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

ANDREW ZUNIGA, individually, on a representative basis, and on behalf of all others similarly situated; and VIVIAN VELASQUEZ, individually, on a representative basis, and on behalf of all others similarly situated;

Plaintiffs,

vs.

DESERT AIDS PROJECT, a California Corporation; and DOES 1 through 10, inclusive;

Defendants.

Case No.: RIC2003219
[Assigned to Hon. Judge Sunshine Sykes, Dept 6, for all purposes]

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Unlawful Deduction of Wages;
- (4) Failure to Provide Meal Periods;
- (5) Failure to Provide Rest Breaks;
- (6) Failure to Pay Vested Vacation Upon Separation of Employment;
- (7) Failure to Timely Pay Final Wages;
- (8) Failure to Provide Accurate Itemized Wage Statements; and
- (9) Unfair and Unlawful Competition

PAGA CLAIMS

- (10) PAGA Assessment for Failure to Pay Minimum Wages;
- (11) PAGA Assessment for Failure to Pay Overtime Wages;
- (12) PAGA Assessment for Unlawful Deduction of Wages;
- (13) PAGA Assessment for Failure to Provide Meal Periods;
- (14) PAGA Assessment for Failure to Provide Rest Breaks;
- (15) PAGA Assessment for Failure to Pay

Vested Vacation Upon Separation of Employment;
(16) PAGA Assessment for Failure to Timely Pay Wages;
(17) PAGA Assessment for Failure to Provide Accurate Itemized Wage Statements

Complaint filed: 8/18/2020

Plaintiffs Andrew Zuniga and Vivian Velasquez (“Plaintiffs”), on behalf of themselves, on a representative basis, and on behalf of others similarly situated, complain and allege as follows.

I. INTRODUCTION AND GENERAL ALLEGATIONS

1. Plaintiffs bring this action against their employer, Defendant Desert AIDS Project, and DOES 1 through 10, (collectively, the “Defendants”) on behalf of all current and former non-exempt employees employed by Defendants in California (hereinafter, the “Class” or “Represented Employees”), for California Labor Code violations stemming from Defendants’ failure to pay all wages owed, including minimum, regular, overtime wages, unlawful deduction of wages, failure to provide meal and rest periods, failure to pay vested vacation upon separation of employment, failure to timely pay wages, and failure to provide accurate itemized wage statements.

2. Plaintiff Zuniga was employed by Defendants as a non-exempt employee from approximately 2014 through March 2020.

3. Plaintiff Vivian Velasquez was employed by Defendants as a non-exempt employee from approximately September 2017 through March 23, 2020.

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

5. At all relevant times, Plaintiffs were not provided proper minimum and overtime wages due to Defendants’ failure to accurately record and compensate for all hours worked. In addition, Plaintiffs allege that Defendants utilized a rounding policy and practice that routinely

1 undercompensated the Represented Employees and resulted in a net benefit to Defendants. In
2 other words, Defendants' rounding policy is not neutral and systematically undercompensates
3 Plaintiff and the Represented Employees, leading to a failure to pay proper minimum, regular,
4 and overtime wages.

5 6. Furthermore, Plaintiff and the Represented Employees were denied 30-minute
6 off-duty meal periods, as mandated by California law. As a result of Defendants' policies and
7 practices, the Represented Employees were subjected to meal period violations when they were:
8 (1) unable to take meal periods due to workload, (2) forced to take on-duty meal periods while
9 under Defendants' control, (3) forced to take meal periods, if such a meal occurred, after the 5th
10 hour of work, (4) not provided mandated second meal periods for shifts over 10 hours; and (5)
11 subjected to short meal periods (less than 30 minutes in length).

