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FILE BY FAX

1 Mehrdad Bokhour, Esq. [CSB No. 285256]
2 *mehrdad@bokhourlaw.com*
3 **BOKHOUR LAW GROUP, P.C.**
4 1901 Avenue of the Stars, Suite 450
Los Angeles, CA 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

5 Brian J. Mankin, Esq. [CSB No. 216228]
6 *brian@lmlfirm.com*
7 Peter J. Carlson, Esq. [CSB No. 295611]
8 *peter@lmlfirm.com*
9 **LAUBY, MANKIN & LAUBY LLP**
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444 | Fax: (951) 320-1445

10 Attorneys for Plaintiff and Putative Classes

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SOLANO**
14

15 MARIA SOLEDAD RANGEL MERCADO,
16 individually and on behalf of all others
similarly situated;

17 Plaintiff,

18 vs.
19

20 NORTH BAY DISTRIBUTION, INC., a
California Corporation; CHARTWELL
21 STAFFING SERVICES, INC., a New York
Corporation; and DOES 1 through 20,
22 inclusive;

23 Defendants.
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FILED/ENDORSED
Clerk of the Superior Court

DEC 27 2021

By **S. MISCHKE**
DEPUTY CLERK

CASE NO.: FCS057328

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS:

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

PAGA CLAIMS

- (8) Failure to Pay Minimum Wages;
- (9) Failure to Pay Overtime Wages;
- (10) Failure to Provide Meal Periods;
- (11) Failure to Provide Rest Breaks;
- (12) Failure to Timely Pay Wages;
- (13) Failure to Timely Pay Final Wages; and Failure to Provide Accurate Itemized Wage Statements.

1 Plaintiff Maria Soledad Rangel Mercado (“Plaintiff”) on behalf of herself and others
2 similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against her former employer(s), Defendants North Bay
5 Distribution, Inc., Chartwell Staffing Services, Inc. and DOES 1 through 20, inclusive,
6 (collectively, “Defendants”) on behalf of all current and former nonexempt employees employed
7 by Defendants at any of Defendant North Bay Distribution Inc.’s warehouses and/or
8 manufacturing facilities in the State of California (the “Class”), for California Labor Code
9 violations stemming from Defendants’ failure to pay minimum wages, failure to pay overtime
10 wages, failure to provide meal periods, failure to provide rest breaks, failure to timely pay wages,
11 failure to timely pay final wages upon separation of employment, and failure to provide accurate
12 itemized wage statements.

13 2. Plaintiff was employed by Defendants from approximately March 2014 through
14 October 2021.

15 3. Plaintiff alleges on information and belief that the Class was subjected to the
16 same policies, working conditions, and corresponding wage and hour violations to which
17 Plaintiff was subjected during her employment.

18 4. Plaintiff and the Class were not provided proper minimum and overtime wages
19 due to Defendants’ failure to accurately record and compensate for all hours worked. As one
20 specific example, Plaintiff and the Class were required to undergo security checks when entering
21 the facility and at the end of their shifts. However, despite that Plaintiff and the Class were
22 subject to Defendants’ control while waiting to go through the security checkpoint, Defendants
23 did not provide any compensation for the time it took to complete the process. These exact
24 issues were found unlawful in the California Supreme Court’s landmark decision of *Troester v.*
25 *Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to
26 require employees to routinely work for minutes off the clock without compensation”). This
27 practice, among others, resulted in unpaid minimum and overtime wages.
28

1 5. Also, at all relevant times, Defendants utilized a rounding policy and practice that
2 routinely undercompensated the Class and resulted in a net benefit to Defendants. In other
3 words, Defendants' rounding policy is not neutral and systematically undercompensates the
4 Class, leading to a failure to pay proper minimum, regular, and overtime wages.

5 6. Also, at all relevant times, Plaintiff and the Class were denied 30-minute off-duty
6 meal periods, as mandated by California law, during their employment with Defendants. As a
7 result of Defendants' policies and practices, Plaintiff and the Class were subjected to meal period
8 violations when they were: (1) unable to take meal periods due to workload, (2) forced to take
9 on-duty meal period while under the control of Defendants, (3) forced to take meal periods, if
10 such a meal occurred, after the 5th hour of work, and (4) not provided a mandated second meal
11 period for shifts in excess of 10 hours.

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

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

24 9. Finally, Plaintiff further alleges that Defendants failed to provide accurate
25 itemized wage statements that fully complied with the requirements of Labor Code § 226(a).

26 10. Plaintiff alleges that Defendants' violations of the wage and hour components of
27 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
28 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its

competitors.

