denied all necessary deductions, payments, and
4 withholdings owed by the employer, including, but not limited to, the failure to make all
5 necessary contributions for unemployment benefits, social security benefits, proper payment of
6 taxes and withholdings, and other mandated state and federal benefits.

7 94. Plaintiffs have also been injured as a result of having to bring this action to
8 attempt to obtain correct wage information following Defendants' refusal to comply with many
9 of the mandates of California's Labor Code and related laws and regulations.

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

16 **SEVENTH CAUSE OF ACTION**

17 **UNFAIR AND UNLAWFUL COMPETITION**

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

19 (*Plaintiffs and the Represented Employees against All Defendants*)

20 96. Plaintiffs incorporate the preceding paragraphs of the Second Amended
21 Complaint as if fully alleged herein.

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

26 98. Defendants, and each of them, are "persons" as defined under Business &
27 Professions Code § 17021.

28 ///

1 99. As alleged herein, Defendants engaged in conduct that violated California's wage
2 and hour laws, including failure to pay minimum, regular, overtime, and vacation/PTO wages,
3 failure to provide mandated meal periods and rest breaks, failure to reimburse business expenses,
4 and failure to timely pay final wages, all to decrease their costs and increase their profits.

5 100. At all times relevant herein, Defendants did not pay Plaintiffs and the Represented
6 Employees wages and monies and other financial obligations to which they were entitled.

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

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

15 103. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
16 unlawful, and harmful to Plaintiffs, other Represented Employees, and to the general public.
17 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of
18 Code of Civil Procedure § 1021.5.

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

25 105. Plaintiffs, individually, and on behalf of the Represented Employees, has no plain,
26 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
27 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
28 the unfair, unlawful and/or fraudulent business practices described above, Plaintiffs, individually,

1 and on behalf of the Represented Employees, have suffered and will continue to suffer
2 irreparable harm unless Defendants, and each of them, are restrained from continuing to engage
3 in said unfair, unlawful and/or fraudulent business practices.

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

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

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

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

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

1 110. Plaintiffs seek to recover all applicable and available PAGA remedies pursuant to
2 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
3 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
4 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiffs are not required to, nor
5 do they, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

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

10 112. Therefore, more than sixty-five (65) days have passed since the date of notice,
11 Plaintiffs have fully satisfied the administrative prerequisites to suit under the PAGA. Plaintiffs
12 seek to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as
13 well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a
14 representative action pursuant to the PAGA and the California Supreme Court in *Arias v.*
15 *Superior Court* (2009) 46 Cal. 4th 969.

16 **EIGHTH CAUSE OF ACTION**

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

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

19 (*Plaintiffs and the Aggrieved Employees against All Defendants*)

20 113. Plaintiffs incorporate paragraphs 1-21 and 109-112 of the Second Amended
21 Complaint as if fully alleged herein.

22 114. Plaintiffs and the Aggrieved Employees were not exempt from the requirement to
23 be paid at least the applicable California minimum wage throughout the statutory period for each
24 hour worked.

25 115. Plaintiffs and the Aggrieved Employees were not provided proper minimum and
26 regular due to Defendants' failure to accurately record and compensate for all hours worked.

27 ///

28 ///

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

4 117. Plaintiffs are informed and believe and thereon allege that Defendants
5 intentionally, willfully, and improperly failed to pay wages to Plaintiffs and the Aggrieved
6 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

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

10 **NINTH CAUSE OF ACTION**

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

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

13 (*Plaintiffs and the Aggrieved Employees against All Defendants*)

14 119. Plaintiff incorporate paragraphs 1-21 and 109-118 of the Second Amended
15 Complaint as if fully alleged herein.

16 120. Plaintiffs and the Aggrieved Employees were “nonexempt” employees of
17 Defendants who did not receive proper protections and benefits of the laws governing payment
18 of overtime wages.

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

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

1 123. Defendants also failed to properly calculate the regular rate of pay, and
2 corresponding overtime rate and wages, on occasions that Plaintiffs and the Aggrieved
3 Employees earned multiple rates of pay during the same workweek. Therefore, Defendants
4 failed to pay proper overtime compensation for hours worked in excess of 8 and/or 12 per day
5 and/or 40 per week on such occasions.

6 124. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
7 Order § 3(A) every pay period with respect to Plaintiffs and the Aggrieved Employees because
8 Defendants failed to pay Plaintiffs and the Aggrieved Employees for all overtime hours worked,
9 and required Plaintiffs and the Aggrieved Employees to work without being properly
10 compensated for all overtime wages earned.

11 125. Plaintiffs are informed and believe and thereon allege that Defendants
12 intentionally, willfully, and improperly failed to pay wages to Plaintiffs and the Aggrieved
13 Employees for each hour worked in violation of Labor Code §§ 204, 221-223, 510, 1194 and
14 1197.

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

18 **TENTH 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 *(Plaintiffs and the Aggrieved Employees against All Defendants)*

22 127. Plaintiffs incorporate paragraphs 1-21 and 109-126 of the Second Complaint as if
23 fully alleged herein.

24 128. Plaintiffs 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.

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

1 130. 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.

8 131. 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.

11 132. At all relevant times herein, Plaintiffs 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 period while under the control of Defendants, (3) forced to take meal periods, if such a meal
16 occurred, after the 5th hour of work, (4) not provided a mandated second meal period for shifts
17 in excess of 10 hours, and (5) subject to shortened meal periods due to policies and practices
18 such as requiring Represented Employees to walk distances to the break room after clocking out,
19 to wait in line while off-the-clock to clock back in for meal periods, and/or to don and doff
20 personal protective equipment while off-the-clock.