12 7. Defendants also failed to provide Plaintiff and the Represented Employees with
13 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
14 mandated by California law. Defendants did not schedule rest breaks and the Represented
15 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
16 overwhelmed by their hectic workload. Additionally, Plaintiff and the Represented Employees
17 were not permitted to leave the premises for rest breaks, in violation of California law.
18 Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of
19 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

20 8. Moreover, at all relevant times, the Company utilized a policy and practice
21 through which Plaintiffs and the Aggrieved Employees accrued vacation and/or PTO hours
22 (collectively, "vacation hours"). However, on the occasions when Plaintiffs and the Aggrieved
23 Employees had accrued but unused vacation hours upon separation of employment, Defendants
24 failed to pay for these earned wages at the "final rate" as required by Labor Code § 227.3. To
25 illustrate, at the time of (and leading up to) Plaintiff Zuniga's termination, he was paid a base
26 hourly rate of \$24.49. However, the Company paid Plaintiff's accrued and unused vacation at
27 something less than Plaintiff's final rate. As a result, Plaintiffs and the Represented Employees
28 did not receive compensation for all accrued but unused vacation hours at the "final rate" – in

1 violation of Labor Code § 227.3.

2 9. Plaintiffs further allege that Defendants engaged in the practice of failing to pay
3 all wages due and owing to Plaintiffs and the Represented Employees each pay period (Labor
4 Code § 204) and at the time employment ended with Defendants (Labor Code §§ 201 – 203),
5 including, but not limited to regular wages, minimum wages, overtime wages, among others.

6 10. Plaintiffs also allege that they and the Represented Employees did not receive
7 accurate itemized wage statements that fully complied with the requirements of Labor Code §
8 226(a) due to violations including: failure to accurately state gross wages earned; failure to
9 accurately state total hours worked; failure to accurately state all deductions; failure to accurately
10 state net wages earned; and, failure to state all applicable hourly rates in effect during the pay
11 period and the corresponding number of hours worked at each hourly rate by the employee.

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

16 12. At all material times, Defendants and DOES 1 through 10 were and/or are
17 Represented Employees' employers or persons acting on behalf of Represented Employees'
18 employer, within the meaning of California Labor Code § 558, who violated or caused to be
19 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
20 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
21 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
22 California law, including *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
23 Cal.App.4th 1112.

24 13. Plaintiffs bring this lawsuit seeking declaratory, injunctive, equitable, and
25 monetary relief against Defendants and each of them, on behalf of themselves and the
26 Represented Employees to recover, among other things, unpaid wages and benefits, interest,
27 attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201,
28 202, 203, 204, 208, 210, 218.6, 221-223, 226, 226.3., 226.7, 227.3, 256, 510, 512, 1194, 1194.2,

1 and 1197 among possibly other sections inadvertently omitted. Plaintiffs also reserve the right to
2 name additional representatives throughout the State of California.

3 **II. JURISDICTION**

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

6 **III. VENUE**

7 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
8 Procedure § 395(a). Defendants transact business in Riverside County and the unlawful acts
9 alleged herein have a direct effect on Plaintiffs and the Represented Employees in Riverside
10 County. Furthermore, Defendants employed or employ Plaintiffs and Represented Employees in
11 Riverside County.

12 **IV. PARTIES**

13 **Plaintiff**

14 16. Plaintiff and Class Representative Andrew Zuniga was employed by Defendants
15 as a non-exempt employee from approximately 2012 through March 2020 and performed work
16 for Defendants in Riverside County.

17 17. Plaintiff and Class Representative Vivian Velasquez was employed by
18 Defendants as a non-exempt employee from approximately September 2017 through March 2020
19 and performed work for Defendants in Riverside County.

20 **Defendants**

21 18. Plaintiffs are informed and believe and thereon allege that Defendant Desert
22 AIDS Project is a California corporation authorized to and doing business in Riverside County,
23 California, and is and/or was the legal employer of Plaintiffs and the Represented Employees
24 during the applicable statutory periods.

25 19. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of
26 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 10,
27 inclusive, but on information and belief allege that those Defendants are legally responsible for
28 the payment of penalties and damages to Plaintiffs and all Represented Employees by virtue of

1 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
2 names. Plaintiffs will amend this complaint to allege the true names and capacities of the DOE
3 Defendants when ascertained.

4 20. Plaintiffs are informed and believe and thereon allege that Defendants, and each
5 of them, acted in all respects pertinent to this action as the agent of the other Defendants, carried
6 out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each
7 Defendant are legally attributable to the other Defendants. On information and belief, a unity of
8 interest and ownership between each Defendant exists such that all Defendants acted as a single
9 employer of Plaintiffs and other similarly situated employees.