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

12. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and monetary relief against Defendants and each of them, on behalf of herself and the Class to recover, among other things, unpaid wages and benefits, interest, attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 218.6, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name additional representatives throughout the State of California

II. JURISDICTION

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

III. VENUE

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

IV. PARTIES

Plaintiff

15. Plaintiff Maria Soledad Rangel Mercado was employed by Defendants from approximately March 2014 through October 2021 and performed work for Defendants in Solano County.

Defendants

16. Plaintiff is informed and believes and thereon alleges that Defendant North Bay Distribution, Inc. is a California corporation authorized to and doing business in Solano County, California, and is and/or was the legal employer of Plaintiff and the Class during the applicable statutory periods.

17. Plaintiff is informed and believes and thereon alleges that Defendant Chartwell Staffing Services, Inc. is a New York corporation authorized to and doing business in Solano County, California, and is and/or was the legal employer of Plaintiff and the Class during the applicable statutory periods.

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

19. Plaintiff is informed and believes and thereon alleges that she and the Class worked under the joint direction and control of Defendants and that Defendants, and each of them, acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. On information and belief, a unity of interest and ownership between each Defendant exists such that all Defendants acted as a single employer of Plaintiff and other the Class. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

20. Furthermore, Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are an integrated enterprise and should be treated as a single employer because these entities share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Additionally,

Defendants also have a shared website, common management, a centralized control of labor operations, and common ownership or financial control.

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

V. CLASS ACTION ALLEGATIONS

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

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

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

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

California Class

All current and former nonexempt employees employed by Defendants at any of Defendant North Bay Distribution Inc.’s warehouses and/or manufacturing facilities in the State of California during the Relevant Time Period.

26. Plaintiff also seeks to represent the following subclasses:

1 **Security Check Subclass**

2 All current and former nonexempt employees who are or were required to
3 go through a security checkpoint during a meal period or at the beginning
4 or end of shift during the Relevant Time Period.

5 **Rounding Policy Subclass**

6 All current and former nonexempt employees who are or were subjected to
7 Defendants' rounding policy and practice during the Relevant Time Period.

8 **Meal Break Subclass**

9 All current and former nonexempt employees who worked a shift in excess
10 of 5 hours during the Relevant Time Period.

11 **Rest Break Subclass**

12 All current and former nonexempt employees who worked a shift of at least
13 3.51 hours during the Relevant Time Period.

14 **Waiting Time Penalties Subclass**

15 All current and former nonexempt employees who separated from their
16 employment with Defendants during the period three years before the filing
17 of this action and ending when final judgment is entered.

18 **Wage Statement Penalties Subclass**

19 All current and former nonexempt employees during the period one year
20 before the filing of this action and ending when final judgment is entered.

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

23 28. Plaintiff, as Class Representative, is a member of the class and subclasses that she
24 seeks to represent.

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

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

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

7 i. Whether Defendants violated the California Labor Code and applicable
8 IWC Wage Order by failing to pay proper minimum and overtime wages to Plaintiff and the
9 Security Check Subclass for all hours worked;

10 ii. Whether Defendants violated the California Labor Code and applicable
11 IWC Wage Order by failing to pay proper minimum and overtime wages to Plaintiff and the
12 Rounding Policy Subclass for all hours worked;

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

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

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

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

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

viii. Whether Plaintiff and the Class are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

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

33. **Adequacy of Representation.** Plaintiff, 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 Representative's counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

34. **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 The Class 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 most efficient and economical for the parties and the judicial system.

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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, the Security Check Subclass, and the Rounding Policy Subclass Against All Defendants*

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

7 36. Plaintiff, the Security Check Subclass, and the Rounding Policy Subclass were
8 not exempt from the requirement to be paid at least the applicable California minimum wage
9 throughout the statutory period for each hour worked.

10 37. Plaintiff, the Security Check Subclass, and the Rounding Policy Subclass were
11 not provided proper minimum and regular wages due to Defendants' failure to accurately record
12 and compensate for all hours worked.

13 38. Plaintiff and the Security Check Subclass were frequently required to undergo
14 security checks when entering the facility and at the end of their shifts. However, despite that
15 Plaintiff and the Class were subject to Defendants' control while waiting to go through the
16 security checkpoint, Defendants did not provide any compensation for the time it took to
17 complete the process.

18 39. Also, at all relevant times, Defendants utilized a rounding policy and practice that
19 routinely undercompensated Plaintiff and the Rounding Policy Subclass and resulted in a net
20 benefit to Defendants. In other words, Defendants' rounding policy is not neutral and
21 systematically undercompensates the Rounding Policy Subclass, leading to a failure to pay
22 proper minimum and regular wages.

23 40. As a result of Defendants' policies or practices described above, Plaintiff, the
24 Security Check Subclass, and the Rounding Policy Subclass were required to perform off-the-
25 clock work that Defendants either knew or should have known they were performing.

