

**COPY**

**CONFORMED COPY  
ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

**AUG 24 2021**

Sherri R. Carter, Executive Officer/Clerk of Court  
By: Tanya Herrera, Deputy

Brian J. Mankin, Esq. [CSB No. 216228]  
[brian@lmlfirm.com](mailto:brian@lmlfirm.com)  
Peter J. Carlson, Esq. [CSB No. 295611]  
[peter@lmlfirm.com](mailto:peter@lmlfirm.com)  
LAUBY, MANKIN & LAUBY, LLP  
4590 Allstate Drive  
Riverside, CA 92501  
Tel: (951) 320-1444 || Fax: (951) 320-1445  
Mehrddad Bokhour, Esq. (Cal. Bar No. 285256)  
[mehrdad@bokhourlaw.com](mailto:mehrdad@bokhourlaw.com)  
BOKHOUR LAW GROUP, P.C.  
1901 Avenue of the Stars, Suite 450  
Los Angeles, California 90067  
Tel: (310) 975-1493 | Fax: (310) 675-0861

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

GENNINE MERRITT, individually, on a  
representative basis, and on behalf of all  
others similarly situated;

Plaintiff,

vs.

DMA CLAIMS, INC., a California  
Corporation; DMA CLAIMS  
MANAGEMENT, INC., an Illinois  
Corporation; VENBROOK GROUP, LLC, a  
Delaware Limited Liability Company;  
VENBROOK INSURANCE SERVICES,  
LLC, a California Limited Liability  
Company; and DOES 1 through 20, inclusive;

Defendants.

Case No.:

**21STCV31200**

**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 Reimburse Bus. Expenses;
- (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 Reimburse Bus. Expenses;
- (14) Failure to Timely Pay Wages Each Period;
- (15) Failure to Timely Pay Final Wages; and
- (16) Failure to Provide Accurate Itemized Wage Statements

1 Plaintiff Gennine Merritt (“Plaintiff”) on behalf of herself, 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 her former employer(s), DMA Claims, Inc. and  
5 DMA Claims Management, Inc, (the “DMA Defendants”), Venbrook Group, LLC and Venbrook  
6 Insurance Services, LLC (the “Venbrook Defendants” which includes any affiliated entities), and  
7 DOES 1 through 20, inclusive, (the DMA Defendants, Venbrook Defendants, and DOES 1  
8 through 20, inclusive, shall collectively be referred to as “Defendants”) on behalf of two defined  
9 Classes: (1) all current and former nonexempt insurance adjusters employed by Defendants in  
10 California (the “Adjuster Class”), and (2) all current and former nonexempt employees employed  
11 by the DMA Defendants in California (the “DMA Class”) (the Adjuster Class and DMA Class  
12 shall be collectively referred to as the “Represented Employees”).

13 2. Plaintiff brings these claims alleging Labor Code violations stemming from  
14 Defendants’ failure to pay all wages owed, including minimum, regular, and overtime wages,  
15 failure to provide meal periods, failure to provide rest breaks, failure to pay reimburse business  
16 expenses, failure to timely pay wages, and failure to provide accurate itemized wage statements.

17 3. Plaintiff was employed by Defendants from approximately 2013 through August  
18 2021.

19 4. Plaintiff alleges on information and belief that the Represented Employees were  
20 subjected to the same policies, working conditions, and corresponding wage and hour violations  
21 to which Plaintiff was subjected during employment.

22 5. Plaintiff and the Represented Employees were not provided all minimum, regular,  
23 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours  
24 worked. As one such example, Defendants paid Plaintiff and the Adjuster Class on a flat-rate /  
25 piece-rate basis where they would only receive a set number of hours for tasks, regardless of how  
26 long the task took to complete. Therefore, Plaintiff and the Adjuster Class were denied proper  
27 minimum and overtime wages on the occasions where the task took longer to complete than the  
28 fixed flat-rate amount. Additionally, under Defendants’ pay plan, Plaintiff and the Adjuster

1 Class were required to complete certain tasks without any compensation, such as completing  
2 reports and/or invoices while off the clock. However, because this time was spent under  
3 Defendants' control, it was uncompensated in violation of California law and led to minimum  
4 and overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829  
5 (California law "do[es] not allow employers to require employees to routinely work for minutes  
6 off the clock without compensation"). Finally, Defendants failed to properly compensate  
7 Plaintiff and the Adjuster Class for time spent traveling to and between work sites and failed to  
8 pay Plaintiff and the Adjuster Class for rest and recovery periods and other nonproductive time  
9 as required by Labor Code § 226.2.