10 **V. CLASS ACTION ALLEGATIONS**

11 21. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

13 22. Plaintiffs bring this action on behalf of themselves and all others similarly situated
14 as a class action pursuant to Code of Civil Procedure § 382.

15 23. The relevant time period for this class action is defined as the time period
16 beginning four years prior to the filing of this action until class certification (the "Relevant Time
17 Period").

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

20 **California Class**

21 All current and former non-exempt employees employed
22 by Defendants in the State of California during the
23 Relevant Time Period.

24 25. Plaintiffs also seek to represent the following subclasses:

25 **Meal Break Subclass**

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

1 **Rest Break Subclass**

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

4 **Vested Vacation Subclass**

5 All Represented Employees who had vested vacation owed
6 upon separation of employment.

7 **Waiting Time Penalties Subclass**

8 All Represented Employees who separated from their
9 employment with Defendants during the period three years
10 before the filing of this action until class certification.

11 **Wage Statement Penalties Subclass**

12 All Represented Employees during the period one year
13 before the filing of this action until class certification.

14 26. Plaintiffs reserve the right to amend or modify the class and subclass descriptions
15 with greater specificity or further division into subclasses or limitation to particular issues as
16 appropriate.

17 27. Plaintiffs, as Class Representatives, are members of the class and subclasses that
18 they seek to represent.

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

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

27 30. **Commonality:** There are questions of law and fact common to the class which
28 predominate over any questions affecting only individual members of the class, including

1 without limitation:

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

5 ii. Whether Defendants violated the California Labor Code and applicable
6 IWC Wage Order by failing to pay proper overtime wages to Plaintiffs and the Represented
7 Employees;

8 iii. Whether Defendants violated the California Labor Code by unlawfully
9 deducting wages from Plaintiffs and the Represented Employees;

10 iv. 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 v. 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 vi. Whether Defendants violated the California Labor Code by failing to pay
21 vested vacation to Plaintiffs and the Vested Vacation Subclass at their final rate of pay;

22 vii. Whether Defendants violated the California Labor Code by failing to pay
23 all wages due upon separation of employment between Defendants and Plaintiffs and the
24 Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

25 viii. Whether Defendants violated the California Labor Code by failing to
26 provide Plaintiffs and Wage Statement Penalties Subclass with complete, accurate, itemized
27 wage statements;

ix. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay all wages owed, including minimum, regular, and overtime wages; and, failure to timely pay final wages;

x. Whether Defendants violated § 17200 *et seq.* of the California Business and Professions Code and, without limitation, California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 256, 510, 512, 1194, 1194.2, and 1197 among possibly other sections inadvertently omitted, and the applicable IWC Wage Order, which violations constitute false, fraudulent, unlawful, unfair and deceptive business practices; and

xi. Whether Plaintiffs and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

31. **Typicality:** Plaintiffs' claims, as the Class Representatives, are typical of the claims of The Class. Plaintiffs, like other members of The Class, were subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, including minimum, regular, overtime wages, unlawfully deducting wages, failure to pay vested vacation at final rate of pay, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

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

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

1 most efficient and economical for the parties and the judicial system.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY MINIMUM WAGES**

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

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

6 34. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
7 as if fully alleged herein.

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

11 36. At all relevant times, Plaintiffs and the Represented Employees were not provided
12 proper minimum wages due to Defendants' failure to accurately record and compensate for all
13 hours worked. Therefore, this resulted in unpaid minimum wages on each such occasion.

14 37. In addition, Defendants utilized a rounding policy and practice that routinely
15 undercompensated the Represented Employees and resulted in a net benefit to Defendants. In
16 other words, Defendants' rounding policy is not neutral and systematically undercompensates
17 Plaintiffs and the Represented Employees, leading to a failure to pay proper minimum wages.

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

21 39. Plaintiffs are informed and believe and thereon allege that Defendants
22 intentionally, willfully, and improperly failed to pay wages to Plaintiffs and the Represented
23 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

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

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

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

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

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME WAGES**

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

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

18 45. Plaintiffs incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

20 46. Plaintiffs and the Represented Employees were employees of Defendants who did
21 not receive proper protections and benefits of the laws governing payment of overtime wages.

