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Clerk of the Superior Court
By Melissa Valdez, Deputy Clerk

ANNETTE CLARK, Esq. (SBN 208216)
RYAN J. CARLSON, Esq. (SBN 308270)
CALLAHAN, THOMPSON, SHERMAN & CAUDILL, LLP
350 Tenth Avenue, Suite 1000
San Diego, California 92101
Tel: (619) 232-5700
Fax: (949) 261-6060
Email: aclark@ctsclaw.com
rcarlson@ctsclaw.com

Attorneys for **CINTHIA CERVANTES**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO [HALL OF JUSTICE]

CINTHIA CERVANTES, an individual, on
behalf of herself and all those similarly
situated

Plaintiff,

vs.

INSPIRE DIAGNOSTICS, LLC, a California
Limited Liability Company; INSPIRE
HEALTH ALLIANCE, LLC, a California
Limited Liability Company; and, DOES 1-25,
inclusive.

Defendants.

Case No.: 37-2022-00013409-CU-OE-CTL
Unlimited Complex Civil Case

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Overtime Wages;
2. Failure to Provide Meal Periods;
3. Failure to Provide Rest Periods;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Make Semi-monthly Payments;
6. Waiting Time Penalties;
7. Failure to Maintain Accurate Records;
8. Unfair Business Practices in Violation of Bus. & Prof. Code § 17200;
9. Theft of Labor;
10. Representative Action under the Private Attorney General Act ("PAGA");
11. Declaratory Relief;
12. Retaliatory Termination;
13. Unlawful Employment Practices in Violation of Govt. Code §12940 et seq;
14. Unlawful Employment Practices in Violation of Govt. Code §12940 et seq
15. Failure to Engage in the Interactive Process; and
16. Failure to Provide Personnel File Upon Written Request

DEMAND FOR JURY TRIAL

PLAINTIFF CINTHIA CERVANTES (“Plaintiff” or “Cervantes”), on behalf of herself and acting for the interests of all current and/or former employees of DEFENDANT INSPRIE DIAGNOSTICS, LLC (“Inspire Diagnostics”) and/or DEFENDANT INSPIRE HEALTH ALLIANCE, LLC (“Inspire Health), and all those similarly situated individuals (hereinafter collectively “Class Members”), hereby alleges as follows:

1. This is a class action pursuant to California Code of Civil Procedure (“CCP”) §382, and a representative action pursuant to California Labor Code (“Lab. Code”) §2698, et seq, filed by Plaintiff on behalf of herself and all Class Members, against Defendants INSPIRE DIAGNOSTICS, LLC, and/or any of its subsidiaries, successors, and/or affiliated companies, and Defendant INSPIRE HEALTH ALLIANCE, LLC, and/or any of its subsidiaries, successors, and/or affiliated companies
2. By way of this action, Plaintiff seeks, on behalf of herself and all Class Members, unpaid wages, reimbursements, statutory penalties, civil penalties, restitution, economic damages, noneconomic damages, injunctive and/or other equitable relief, punitive damages, reasonable attorneys fees and costs, and all other forms of relief which this Court deems just and proper.

PARTIES & JURISDICTION

3. Plaintiff CINTHIA CERVANTES is, and at all times relevant hereto was, an individual residing in the County of San Diego, State of California. From September of 2021 through November of 2021, Plaintiff Cervantes was employed full-time by Defendant as a “Team Lead.”
4. Defendant INSPIRE DIAGNOSITCS, LLC is a Limited Liability Company organized under the laws of the State of Florida, and authorized to conduct and transact business in the State of California. Defendant Inspire conducts substantial business in the County of San Diego, and other Counties within the State of California.
5. Defendant INSPIRE HEALTH ALLIANCE, LLC (“Inspire Health”) is a Limited Liability Company organized under the laws of the State of Florida, and authorized to conduct and transact business in the State of California. Defendant Inspire Health

conducts substantial business in the County of San Diego, and other Counties within the State of California.