10 6. Also, at all relevant times, Defendants failed to pay proper overtime to Plaintiff  
11 and the Represented Employees. For example, Defendants paid Plaintiff and the Adjuster Class  
12 on an hourly basis but also paid additional earned compensation. However, during workweeks  
13 where the Adjuster Class worked overtime hours and earned additional nondiscretionary  
14 compensation, Defendants failed to properly include that compensation in the calculations for the  
15 regular rate of pay – violating the well-established rule that overtime must always be paid at time  
16 and one-half the regular rate of pay.

17 7. Plaintiff and the Represented Employees were also denied 30-minute off-duty  
18 meal periods, as mandated by California law. As a result of Defendants' policies and practices,  
19 the Represented Employees were subjected to meal period violations when they were: (1) unable  
20 to take meal periods due to workload, (2) forced to take on-duty meal periods while under  
21 Defendants' control, (3) forced to take meal periods, if such a meal occurred, after the 5th hour  
22 of work, (4) not provided a mandated first meal period for shifts in excess of 6 hours, and (5) not  
23 provided mandated second meal periods for shifts over 10 hours.

24 8. Defendants also failed to provide Plaintiff and the Represented Employees with  
25 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as  
26 mandated by California law. Defendants did not schedule rest breaks and the Represented  
27 Employees were often not authorized and/or permitted to take mandated rest breaks due to the  
28 lack of adequate staffing and coverage and being overwhelmed by the hectic workload.

1 Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of  
2 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

3 9. Moreover, at all relevant times, Defendants required Plaintiff and the Represented  
4 Employees to incur necessary business-related expenses and costs without reimbursement. For  
5 example, Plaintiff was required to incur substantial expenses without reimbursement, including  
6 setting up and maintaining a home office, including internet and equipment costs, and acquiring  
7 and maintaining a smart phone and related monthly data plan to communicate with Defendants  
8 via phone, text message, and e-mail.

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

15 11. Plaintiff further alleges that Defendants failed to provide the Represented  
16 Employees with accurate itemized wage statements that fully complied with the requirements of  
17 Labor Code § 226(a). This claim is detailed below, but one example relates to Defendants’  
18 practice of providing wage statements to Plaintiff and the Represented Employees that (a) failed  
19 to list any rate of pay for regular and overtime hours, and (b) failed to state the hours worked  
20 under each category.

21 12. Plaintiff alleges that Defendants’ violations of the wage and hour components of  
22 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their  
23 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over  
24 its competitors.

25 13. At all material times, Defendants and DOES 1 through 20 were and/or are the  
26 Represented Employees’ employers or persons acting on behalf of the Represented Employees’  
27 employer, within the meaning of California Labor Code § 558, who violated or caused to be  
28 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating

1 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each  
2 underpaid employee as set forth in Labor Code § 558 and under California law.

3 14. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and  
4 monetary relief against Defendants and each of them, on behalf of herself and the Represented  
5 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,  
6 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,  
7 210, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,  
8 among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name  
9 additional representatives throughout the State of California.

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

18 **II. JURISDICTION**

19 16. 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 17. Venue as to each Defendant is proper in this Court pursuant to Code of Civil  
23 Procedure § 395(a), as Defendants transact business in Los Angeles County, the unlawful acts  
24 alleged herein have a direct effect on the Represented Employees in Los Angeles County, and  
25 each Defendants' principal place of business is in Los Angeles County.

26 ///

27 ///

28 ///

1 **IV. PARTIES**

2 **Plaintiff**

3 18. Plaintiff and Class Representative Gennine Merritt was employed by Defendants  
4 from approximately 2013 through August 2021.