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

1 42. Plaintiff is informed and believes and thereon alleges that Defendants
2 intentionally, willfully, and improperly failed to pay wages to Plaintiff, the Security Check
3 Subclass, and the Rounding Policy Subclass for each hour worked in violation of Labor Code §§
4 221-223, 1194 and 1197.

5 43. Defendants' conduct was willful, as Defendants knew that Plaintiff, the Security
6 Check Subclass, and the Rounding Policy Subclass were entitled to be paid wages throughout the
7 statutory period for each hour worked, including proper minimum wages, yet Defendants chose
8 not to pay them in accordance thereto.

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

14 45. During employment of Plaintiff, the Security Check Subclass, and the Rounding
15 Policy Subclass, Defendants failed to pay them all wages to which they were entitled, thereby
16 receiving an economic benefit.

17 46. As a result of the Defendants' wrongful conduct, Plaintiff, the Security Check
18 Subclass, and the Rounding Policy Subclass have been damaged in amounts to be proven at trial.

19 47. Plaintiff, on behalf of herself, the Security Check Subclass, and the Rounding
20 Policy Subclass, seeks recovery of all unpaid minimum wages, liquidated damages, penalties,
21 interest, attorneys' fees and costs of suit, pursuant to Labor Code §§ 1194 and 1194.2, against
22 Defendants in an amount to be proven at trial.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME WAGES**

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

26 *Plaintiff, the Security Check Subclass, the Rounding Policy Subclass Against All Defendants*

27 48. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
28 as if fully alleged herein.

1 49. Plaintiff, the Security Check Subclass, and the Rounding Policy Subclass were
2 employees of Defendants who did not receive proper protections and benefits of the laws
3 governing payment of overtime wages.

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

10 51. Plaintiff and the Security Check Subclass were frequently required to undergo
11 security checks when entering the facility and at the end of their shifts. However, despite that
12 Plaintiff and the Class were subject to Defendants' control while waiting to go through the
13 security checkpoint, Defendants did not provide any compensation for the time it took to
14 complete the process, leading to a failure to pay proper overtime wages.

15 52. Also, at all relevant times, Defendants utilized a rounding policy and practice that
16 routinely undercompensated Plaintiff and the Rounding Policy Subclass and resulted in a net
17 benefit to Defendants. In other words, Defendants' rounding policy is not neutral and
18 systematically undercompensates the Rounding Policy Subclass, leading to a failure to pay
19 proper overtime wages.

20 53. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
21 Order § 3(A) every pay period with respect to Plaintiff, the Class, the Rounding Policy Subclass,
22 and the Overtime Subclass because Defendants required its employees to work hours in excess of
23 8 and/or 12 per day and/or 40 per week without proper overtime compensation.

24 54. Plaintiff is informed and believes and thereon alleges that Defendants
25 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff, the
26 Security Check Subclass, and the Rounding Policy Subclass in violation of Labor Code §§ 204,
27 221-223, 510, 1194 and 1197.

55. Defendants' conduct was willful, as Defendants knew that Plaintiff, the Security Check Subclass, and the Rounding Policy Subclass were entitled to be paid proper overtime wages throughout the statutory period, yet Defendants chose not to pay them in accordance thereto.

56. At all material times, Defendants DOES 1 through 10 were and/or are the employer of Plaintiff, the Security Check Subclass, and the Rounding Policy Subclass or were persons acting on behalf of said employer(s), within the meaning of California Labor Code § 558, who violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and days of work respectively.

57. During the employment of Plaintiff, the Security Check Subclass, the Rounding Policy Subclass, Defendants failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

58. As a result of Defendants' wrongful conduct, Plaintiff, the Security Check Subclass, and the Rounding Policy Subclass have been damaged in amounts to be proven at trial.

59. Plaintiff, on behalf of herself, the Security Check Subclass, and the Rounding Policy Subclass seeks recovery of all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against Defendants in an amount to be proven at trial.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

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

Plaintiff and the Meal Break Subclass Against All Defendants

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

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

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

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

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

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

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

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

25 68. On information and belief, Plaintiff and the Meal Break Subclass did not
26 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
27 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
28 voluntarily agreed to, were a condition of employment, or were a part of a contract of an

1 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
2 to take meal periods in accordance with California law.

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

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

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REST BREAKS**

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

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

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

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

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

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

27 75. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
28 Order, Defendants shall pay Plaintiff and the Rest Break Subclass one additional hour of pay at

her regular rate of compensation for each day that the rest period is not provided.