6. Upon information and belief, Defendant Inspire Health Alliance owns all or a substantial portion of Defendant Inspire Diagnostics, exercises dominion and/or control over all of Inspire Diagnostics' business and affairs, and/or manages Inspire Diagnostics' day to day operations. In operating in such a capacity, Defendant Inspire Health has ordered, engaged in, approved, authorized, and/or ratified all of the conduct giving rise to the wrongs alleged hereinbelow.
7. Defendant INSPIRE DIAGNOSTICS and Defendant INSPIRE HEALTH ALLIANCE shall hereinafter be referred to collectively as "Defendants"
8. Plaintiff is ignorant of how many other fictitious names Defendants used in California in the operative time period, but it is believed other businesses were or may have been operated under different names but did business in the same illegal manner as did Defendants, as alleged below.
9. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 25, inclusive, and therefore sue these defendants by such fictitious names. Plaintiff is informed and believes and based thereon alleges that each defendant sued under such fictitious name(s) is (are) in some manner responsible for the wrongs and damages as alleged below, and in so acting was functioning as the agent, managing agent, servant, partner, and employee of the co-defendants, and in doing the actions mentioned below was acting within the course and scope of his, her, their or its authority as such agent, servant, partner and employee with the permission and consent of the Defendants and/or other co-defendants.
10. All of the wrongs alleged herein occurred or had a substantial effect in the County of San Diego, in the State of California. However, it is alleged that Defendants committed the same or substantially similar wrongs which affected numerous individuals all throughout the State of California.
11. Pursuant to Lab. Code §§2698, 2699.3(a)(1) et seq ("PAGA"), Counsel for Plaintiff

submitted to the Labor & Workforce Development Agency written notice setting forth the specific provisions of the Lab. Code alleged to have been violated by Defendants, including the facts and circumstances in support thereof and giving rise thereto. This notice was submitted on or around November 22, 2021. A copy of the aforementioned notice was sent via certified mail to Defendant Inspire Diagnostics at the same time. As of the filing of this complaint, Counsel for Plaintiff has not received from the LWDA a response to this notice.

GENERAL FACTUAL ALLEGATIONS

12. Defendants are in the business of, *inter alia*, providing diagnostic testing services for numerous public and private businesses, entities, schools, and other organizations located throughout the United States, including, but not limited to, in the State of California. By way of one example, Defendants provide COVID-19 testing for luxury cruise line passengers upon their arrival at each cruise line's respective ports of call.
13. Defendants employ several categories of employees in California. Those categories of employees include, but are not limited to, supervisors/managers ("managers"), team leads, testers, lab technicians, runners, and help desk staff. Upon information and belief, Defendants also utilize the services of other employees not specifically mentioned by title herein, and the duties those employees perform on Defendant's behalf are all essential to Defendants' ability to carry on their business.
14. All employees mentioned in ¶13, regardless of title or classification, shall be collectively referred to herein as "Employees."
15. Among other duties, managers oversee daily operations at each port/testing site, set and/or enforce company policies applicable to each port/testing site, hire and fire other employees, set the schedules and shift assignments of all other employees, and ensure that the testing administered by other employees is done in accordance with company, client and/or CDC guidelines.
16. Team Leads perform duties as assigned to them daily by their respective manager. The duties they are typically assigned include, but are not limited to: standing at the front of

the passenger/patron line to guide passengers to the testing booth at which their test will be administered; refilling the supplies (*i.e.*, test kits, swabs, hand sanitizer, etc.) at each tester's respective testing booth; assisting testers and passengers when issues or errors arise with a given passenger's test; briefly relieving other employees for bathroom breaks; and administering tests to passengers/patrons.

17. Testers administer the actual tests on behalf of Employer. Runners transport test swabs from the testers' test booths to the lab technicians to have their results processed. Lab technicians process those tests upon receiving them from runners. Help desk staff is there to assist all employees with information technology (*i.e.* "IT") issues and/or technical difficulties they experience during the workdays.