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

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

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

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

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

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

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

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

25 55. Plaintiffs, on behalf of himself and the Represented Employees, seeks recovery of
26 all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against
27 Defendants in an amount to be proven at trial.

1 62. 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 63. Labor Code § 226.7 requires employers, including Defendants, to provide
5 employees with meal periods as mandated by the Industrial Welfare Commission.

6 64. 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 65. 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 66. 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 67. 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.

1 68. 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 69. 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 70. 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 workday that a meal period was not
15 lawfully provided in an amount to be proven at time of trial.

16 71. 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 **FIFTH 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 72. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 73. 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 74. 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 75. 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 76. 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 77. At all relevant times, Defendants failed to provide Plaintiff and the Rest Break
10 Subclass with 10 minutes of net rest break time for every 4 hours worked, or major fraction
11 thereof, as mandated by California law. Defendants did not schedule rest breaks and the Rest
12 Break Subclass were often not authorized and/or permitted to take mandated rest breaks due to
13 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 Moreover, Plaintiff and the Rest Break Subclass were not authorized to leave the premises for
17 their rest periods in violation of California law.

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

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

25 80. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
26 as required by California law, and failing to pay one hour of additional wages in lieu of each rest
27 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
28 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the

1 employee's regular rate of compensation for each workday that a paid rest break was not
2 lawfully provided in an amount to be proven at time of trial.

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

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO PAY VESTED VACATION ON SEPARATION OF EMPLOYMENT**

8 (Labor Code § 227.3)

9 *(Plaintiffs, and the Vested Vacation Subclass Against All Defendants)*

10 82. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
11 as if fully alleged herein.

12 83. Plaintiffs the Represented Employees and the Vested Vacation Subclass were
13 employees of Defendants who did not receive proper protections and benefits of the laws
14 governing the payment of vested vacation time and/or paid time off upon separation of
15 employment.

16 84. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
17 vacation, paid time off, or compensated time off policy must, upon an employee's separation
18 from employment, pay to the employee all vested but unused vacation and/or paid time off at his
19 final rate of pay.

20 85. At all relevant times, Defendants utilized a policy and practice through which
21 Plaintiffs the Represented Employees and the Vested Vacation Subclass accrued vacation hours.
22 However, on the occasions when Plaintiffs the Represented Employees and the Vested Vacation
23 Subclass had accrued but unused vacation hours upon separation of employment, Defendants
24 failed to pay for these earned wages at the "final rate" as required by Labor Code § 227.3.

25 86. As a result, Plaintiffs the Represented Employees and the Vested Vacation
26 Subclass did not receive compensation for all accrued but unused vacation hours at the "final
27 rate" upon separation of employment – in violation of Labor Code § 227.3.
28

1 87. At all relevant times herein, Defendants failed to pay the Represented Employees
2 and the Vested Vacation Subclass, including Plaintiffs, all vested but unused vacation time
3 and/or paid time off upon separation from employment, thereby receiving an economic benefit.

4 88. Plaintiffs are informed and believe and thereon allege that Defendants, and each
5 of them, knowingly refused to perform their obligations to compensate the Represented
6 Employees and the Vested Vacation Subclass for all vested but unused vacation time and/or paid
7 time off upon separation from employment.

8 89. As a result of Defendants' violations of Labor Code § 227.3, Plaintiffs and the
9 Vested Vacation Subclass seek to recover the unpaid vacation hours, as well as penalties,
10 interest, attorneys' fees, and costs as permitted under California law.

11 **SEVENTH CAUSE OF ACTION**

12 **FAILURE TO TIMELY PAY FINAL WAGES**

13 (Labor Code § 201 – 203)

14 *(Plaintiffs and the Waiting Time Penalties Subclass Against All Defendants)*

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

17 91. Plaintiffs and the Waiting Time Penalties Subclass are and/or were “non-exempt”
18 employees of Defendants who did not receive proper protections and benefits of the laws
19 governing the timing and payment of wages.

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

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

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

1 95. At all relevant times here, Defendants did not provide Plaintiffs and the Waiting
2 Time Penalties Subclass with all wages due and owing upon separation of employment,
3 including, but not limited to, minimum, regular, overtime wages, as well as meal and rest period
4 premiums, within the time specified by Labor Code §§ 201 – 203.