5 **Defendants**

6 19. Plaintiff is informed and believes and thereon alleges that Defendant DMA  
7 Claims, Inc., is a California Corporation authorized to and doing business in Los Angeles  
8 County, California. Plaintiff is also informed and believes that Defendant DMA Claims, Inc. is  
9 and/or was the legal employer of Plaintiff and the Represented Employees during the applicable  
10 statutory periods.

11 20. Plaintiff is informed and believes and thereon alleges that Defendant DMA  
12 Claims Management, Inc., is an Illinois Corporation authorized to and doing business in Los  
13 Angeles County, California. Plaintiff is also informed and believes that Defendant DMA Claims  
14 Management, Inc. is and/or was the legal employer of Plaintiff and the Represented Employees  
15 during the applicable statutory periods.

16 21. Plaintiff is informed and believes and thereon alleges that Defendant Venbrook  
17 Group, LLC, is a Delaware Limited Liability Company authorized to and doing business in Los  
18 Angeles County, California. Plaintiff is also informed and believes that Defendant Venbrook  
19 Group, LLC is and/or was the legal employer of Plaintiff and the Represented Employees during  
20 the applicable statutory periods.

21 22. Plaintiff is informed and believes and thereon alleges that Defendant Venbrook  
22 Insurance Services, LLC, is a California Limited Liability Company authorized to and doing  
23 business in Los Angeles County, California. Plaintiff is also informed and believes that  
24 Defendant Venbrook Insurance Services, LLC is and/or was the legal employer of Plaintiff and  
25 the Represented Employees during the applicable statutory periods.

26 23. Plaintiff is ignorant of the true names, capacities, relationships, and extent of  
27 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,  
28 inclusive, but on information and belief alleges that those Defendants are legally responsible for

1 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of  
2 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious  
3 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE  
4 Defendants when ascertained.

5         24. Plaintiff is informed and believes and thereon alleges that she and the Represented  
6 Employees worked under the joint direction and control of Defendants and that Defendants, and  
7 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,  
8 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of  
9 each Defendant are legally attributable to the other Defendants. On information and belief, a  
10 unity of interest and ownership between each Defendant exists such that all Defendants acted as  
11 a single employer of Plaintiff and other Represented Employees.

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

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

27         27. Plaintiff is further informed and believes that at all relevant times, Defendants  
28 have been inadequately capitalized to conduct business, have failed to follow appropriate

1 corporate formalities, and have simply been a shell and instrumentality through which  
2 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,  
3 the corporate veil should be pierced, and any liability attached to Defendants should be imposed  
4 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the  
5 separate existence of these corporate entities would permit abuse of the corporate privilege,  
6 thereby sanctioning fraud and promoting injustice.

7 **V. CLASS ACTION ALLEGATIONS**

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

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

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

14 31. The two separate Classes, collectively referred to as the “Represented  
15 Employees,” that Plaintiff seeks to represent are defined as follows:

16 **Adjuster Class**

17 All current and former nonexempt insurance adjusters  
18 employed by Defendants in California during the Relevant  
19 Time Period.

20 **DMA Class**

21 All current and former nonexempt employees employed by  
22 the DMA Defendants in California during the Relevant Time  
23 Period.

24 32. Plaintiff also seeks to represent the following subclasses:

25 **Meal Break Subclass**

26 All Represented Employees who worked a shift in excess of  
27 5 hours during the Relevant Time Period.  
28

1                   **Rest Break Subclass**

2                   All Represented Employees who worked a shift of at least  
3                   3.5 hours during the Relevant Time Period.

4                   **Unreimbursed Expense Subclass**

5                   All Represented Employees who were required to incur  
6                   expenses to discharge their duties for Defendants without  
7                   reimbursement during the Relevant Time Period.

8                   **Waiting Time Penalties Subclass**

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

13                  **Wage Statement Penalties Subclass**

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

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

19           34.     Plaintiff, as Class Representative, is a member of the classes and subclasses that  
20           she seeks to represent.