18. Each aforementioned category of employee performs duties that are essential, related and/or incidental to the services that Defendants offers within the usual course and scope of its business. Defendants could not provide the services it is in business to provide without the work performed by the aforementioned Employees.

19. Defendants provide its employees with all of the tools, equipment, materials, supplies and facilities they need in order to perform the work they were hired to perform. All the testing kits, swabs, hand sanitizer, masks, desks, and all other equipment and supplies needed to perform the work employees perform, are provided by Defendants. All work performed by Employees is done within areas at each port of call (or areas very close thereto) that are specifically designated and recognized as under the control of Defendants' business. Employees wear uniforms – usually scrubs – provided to them by Defendants, which bear Defendants' company name and logo. In addition, Defendants enforce strict guidelines governing the Employees' appearance while working (such as prohibitions on displaying tattoos and/or piercings), their choice of clothing, their hairstyle, and other similar matters.

20. Employees are paid by the hour and receive their paychecks once per week on a pay day designated by Defendants.

21. Defendants establish and dictate the shift schedules for each of its Employees. Employees

cannot leave work without permission from a supervisor. In general, each individual Employee is required to work a full-time schedule (i.e. 35+ hours per week) and many, if not all, Employees are regularly scheduled to work, and do work, far more than 8 hours per day and/or 40 hours per week. However, Plaintiff and Employees, and each of them, receive the same rate for all hours worked regardless of whether those hours constitute regular or overtime hours under California law. Moreover, all Employees are required to clock into and out of work each workday. From their scheduling practices and their requirements that Employees clock in and out of work each day, Defendants have both actual and constructive knowledge that Plaintiff and Employees customarily and regularly work overtime hours.

22. All Employees are hired, and perform work for Defendants, in their individual capacities; i.e., Employees do not own their own businesses and are not engaged in an independently established trade or occupation when working for, and subject to the control of, Defendants.
23. Notwithstanding all of the matters alleged in ¶¶12–22, Defendants classified all of its Employees as Independent Contractors at all times relevant hereto.
24. Plaintiff worked for Defendants as a “Team Lead” at two of Defendants’ testing sites – the “Port” site and “Intercontinental” site – located in San Diego, California. All of the duties Plaintiff performed in her capacity as a Team Lead were assigned to her by her supervisors. The tasks she customarily and regularly performed included, but were not limited to: standing at the front of a line and guiding passengers (that were in line) to the booth where their tests would be performed, refilling the supplies (i.e., test kits, swabs, hand sanitizer, etc.) at each tester’s respective testing booth; assisting testers and passengers when issues or errors arise with a given passenger’s test; briefly relieving other employees for bathroom breaks; and administering tests to passengers/patrons. Plaintiff did not oversee, supervise, or control any other Employees. Plaintiff did not set schedules for any other Employees. Plaintiff had no hiring or firing authority. Plaintiff had no say in or influence upon any company policy. Though her official title was “team

lead,” Plaintiff’s regular job duties did not in any way involve “leading” a “team”, much less leading any individual Employees.

25. Defendants made clear to Plaintiff and its Employees that they were not authorized and permitted to take any 30-minute meal periods or 10-minute rest periods because, as Defendants explained, Plaintiff and Employees were all independent contractors who were not entitled to those breaks. Plaintiff and other Employees were only allowed to be relieved of their duties so that they could go to the bathroom. At Defendants’ San Diego sites, Plaintiff was often the employee who was responsible for relieving other Employees – especially other testers – of their duties so they could go to the bathroom.