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

11 **EIGHTH CAUSE OF ACTION**

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

13 (Labor Code § 226)

14 *(Plaintiff and the Wage Statement Penalties Subclass Against All Defendants)*

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

17 98. Plaintiffs and the Wage Statement Penalties Subclass are and/or were employees
18 of Defendants who did not receive proper protections and benefits of the laws governing the
19 provision of accurate itemized wage statements.

20 99. Labor Code § 226(a) requires that employers furnish its employees with written
21 itemized wage statements, semimonthly or at the time of each payment of wages, that show the
22 gross wages earned, total hours worked, all deductions, net wages earned, and all applicable
23 hourly rates in effect during the pay period and the corresponding number of hours worked at
24 each hourly rate by the employee.

25 100. Defendants violates Labor Code § 226(a) every pay period with respect to
26 Plaintiff, the Represented Employees and the Wage Statement Penalties Subclass because
27 Defendants failed to provide a wage statement to Plaintiff, the Represented Employees and the
28 Wage Statement Penalties Subclass that complied with the requirements of Labor Code § 226(a)

1 by failing to accurately state gross wages earned, failure to accurately state total hours worked,
2 failure to accurately state all deductions, failure to accurately state net wages earned, and failure
3 to state all applicable hourly rates in effect during the pay period and the corresponding number
4 of hours at each hourly rate by the employee.

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

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

25 103. Plaintiffs have also been injured as a result of having to bring this action to
26 attempt to obtain correct wage information following Defendants' refusal to comply with many
27 of the mandates of California's Labor Code and related laws and regulations.
28

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

NINTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

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

(Plaintiffs and the Represented Employees Against All Defendants)

105. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

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

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

108. As alleged herein, Defendants engaged in conduct that violated California's wage and hour laws, including failure to pay minimum wages, regular wages, overtime wages, unlawful deduction of wages, failure to pay vested vacation at final rate of pay, and failure to timely pay final wages, all in order to decrease their costs and increase their profits.

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

110. As a result of Defendants' failure to comply with the Labor Code and IWC Orders, Represented Employees, including Plaintiffs, suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. Defendants' ongoing violations of the

1 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

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

6 112. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
7 unlawful, and harmful to Plaintiffs, other Represented Employees, and to the general public.
8 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of
9 Code of Civil Procedure § 1021.5.

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

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

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

1 116. Plaintiffs, individually, and on behalf of the Represented Employees, are further
2 entitled to and does seek a declaration that the above-described business practices are unfair,
3 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
4 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
5 the future.

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

12 **VI. LABOR CODE PRIVATE ATTORNEY GENERAL ACT CAUSES OF ACTION**
13 **(Labor Code § 2698 – 2699.5)**

14 118. Plaintiffs are "aggrieved employees" under the PAGA as she was employed by
15 Defendants during the applicable statutory period and suffered one or more of the Labor Code
16 violations alleged herein. As such, Plaintiffs may recover the remedies described herein in a
17 civil action filed on behalf of themselves and all other similarly situated current and former
18 aggrieved employees in California against whom one or more of the alleged violations was
19 committed.

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

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

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

9 **TENTH CAUSE OF ACTION**

10 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGE**

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

12 122. Plaintiffs realleges and incorporates the paragraphs 1-20 and 118-121 of the First
13 Amended Complaint as if fully alleged herein.

14 123. Plaintiffs and the Aggrieved Employees were not exempt from the requirement to
15 be paid at least the applicable California minimum wage throughout the statutory period for each
16 hour worked.

17 124. At all relevant times herein, Plaintiffs and the Aggrieved Employees were
18 illegally not paid proper minimum and/or regular wages due to Defendants' failure to accurately
19 record and compensate for all hours worked..

20 125. In addition, Defendants utilized a rounding policy and practice that routinely
21 undercompensated the Represented Employees and resulted in a net benefit to Defendants. In
22 other words, Defendants' rounding policy is not neutral and systematically undercompensates
23 Plaintiffs and the Represented Employees, leading to a failure to pay proper minimum wages

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

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

4 **ELEVENTH CAUSE OF ACTION**

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

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

7 128. Plaintiffs reallege and incorporate the paragraphs 1-20 and 118-127 of the First
8 Amended Complaint as if fully alleged herein.