76. At all relevant times, Defendants also failed to provide Plaintiff and the Rest Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Additionally, Plaintiff and the Rest Break Subclass were often not permitted to leave the premises for rest breaks, in violation of California law. Furthermore, on occasions when Plaintiff and the Rest Break Subclass worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

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

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

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

80. 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.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

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

5 81. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

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

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

12 84. 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 85. 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 86. At all relevant times, Defendants employed a policy and practice whereby
19 Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
20 separation of employment within the time required by Labor Code §§ 201 and 202.

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

25 88. Plaintiff alleges that, at all times material to this action, Defendants had a planned
26 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
27 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
28 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting

Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Wage Statement Penalties Subclass against All Defendants

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

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

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

92. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the requirements of Labor Code § 226(a). Specifically, Defendants' wage statements failed to accurately state total hours worked, the hours worked at each hourly rate, the accurate hourly rates, gross wages earned, all deductions, and net wages earned.

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

1 94. 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 95. 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 Class being denied all necessary deductions, payments, and withholdings owed
17 by the employer, including, but not limited to, the failure to make all necessary contributions for
18 unemployment benefits, social security benefits, proper payment of taxes and withholdings, and
19 other mandated state and federal benefits.

20 96. 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 97. 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.

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

3 106. 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.

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

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

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

26 110. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and The
27 Class are entitled to restitution of the wages withheld and retained by Defendants during a period
28 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 The Class; 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)

111. 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”).

112. 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. Therefore, Plaintiff is not required to, nor does she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

113. 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. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

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1 **EIGHTH 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*

5 114. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 115. 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.

10 116. 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.

13 117. Plaintiff and the Aggrieved Employees were frequently required to undergo
14 security checks when entering the facility and at the end of their shifts. However, despite that
15 Plaintiff and the Aggrieved Employees were subject to Defendants' control while waiting to go
16 through the security checkpoint, Defendants did not provide any compensation for the time it
17 took to complete the process.

18 118. Also, at all relevant times, Defendants utilized a rounding policy and practice that
19 routinely undercompensated Plaintiff and the Aggrieved Employees and resulted in a net benefit
20 to Defendants. In other words, Defendants' rounding policy is not neutral and systematically
21 undercompensates the Aggrieved Employees, leading to a failure to pay proper minimum and
22 regular wages.

23 119. As a result of Defendants' policies or practices described above, Plaintiff and the
24 Aggrieved Employees were required to perform off-the-clock work that Defendants either knew
25 or should have known they were performing.

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

1 121. Plaintiff is informed and believes and thereon alleges that Defendants
2 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
3 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

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

7 **NINTH CAUSE OF ACTION**

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

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

10 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

21 126. Plaintiff and the Aggrieved Employees were frequently required to undergo
22 security checks when entering the facility and at the end of their shifts. However, despite that
23 Plaintiff and the Aggrieved Employees were subject to Defendants' control while waiting to go
24 through the security checkpoint, Defendants did not provide any compensation for the time it
25 took to complete the process, leading to a failure to pay proper overtime wages.

26 127. Also, at all relevant times, Defendants utilized a rounding policy and practice that
27 routinely undercompensated Plaintiff and the Aggrieved Employees and resulted in a net benefit
28 to Defendants. In other words, Defendants' rounding policy is not neutral and systematically

undercompensates the Aggrieved Employees, leading to a failure to pay proper overtime wages.

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

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

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

TENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

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

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

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

1 the employee with a second meal period of not less than 30 minutes.

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

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

12 137. 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 meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
15 one additional hour of compensation at the regular rate of pay in lieu thereof.

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

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

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PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS

PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS

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

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

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

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

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

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

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

8 **TWELFTH CAUSE OF ACTION**

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

10 (Labor Code § 204)

11 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

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

3 153. 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 TIMELY PAY FINAL WAGES**

8 (Labor Code §§ 201 – 203 and 256)

9 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

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

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

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

7 **FOURTEENTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR**

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

10 (Labor Code § 226)

11 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

1 166. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
2 to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement
3 to Plaintiff and the Aggrieved Employees that complied with the requirements of Labor Code §
4 226(a).

5 167. As a result of the Defendants' violations of Labor Code § 226(a), 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 and all others similarly situated, prays for
12 judgment and relief against Defendants, jointly and severally, as follows:

13 1. As to the Eighth through Fourteenth Causes of Action, the assessment of all
14 applicable and available remedies under the PAGA;

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

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

17 4. That Plaintiff be appointed as Class Representative;

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

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

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

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

26 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
27 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1198, and
28 1199, among other sections inadvertently omitted;

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

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

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

DEMAND FOR JURY TRIAL

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

Dated: December 27, 2021

LAUBY, MANKIN & LAUBY LLP
BOKHOUR LAW GROUP, P.C.

BY:

Peter James Cook

Peter J. Carlson, Esq.

Attorneys for Plaintiff and the Putative Class