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

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

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

7 **ELEVENTH CAUSE OF ACTION**

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

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

10 (*Plaintiffs and the Aggrieved Employees against All Defendants*)

11 136. Plaintiffs incorporate paragraphs 1-21 and 109-135 of the Second Amended
12 Complaint as if fully alleged herein.

13 137. Plaintiffs 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.

15 138. 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.

17 139. 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.

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

25 141. Defendants failed to provide Plaintiffs and the Aggrieved Employees with 10
26 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated
27 by California law. Defendants did not schedule rest breaks and the Aggrieved Employees were
28 often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by

1 their hectic workload. Furthermore, on occasions when Plaintiffs and the Aggrieved Employees
2 worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third
3 mandated rest break.

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

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

12 **TWELFTH CAUSE OF ACTION**

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

14 (Labor Code § 204)

15 *(Plaintiffs and the Aggrieved Employees against All Defendants)*

16 144. Plaintiffs incorporate paragraphs 1-21 and 109-143 of the Second Amended
17 Complaint as if fully alleged herein.

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

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

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

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

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

10 **THIRTEENTH CAUSE OF ACTION**

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

12 (Labor Code §§ 201 – 203)

13 *(Plaintiffs and the Aggrieved Employees against All Defendants)*

14 150. Plaintiffs incorporate paragraphs 1-21 and 109-149 of the Second Amended
15 Complaint as if fully alleged herein.

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

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

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

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

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

1 but not limited to, minimum, regular, overtime, and vacation/PTO wages, as well as meal and
2 rest period premiums, within the time specified by Labor Code §§ 201 – 203.

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

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

9 **FOURTEENTH CAUSE OF ACTION**

10 **PAGA ASSESSMENT FOR**

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

12 (Labor Code § 226)

13 *(Plaintiffs and the Aggrieved Employees against All Defendants)*

14 158. Plaintiffs incorporate paragraphs 1-21 and 109-157 of the Second Amended
15 Complaint as if fully alleged herein.

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

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

25 161. Defendants violate Labor Code § 226(a) every pay period with respect to
26 Plaintiffs and the Aggrieved Employees because Defendants failed to provide a wage statement
27 to Plaintiffs and the Aggrieved Employees that complied with the requirements of Labor Code §
28 226(a). Specifically, Defendants' wage statements failed to state the overtime rate of pay, failed

1 to state the applicable rate of pay for work, and failed to state the start date of the pay period.
2 Additionally, the wage statements also failed to accurately state gross wages earned, total hours
3 worked, all deductions, and net wages earned.

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

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

13 **FIFTEENTH CAUSE OF ACTION**

14 **PAGA ASSESSMENT FOR**

15 **FAILURE TO PROVIDE SAFE AND HEALTHFUL WORKING CONDITIONS**

16 (Labor Code § 6400-6403)

17 (*Plaintiffs and the Aggrieved Employees against All Defendants*)

18 164. Plaintiffs incorporate paragraphs 1-21 and 109-163 of this Second Amended
19 Complaint as if fully alleged herein.

20 165. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
21 who did not receive proper protections and benefits of the laws governing workplace health and
22 safety.

23 166. Labor Code § 6400(a) requires "[e]very employer to furnish employment and a
24 place of employment that is safe and healthful for the employees therein. Labor Code § 6401
25 requires that "[e]very employer shall furnish and use safety devices and safeguards, and shall
26 adopt and use practices, means, methods, operations, and processes which are reasonably
27 adequate to render such employment and place of employment safe and healthful. Every
28 employer shall do every other thing reasonably necessary to protect the life, safety, and health of

employees.” Labor Code § 6402 states that, “[n]o employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.” Further, Labor Code § 6403 imposes a duty on employer, “(a) [t]o provide and use safety devices, and safeguards reasonably adequate to render the employment and place of employment safe; (b) [t]o adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and (c) [t]o do every other thing reasonably necessary to protect the life, safety, and health of employees.”

167. Plaintiffs allege that at all relevant times, she and the Aggrieved Employees were not furnished safe and healthful place of employment and were not provided necessary safety devices to render the place of employment safe in accordance with Labor Code §§ 6400-6403.

168. As a result of the Defendants’ violations of Labor Code §§ 6400-6403, Plaintiffs seek the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seek to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, on a representative basis, and all others similarly situated, prays for judgment and relief against Defendants, jointly and severally, as follows:

1. As to the Eighth through Fifteenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys’ fees and costs as permitted under the PAGA;
3. That the First through Seventh Causes of Action be certified as a class action;
4. That Plaintiffs be appointed as Class Representative;
5. That counsel for Plaintiffs be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Seventh Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;

///

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, 218.6, 223, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1174, 1194, 1194.2,
7 1197, 1198, and 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
14 Dated: January 10, 2023

DIVERSITY LAW GROUP, P.C.

15
16 BY: 

Larry W. Lee, Esq.
Kristen M. Agnew, Esq.
Nicholas Rosenthal, Esq.
Attorneys for Plaintiff Jodie Blanton Jr.

17
18
19 Dated: January 10, 2023

POLARIS LAW GROUP, LLC

20
21 BY: 

William L. Marder, Esq.
Attorneys for Plaintiff Jodie Blanton Jr.

22
23
24 Dated: January 10, 2023

LAUBY, MANKIN & LAUBY LLP

25
26 BY: 

Brian J. Mankin, Esq.
Misty M. Lauby, Esq.
Attorneys for Plaintiff Yazmin Cortes

1 Dated: January 10, 2023

THE SPIVAK LAW FIRM

2
3 BY: 
4 David G. Spivak, Esq.
5 Caroline Tahmassian, Esq.
Attorneys for Plaintiff Gabriela Escriba

6 Dated: January 10, 2023

BENOWITZ LAW CORP.

7
8 BY: 
9 Louis Benowitz, Esq.
Attorneys for Plaintiff Gabriela Escriba