9 129. Plaintiffs and the Aggrieved Employees were "non-exempt" employees of
10 Defendants who did not receive proper protections and benefits of the laws governing payment
11 of overtime wages.

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

18 131. At all relevant times, Plaintiffs and the Aggrieved Employees were required by
19 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper
20 overtime compensation.

21 132. As a result of Defendants' failure to pay for off-the-clock work performed by the
22 Aggrieved Employees, Defendants violate Labor Code §§ 204 and 510 and the applicable IWC
23 Wage Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees
24 because Defendants failed to pay Plaintiff and members of the Aggrieved Employees for all
25 hours worked, including overtime hours, and required Plaintiff and the Aggrieved Employees to
26 work without being properly compensated for all overtime wages earned.

27 133. Plaintiff is informed and believes and thereon alleges that Defendants
28 intentionally, willfully, and improperly failed to pay minimum and overtime wages to Plaintiff

1 and the Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

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

5 **TWELFTH CAUSE OF ACTION**

6 **PAGA ASSESSMENT FOR UNLAWFUL DEDUCTION OF WAGES**

7 (Labor Code § 221)

8 135. Plaintiffs reallege and incorporate the paragraphs 1-20 and 118-134 e First
9 Amended Complaint as if fully alleged herein.

10 136. California Labor Code § 221 states that “[i]t shall be unlawful for any employer to
11 collect or receive from an employee any part of wages theretofore paid by said employer to said
12 employee.” Labor Code § 221 reflects “‘California's strong public policy favoring the protection
13 of employees' wages.’” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166,
14 quoting *Harris v. Investor's Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40–41.

15 137. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221
16 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor
17 Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski*, supra at 1166.
18 Also, under Labor Code §§ 219 and 221, an employer may not “require its employees to consent
19 to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34
20 Cal.App.4th 1109, 1124.

21 138. As previously alleged herein, Defendant engaged in the unlawful deduction of
22 wages when it deducted amounts from the wages of Plaintiffs and the Represented Employees.

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

27 ///

28 ///

1 **THIRTEENTH CAUSE OF ACTION**

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

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 140. Plaintiff incorporates paragraphs 1-20 and 118-139 of the First Amended
6 Complaint as if fully alleged herein.

7 141. 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 meal
9 periods.

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

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

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

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

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

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

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

14 **FORTEENTH CAUSE OF ACTION**

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

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

17 *Plaintiff and the Aggrieved Employees against All Defendants*

18 149. Plaintiff incorporates paragraphs 1-20 and 118-148 of the First Amended
19 Complaint as if fully alleged herein.

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

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

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

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

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

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

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

19 **FIFTEENTH CAUSE OF ACTION**

20 **PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION ON**
21 **SEPARATION OF EMPLOYMENT**

22 (Labor Code § 227.3)

23 157. Plaintiffs realleges and incorporates the paragraphs 1-20 and 118-156 of the First
24 Amended Complaint as if fully alleged herein.

25 158. Plaintiffs the Represented Employees were employees of Defendants who did not
26 receive proper protections and benefits of the laws governing the payment of vested vacation
27 time and/or paid time off upon separation of employment.
28

1 159. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
2 vacation, paid time off, or compensated time off policy must, upon an employee's separation
3 from employment, pay to the employee all vested but unused vacation and/or paid time off at his
4 final rate of pay.

5 160. At all relevant times, Defendants utilized a policy and practice through which
6 Plaintiffs the Represented Employees accrued vacation hours. However, on the occasions when
7 Plaintiffs and the Represented Employees had accrued but unused vacation hours upon
8 separation of employment, Defendants failed to pay for these earned wages at the "final rate" as
9 required by Labor Code § 227.3.

10 161. As a result, Plaintiffs and the Represented Employees did not receive
11 compensation for all accrued but unused vacation hours at the "final rate" upon separation of
12 employment – in violation of Labor Code § 227.3.

13 162. At all relevant times herein, Defendants failed to pay the Represented Employees,
14 including Plaintiff, all vested but unused vacation time and/or paid time off upon separation from
15 employment, thereby receiving an economic benefit.