21           35.     This action has been brought and may properly be maintained as a class action  
22           under Code of Civil Procedure § 382 because there is a well-defined community of interest in the  
23           litigation and the proposed class is easily ascertainable from Defendants' records.

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

27           ///

28           ///

1           37.    **Commonality:** There are questions of law and fact common to the class which  
2 predominate over any questions affecting only individual members of the class, including  
3 without limitation:

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

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

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

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

20                  v.       Whether Defendants violated the California Labor Code and applicable  
21 IWC Wage Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for  
22 business expenses incurred while discharging their duties or in obedience to the directions of  
23 their employer;

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

27    ///

28    ///

1           vii.     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           viii.   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 reimburse business expenses, and  
7 failure to timely pay final wages; and

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

10         38.     **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, failure to timely pay final wages, and failure to  
15 provide accurate itemized wage statements.

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

21         40.     **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 *Plaintiff and the Represented Employees Against All Defendants*

5 41. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully  
6 alleged herein.

7 42. Plaintiff 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 43. Plaintiff 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 44. As one such example, Defendants paid Plaintiff and the Adjuster Class on a flat-  
14 rate / piece-rate basis where they would only receive a set number of hours for tasks, regardless  
15 of how long the task took to complete. Therefore, Plaintiff and the Adjuster Class were denied  
16 proper minimum and overtime wages on the occasions where the task took longer to complete  
17 than the fixed flat-rate amount.

18 45. Additionally, under Defendants' pay plan, Plaintiff and the Adjuster Class were  
19 required to complete certain tasks without any compensation, such as completing reports and/or  
20 invoices while off the clock. However, because this time was spent under Defendants' control, it  
21 was uncompensated in violation of California law and led to minimum and overtime wage  
22 violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es]  
23 not allow employers to require employees to routinely work for minutes off the clock without  
24 compensation").

25 46. Defendants also failed to properly compensate Plaintiff and the Adjuster Class for  
26 time spent traveling to and between work sites and failed to pay Plaintiff and the Adjuster Class  
27 for rest and recovery periods and other nonproductive time as required by Labor Code § 226.2.

28 ///

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

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

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

10          50.     Defendants' conduct was willful, as Defendants knew that Plaintiff and the  
11 Represented Employees were entitled to be paid wages throughout the statutory period for each  
12 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay  
13 them in accordance thereto.

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

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

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

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

27     ///

28     ///

## FAILURE TO PAY OVERTIME WAGES

*Plaintiff and the Represented Employees Against All Defendants*

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

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

59. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the Represented Employees due to the failure to properly include all earned and nondiscretionary compensation in the calculation for the regular rate of pay and overtime rate. For example, at all relevant times, Defendants paid Plaintiff and the Adjuster Class on an hourly basis but also paid additional earned nondiscretionary compensation. However, during workweeks where the Adjuster Class worked overtime hours and earned additional nondiscretionary compensation, Defendants failed to properly include the bonuses in the calculations for the regular rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay.

## CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

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

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

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

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

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

20           66. Plaintiff, on behalf of herself and the Represented Employees, seeks recovery of  
21 all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against  
22 Defendants in an amount to be proven at trial.

23                                   **THIRD CAUSE OF ACTION**

24                                   **FAILURE TO PROVIDE MEAL PERIODS**

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

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

27           67. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully  
28 alleged herein.

1           68. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants  
2 who did not receive proper protections and benefits of the laws governing mandatory meal  
3 periods.

4           69. Labor Code § 226.7 requires employers, including Defendants, to provide  
5 employees with meal periods as mandated by the Industrial Welfare Commission.

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

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

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

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

27 ///

28 ///

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

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

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

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

19                   **FOURTH CAUSE OF ACTION**

20                   **FAILURE TO PROVIDE REST BREAKS**

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

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

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

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

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

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

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

9           83.     At all relevant times, Defendants also failed to provide Plaintiff and the Rest  
10 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major  
11 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the  
12 Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due  
13 to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload.  
14 Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of  
15 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

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

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

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

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

## **FIFTH CAUSE OF ACTION**

## FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

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

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

89. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

90. Labor Code § 2802(a) requires that the employer indemnify its employees for expenses and losses incurred while discharging their duties or in obedience to the directions of their employer.