26. Defendants did reimburse Plaintiff and its Employees for at least a portion of the business related expenses they incurred in the discharge of their duties. Many of the expenses that were (at least partially) reimbursed were for parking charges that Plaintiff and Employees had to pay in order to park at, or reasonably near to, Defendants’ testing sites each workday. Defendants affirmed many times that they would be reimbursing all parking expenses. However, those expenses incurred by Plaintiff and other Employees have not been fully reimbursed despite Plaintiff’s and other Employees’ requests for same. Either the full amount, or a portion thereof, remains unpaid by Defendants. Upon information and belief, Defendants have also failed and/or refused to reimburse Plaintiff and other Employees for other business related expenses, like meals, that Plaintiff and/or other Employees incurred at Defendants’ direction, or for which Defendants otherwise agreed to reimburse them.

27. Upon information and belief, Defendants actually knew, or in the exercise of due care should have known, of their duty to ensure that its workers were classified properly – as employees – under California law. Further, upon information and belief, Defendants actually knew that they were misclassifying its workers as independent contractors and intended to do so in order to, *inter alia*, save money on workers compensation insurance, overtime wages and employment/payroll taxes; avoid having to satisfy requirements involving paid vacation and/or sick time; avoid having to pay overtime wages; avoid

1 having to provide meal and/or rest breaks; avoid having to provide insurance benefits as
2 required of all employers who employ 50+ employees (which Defendants do); avoid
3 liability for any workplace injuries that Employees suffered or might have suffered while
4 they were working; and to, in general, enjoy the benefits of Employees' labor for a
5 substantially reduced cost and with substantially less risk.

6 28. Thus, Plaintiff believes that Defendants purposefully and intentionally misclassified both
7 its Employees and her with actual knowledge that what they were doing was both illegal
8 and substantially detrimental to the health, safety and interests of all Employees.

9 **CLASS ACTION ALLEGATIONS**

10 29. This action has been brought and may be properly maintained as a class action pursuant
11 to CCP §382 because there is a well-defined community of interests in the litigation, and
12 the proposed class(es) is (are) easily ascertainable.

13 30. Plaintiff seeks to represent a class composed of, and defined as, the following: all persons
14 who are currently, or who during the class period were, employed by Defendants in the
15 State of California, but classified by Defendants as independent contractors. The class
16 period is designated as any time within the four years prior to the filing of this complaint.

17 31. Plaintiff reserves the right under California Rule of Court, Rule 1855(b), to amend,
18 and/or modify the Class descriptions above with greater specificity, or to further
19 designate appropriate subclasses, or to further divide the classes into subclasses by
20 limiting particular issues and/or remedies and/or claims.

21
22 **NUMEROSITY**

23 32. The total number of persons affected by the actions, omissions, conduct, and/or business
24 practices of Defendants is expected to be close to or more than one hundred (100). The
25 potential members of the classes defined above are so numerous that joinder thereof
26 would be impracticable. While the precise number of class members has not been
27 determined at this time, Plaintiffs are informed and believes that Defendants currently
28 employ, and during the relevant time periods stated herein employed, well over one

hundred (100) employees in the State of California. If considering employee turnover rates during the relevant time periods, the total number of potential Class Members likely increases dramatically.

33. Defendants' employment records would provide information as to the number and location of all potential class members. Nevertheless, joinder of all members of the aforementioned proposed classes, is not practical at this time.

COMMONALITY

34. There are several issues of law and fact common to the Class which predominate over any questions affecting only individual Plaintiffs and/or Class Members. These common questions of law or fact include, but are not limited, to the following:

- a. Whether Plaintiff and Class Members were misclassified as independent contractors in violation of Lab. Code §226.8;
- b. Whether Plaintiff and Class Members received premium wages for all overtime hours worked, in accordance with the Lab. Code;
- c. Whether Plaintiff and Class Members received their statutorily-mandated meal breaks in accordance with Industrial Welfare Commission Order ("IWC Order") No. 4-2001 §11 and/or Lab. Code §512 et seq.;
- d. Whether Plaintiff and Class Members received their statutorily-mandated rest breaks in accordance with IWC Order 4-2001 §12 and/or Lab. Code §226.7;
- e. Whether Defendants failed to timely and fully compensate Plaintiff and Class Members in accordance with Lab. Code §§200-204 et seq.;
- f. Whether Defendants failed to indemnify Plaintiff and Class Members for business expenses incurred in the discharge of their respective duties, in accordance with Lab. Code §2802 and/or IWC Order 4-2001 §9;
- g. Whether Plaintiff and Class Members received accurate itemized wage statements in accordance with Lab. Code §226 and/or IWC Order 4-2001 §7(B);
- h. Whether Plaintiff and Class Members received all earned wages at the end of their employment in accordance with Lab. Code §203