16 163. Plaintiffs are informed and believe and thereon allege that Defendants, and each
17 of them, knowingly refused to perform their obligations to compensate the Represented
18 Employees for all vested but unused vacation time and/or paid time off upon separation from
19 employment.

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

23 **SIXTEENTH CAUSE OF ACTION**

24 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES**

25 (Labor Code §§ 201 – 204)

26 165. Plaintiffs reallege and incorporate the paragraphs 1-20 and 118-164 of the First
27 Amended Complaint as if fully alleged herein.
28

1 166. Plaintiffs and the Represented Employees are and/or were “non-exempt”
2 employees of Defendants who did not receive proper protections and benefits of the laws
3 governing the timing and payment of wages.

4 167. Labor Code § 201 requires that the employer immediately pay any wages, without
5 abatement or reduction, to any employee who is discharged.

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

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

12 170. At all relevant times, Defendants engaged in the practice of failing to pay all
13 wages due and owing to Plaintiff and the Represented Employees upon separation of
14 employment, including, but not limited to minimum and overtime wages, wage premiums,
15 among others.

16 171. Furthermore, Labor Code § 204(a) states that all wages earned by a person are
17 due and payable twice during each calendar month, and further states that wages earned during
18 the first through fifteenth days of the month must be paid no later than the twenty-sixth day of
19 the month, and that wages earned between the sixteenth and last day of the month must be paid
20 by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this
21 section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly
22 payroll if the wages are paid not more than seven calendar days following the close of the payroll
23 period.”

24 172. At all relevant times herein, Defendants did not provide Plaintiffs and the
25 Represented Employees with all wages due and owing each pay period, including, but not
26 limited to, minimum, regular, and overtime wages, within the time specified by Labor Code §
27 204.

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

5 174. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
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 **SEVENTEENTH CAUSE OF ACTION**

9 **PAGA ASSESSMENT FOR**

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

11 (Labor Code § 226)

12 175. Plaintiffs realleges and incorporates the paragraphs 1-20 and 118-174 of the First
13 Amended Complaint as if fully alleged herein.

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

17 177. Labor Code § 226(a) requires that employers furnish its employees with written
18 itemized wage statements, semimonthly or at the time of each payment of wages, that show the
19 gross wages earned, total hours worked, all deductions, net wages earned, and all applicable
20 hourly rates in effect during the pay period and the corresponding number of hours worked at
21 each hourly rate by the employee.

22 178. Defendants violate Labor Code § 226(a) every pay period with respect to
23 Plaintiffs and the Aggrieved Employees because Defendants failed to provide a wage statement
24 to Plaintiffs and the Aggrieved Employees that complied with the requirements of Labor Code §
25 226(a) by failing to accurately state gross wages earned, failure to accurately state total hours
26 worked, failure to accurately state all deductions, failure to accurately state net wages earned,
27 and failure to state all applicable hourly rates in effect during the pay period and the
28 corresponding number of hours at each hourly rate by the employee.

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

4 **VI. PRAYER FOR RELIEF**

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

8 1. As to the Tenth through Seventeenth Causes of Action, the assessment of all
9 applicable and available remedies under the PAGA in accordance with Labor § 2699 and/or any
10 other damages permitted under the PAGA provided for by the California Labor Code Private
11 Attorneys General Act of 2004 (Labor Code § 2698, *et seq.*) as a result of Defendants' violations
12 of the Labor Code as alleged herein;

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

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

15 4. That Plaintiffs be appointed as Class Representatives;

16 5. That counsel for Plaintiffs be appointed Class Counsel;

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

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

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

24 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
25 201, 202, 203, 218.6, 221, 223, 226, 226.2, 227.3, 226.7, 510, 512, 558, 1194, 1194.2, and 1197,
26 among other sections inadvertently omitted;

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

1 thereon;

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

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

4
5 Dated: December 29, 2021

LAUBY, MANKIN & LAUBY LLP

6
7 BY:



8 Brian J. Mankin, Esq.
9 Misty M. Lauby, Esq.
Attorneys for Plaintiff

[illegible]

On January 31, 2022, I caused to be served the foregoing document(s) described as follows:

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

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

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

Jaui Chauri

Tracie Chiarito, Declarant

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