91. At all relevant times herein mentioned, as a condition of employment, Defendants required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, setting up and maintaining a home office, including internet and equipment costs, and acquiring and maintaining a smart phone and related monthly data plan to communicate with Defendants via phone, text message, and e-mail.

92. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they failed to reimburse Plaintiff and the Unreimbursed Expense Subclass for expenses incurred as a direct consequence of employment with Defendants and/or under the direction of Defendants.

93. At all relevant times herein, Defendants failed to reimburse the Unreimbursed Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to Defendants, thereby receiving an economic benefit.

/ / /

94. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to compel Defendants to fully perform their obligations under the law, all in an amount to be proved at time of trial.

95. Labor Code § 2802(b) states that “[a]ll awards made by a Court for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

96. Furthermore, Labor Code § 2802(c) states that “[f]or the purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee in enforcing the rights granted by this section.” Therefore, Plaintiff and the Unreimbursed Expense Subclass seek to recover the unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney’s fees necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney’s fees will be in an amount to be proved at the time of trial.

## **SIXTH CAUSE OF ACTION**

## FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203)

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

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

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

/ / /

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

3           100. 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           101. 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           102. 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           103. 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           104. Plaintiff alleges that, at all times material to this action, Defendants had a planned  
17 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all  
18 wages due and owing upon separation of employment as required by Labor Code §§ 201 and  
19 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting  
20 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown  
21 according to proof at trial and within the jurisdiction of this Court.

22                                   **SEVENTH CAUSE OF ACTION**

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

24                                   (Labor Code § 226)

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

26           105. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully  
27 alleged herein.

28   ///

1           106. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of  
2 Defendants who did not receive proper protections and benefits of the laws governing the  
3 provision of accurate itemized wage statements.

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

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

14           109. Here, Defendants violate Labor Code § 226(a)(9) each pay period because the  
15 wage statements provided to Plaintiff and the Represented Employees failed to list any rate of  
16 pay for regular and overtime hours and failed to state the hours worked under each category.

17           110. In addition, Defendants' wage statements failed to comply with other  
18 requirements of Labor Code § 226 due to violations including: failure to accurately state total  
19 hours worked (the wage statements failed to accurately reflect the hours worked since  
20 Defendants did not compensate for certain tasks); failure to accurately state gross wages earned;  
21 failure to accurately state all deductions; failure to accurately state net wages earned; failure to  
22 state the applicable hourly rates (including the accurate overtime rate of pay); and failure to  
23 accurately state the corresponding number of hours worked at each hourly rate.

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

28       ///

1           112. Defendants' failure to provide the required writing deprived Plaintiff and the  
2 Wage Statement Penalties Subclass of the ability to know, understand, and question the  
3 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,  
4 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting  
5 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said  
6 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered  
7 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost  
8 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully  
9 perform its obligation under state law, all to their respective damages in amounts according to  
10 proof at trial.

11           113. As a result of Defendants' knowing and intentional failure to comply with Labor  
12 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in  
13 that each was prevented from knowing, understanding and disputing the wage payments paid to  
14 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an  
15 injury in that the failure to show all wages earned on the itemized wage statements resulted in  
16 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and  
17 withholdings owed by the employer, including, but not limited to, the failure to make all  
18 necessary contributions for unemployment benefits, social security benefits, proper payment of  
19 taxes and withholdings, and other mandated state and federal benefits.

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

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

1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR AND UNLAWFUL COMPETITION**

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

4 *Plaintiff and the Represented Employees against All Defendants*

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

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

11 118. Defendants, and each of them, are “persons” as defined under Business &  
12 Professions Code § 17021.

13 119. As alleged herein, Defendants engaged in conduct that violated California’s wage  
14 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide  
15 mandated meal periods and rest breaks, failure to reimburse business expenses, and failure to  
16 timely pay final wages, all to decrease their costs and increase their profits.

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

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

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

27 123. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,  
28 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.