TYPICALITY

35. Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and Class Members were both subjected to the same wrongful acts, omissions, business practices, and/or conduct of Defendants as alleged herein, and, as a consequence thereof, Plaintiff has sustained injuries and incurred damages similar to those sustained and incurred by Class Members.

ADEQUACY OF REPRESENTATION

36. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class and any potential subclasses. Counsel for Plaintiff is competent and experienced in litigating large employment actions, including class actions and representative actions under PAGA. Plaintiff and Plaintiff's Counsel will act to protect the interests of the Class and will not place their own individual interests above those of the Class Members.

SUPERIORITY OF CLASS ACTION AS METHOD FOR ADJUDICATING DISPUTE

37. A class action is the best way to adjudicate this controversy and is superior to alternative available means for fairly and efficiently adjudicating same. Individual joinder of all Class Members is not practical, and questions of law and fact common to the Class(es) predominate over any questions affecting only individual class members. Each and every Class Member has been damaged and is entitled to recovery by way of Defendants' unlawful acts, omissions, practices and/or conduct as alleged herein.

38. 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 for the judicial system. Plaintiffs are unaware of any difficulties that are likely to arise or be encountered in the management of this action, which would preclude its maintenance as a class action.

FACTUAL ALLEGATIONS APPLICABLE ONLY TO PLAINTIFF

39. When Plaintiff was originally hired, she was advised that she would be performing work for Defendants, first in San Diego, California and then "following the ship" to – i.e. transferred to another one of Defendants' testing sites near – the Port of Galveston in

Galveston, Texas. (Since Defendants’ business involves, inter alia, providing COVID-19 testing to cruise line passengers, “following the ship” meant that Plaintiff would be going to the next primary port of call from which one of Defendants’ clients’ cruises disembarked for their cruises).

40. In late September of 2021, Plaintiff experienced a medical issue related to her pregnancy while working a shift for Defendants. She was excused from work for the remainder of that shift so she could seek medical evaluation/treatment. Following this incident, Plaintiff was cleared by her doctor to return to work without restrictions. As such, on or around October 6, 2021, Plaintiff presented to her supervisor a doctor’s note which clearly stated “able to work without restrictions.” Plaintiff proceeded to work several shifts, without incident, between October 6 and October 20, 2021.

41. On October 19, 2021, an employee in Defendants’ human resources (“HR”) department asked Plaintiff whether she was still ready and able to travel to Galveston, Texas to “follow the ship.” Plaintiff confirmed she was. The HR employee then advised Plaintiff that she would be contacted by the HR employee’s manager to confirm the details of the trip and assignment. In addition to the foregoing, one of Plaintiff’s supervisors, who would be leading the Galveston trip on Defendants’ behalf and who had the authority to hire and fire employees like Plaintiff, sent to Plaintiff a copy of all of the work shifts that would be scheduled upon their arrival at the Galveston port.