1 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of  
2 Code of Civil Procedure § 1021.5.

3 124. A violation of California Business & Professions Code § 17200, et seq. may be  
4 predicated on the violation of any state or federal law. All of the acts described herein as  
5 violations of, among other things, the California Labor Code and IWC Wage Orders, are  
6 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,  
7 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business  
8 practices in violation of California Business and Professions Code §§ 17200, et seq.

9 125. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,  
10 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a  
11 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of  
12 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,  
13 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable  
14 harm unless Defendants, and each of them, are restrained from continuing to engage in said  
15 unfair, unlawful and/or fraudulent business practices.

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

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

27 128. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and  
28 Represented Employees are entitled to restitution of the wages withheld and retained by

Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Represented Employees; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

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

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

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

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

///

///

///

///

1 **NINTH CAUSE OF ACTION**

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

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 132. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully  
6 alleged herein.

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

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

13 135. As one such example, Defendants paid Plaintiff and the Aggrieved Employees on  
14 a flat-rate / piece-rate basis where they would only receive a set number of hours for tasks,  
15 regardless of how long the task took to complete. Therefore, P Plaintiff and the Aggrieved  
16 Employees were denied proper minimum and overtime wages on the occasions where the task  
17 took longer to complete than the fixed flat-rate amount.

18 136. Additionally, under Defendants' pay plan, Plaintiff and the Aggrieved Employees  
19 were required to complete certain tasks without any compensation, such as completing reports  
20 and/or invoices while off the clock. However, because this time was spent under Defendants'  
21 control, it was uncompensated in violation of California law and led to minimum and overtime  
22 wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law  
23 "do[es] not allow employers to require employees to routinely work for minutes off the clock  
24 without compensation").

25 137. Defendants also failed to properly compensate Plaintiff and the Aggrieved  
26 Employees for time spent traveling to and between work sites and failed to pay Plaintiff and the  
27 Aggrieved Employees for rest and recovery periods and other nonproductive time as required by  
28 Labor Code § 226.2.

138. As a result of this policy and practice, Plaintiff and the Aggrieved Employees were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

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

140. 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.

141. 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*

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

143. 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.

144. 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.

145. 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

1 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the  
2 Aggrieved Employees did not receive proper overtime compensation.

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

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

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

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

16 **ELEVENTH CAUSE OF ACTION**

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

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

19 *Plaintiff and the Aggrieved Employees against All Defendants*

20 150. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully  
21 alleged herein.

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

25 152. Labor Code § 226.7 requires employers, including Defendants, to provide  
26 employees with meal periods as mandated by the Industrial Welfare Commission.

27 153. Labor Code § 512(a), in part, provides that employers, including Defendants, may  
28 not employ an employee for a work period of more than five hours per day without providing an

1 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,  
2 except that if the total work period per day of the employee is no more than six hours, the meal  
3 period may be waived by mutual consent of both the employer and the employee. Employers  
4 may not employ an employee for a work period more than 10 hours per day without providing  
5 the employee with a second meal period of not less than 30 minutes.

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

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

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

20 157. On information and belief, Plaintiff and the Aggrieved Employees did not  
21 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers  
22 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not  
23 voluntarily agreed to, were a condition of employment, or were a part of a contract of an  
24 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved  
25 Employees to take meal periods in accordance with California law.

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

1 **TWELFTH CAUSE OF ACTION**

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

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 159. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully  
6 alleged herein.

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

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

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

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

19 164. At all relevant times, Defendants also failed to provide Plaintiff and the  
20 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major  
21 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the  
22 Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks  
23 due to the lack of adequate staffing and coverage and being overwhelmed by their hectic  
24 workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked in  
25 excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest  
26 break.

27 165. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage  
28 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with

1 all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees  
2 one additional hour of compensation in lieu thereof.

3 166. 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 **THIRTEENTH CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 (Labor Code § 2802)

9 *Plaintiff and the Aggrieved Employees against All Defendants*

10 167. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully  
11 alleged herein.

12 168. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
13 who did not receive proper protections and benefits of the laws governing reimbursement of  
14 business expenses.

15 169. Labor Code § 2802(a) requires that the employer indemnify its employees for  
16 expenses and losses incurred while discharging their duties or in obedience to the directions of  
17 their employer.

18 170. At all relevant times herein mentioned, as a condition of employment, Defendants  
19 required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and  
20 costs without reimbursement, including, but not limited to, setting up and maintaining a home  
21 office, including internet and equipment costs, and acquiring and maintaining a smart phone and  
22 related monthly data plan to communicate with Defendants via phone, text message, and e-mail.

23 171. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they  
24 failed to reimburse the Aggrieved Employees for expenses incurred as a direct consequence of  
25 Plaintiff's employment with Defendants and/or under the direction of Defendants.

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

1 **FOURTEENTH CAUSE OF ACTION**

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

3 (Labor Code § 204)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 173. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully  
6 alleged herein.

7 174. Plaintiff and the Aggrieved Employees are and/or were “nonexempt” employees  
8 of Defendants who did not receive proper protections and benefits of the laws regarding the  
9 timing of payment of wages each period.

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

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

18 177. At all relevant times herein, Defendants did not provide Plaintiff and the  
19 Aggrieved Employees with all wages due and owing each period within the time required by  
20 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved  
21 Employees with all wages due and owing each pay period, including, but not limited to,  
22 minimum, regular, and overtime wages, as well as meal and rest period premiums, within the  
23 time specified by Labor Code § 204.

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

27 ///

28 ///

1 **FIFTEENTH CAUSE OF ACTION**

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

3 (Labor Code §§ 201 – 203)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 179. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully  
6 alleged herein.

7 180. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees  
8 of Defendants who did not receive proper protections and benefits of the laws governing the  
9 timing and payment of final wages.

10 181. Labor Code § 201 requires that the employer immediately pay any wages, without  
11 abatement or reduction, to any employee who is discharged.

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

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

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

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

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

28 ///

1 **SIXTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR**

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

4 (Labor Code § 226)

5 *Plaintiff and the Aggrieved Employees against All Defendants*

6 187. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully  
7 alleged herein.

8 188. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
9 who did not receive proper protections and benefits of the laws governing the provision of  
10 accurate itemized wage statements.

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

17 190. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff  
18 and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff  
19 and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

20 191. Here, Defendants violate Labor Code § 226(a)(9) each pay period because the  
21 wage statements provided to Plaintiff and the Aggrieved Employees failed to list any rate of pay  
22 for regular and overtime hours and failed to state the hours worked under each category.

23 192. In addition, Defendants' wage statements failed to comply with other  
24 requirements of Labor Code § 226 due to violations including: failure to accurately state total  
25 hours worked (the wage statements failed to accurately reflect the hours worked since  
26 Defendants did not compensate for certain tasks); failure to accurately state gross wages earned;  
27 failure to accurately state all deductions; failure to accurately state net wages earned; failure to  
28 state the applicable hourly rates (including the accurate overtime rate of pay); and failure to

1 accurately state the corresponding number of hours worked at each hourly rate.

2 193. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect  
3 to Plaintiff and the Aggrieved Employees because Defendants' wage statements failed to comply  
4 with the requirements of Labor Code § 226(a).

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

10 **VII. PRAYER FOR RELIEF**

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

14 1. As to the Ninth through Sixteenth Causes of Action, the assessment of all  
15 applicable and available remedies under the PAGA;

16 2. For reasonable attorneys' fees and costs as permitted under the PAGA;

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

18 4. That Plaintiff be appointed as Class Representative;

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

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

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

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

27 ///

28 ///

1           9.       For a declaratory judgment that Defendants have violated Labor Code §§ 200,  
2 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1194, 1197,  
3 1198, 1199, among other sections inadvertently omitted;

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

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

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

9                               **DEMAND FOR JURY TRIAL**

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

12 Dated: August 23, 2021

LAUBY, MANKIN & LAUBY LLP

13  
14 BY:



15 Brian J. Mankin, Esq.  
16 Peter J. Carlson, Esq.  
17 Attorneys for Plaintiff  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28