42. Between October 18 and 20, 2021, the aforementioned HR employee contacted Plaintiff in connection with an investigation that Defendants were conducting, which concerned (at least) three incidents at the San Diego sites.

a. The first incident involved several of Plaintiff’s co-workers (but not Plaintiff) drinking and/or being drunk while on the job. Plaintiff responded truthfully to the questions she was asked about who she believed may have been either drinking on site or intoxicated while working. The information Plaintiff provided disclosed that at least one of her supervisors was aware of, and actually condoned, the unlawful behavior that was being investigated.

b. The second incident involved Plaintiff's supervisors forging the hours other employees worked and/or knowingly approving the payment of wages for hours that employees did not actually work. Since, as a team lead, Plaintiff was typically one of the last persons to leave work after each of her shifts, Plaintiff was asked several questions about the hours she witnessed certain employees working and the typical working hours for each site operated by Defendants in San Diego. Plaintiff, again, responded truthfully to the questions she was asked. The responses she provided implicated both of Plaintiff's supervisors (including the one with authority to fire Plaintiff) because they were the ones who were approving the knowingly-false timecards, and the employees whose time were at issue were known to be "favorites" of the supervisors.

c. The third incident involved reimbursement requests that both Plaintiff's supervisors and fellow coworkers submitted for expenses that were not actually incurred in the discharge of their duties. For example, one supervisor submitted a request for, and received reimbursement for, an Airbnb that was used for a personal vacation; another employee submitted a request for, and was reimbursed for, a personal stay at a hotel near the Intercontinental site. Plaintiff, again, responded truthfully to the questions she was asked. The information she provided to the HR employee implicated both of Plaintiff's supervisors (including the one with authority to fire Plaintiff), as one of them was the one who submitted the request for a personal Airbnb stay, and, upon information and belief, her other supervisor (the one with authority to fire Plaintiff) was the one who approved the reimbursement for same despite her actual knowledge that the expense was not business related.

43. On October 19, 2021, Plaintiff's supervisor (i.e. the one with authority to fire her) text messaged Plaintiff about the aforementioned investigation by HR and expressed her displeasure about Plaintiff reporting the issues with HR instead of first bringing it to her attention.

- 1 44. Following the aforementioned conversations with Defendants' HR employee between
2 October 18-20th, the next shift Plaintiff worked was on October 22, 2021. One of the
3 supervisors that Plaintiff implicated during her conversations with HR (i.e. the one with
4 the authority to fire Plaintiff), also worked that same shift with Plaintiff. That same
5 supervisor forced Plaintiff to go home early during the middle of her shift on October
6 22nd. According to the supervisor, Plaintiff was sent home early because she did not want
7 Plaintiff lifting any heavy objects. This was so despite the fact that Plaintiff's job did not
8 in any way involve heavy lifting, there was nothing heavy on site that needed to be lifted
9 and, even if there was, Plaintiff's October 6, 2021 doctors note clearly stated that she was
10 "able to work without restrictions." Based on the foregoing and the timing of this
11 incident, the reason Plaintiff was given for being sent home early was clearly pretextual
12 and had nothing to do with any concerns about Plaintiff lifting heavy objects. As a result
13 of being sent home early, Plaintiff missed out on the wages she would have earned had
14 she continued to work through the end of her regularly scheduled shift.
- 15 45. Despite being cleared to work without restrictions pursuant to her October 6, 2021,
16 doctor's note, and despite being sent home on October 22nd for clearly pretextual reasons,
17 Plaintiff was advised on October 27, 2021, that she could not return to work until she
18 obtained another doctor's note. Plaintiff quickly obtained this doctor's note and delivered
19 it to her supervisor on or around October 27, 2021. It stated she could return to regular
20 duties at the Intercontinental site.
- 21 46. Shortly after delivering the updated doctor's note to her supervisor (i.e. the supervisor
22 with authority to fire Plaintiff) on October 27, 2021, Plaintiff was further advised by the
23 same supervisor that Plaintiff would no longer be transferred to Galveston, Texas to
24 "follow the ship" as she was originally promised and, consequently, was terminated. She
25 was also advised by the same supervisor on the same day that many of her outstanding
26 expense reimbursement requests may not be approved even though similar requests for
27 identical expense reimbursements were being approved for other employees. To date,
28 Plaintiff still has not been reimbursed for all of the expenses she incurred in the discharge

of her duties.

47. On November 23, 2021, Plaintiff sent to Defendants a written request for the complete contents of her payroll records and personnel file, pursuant to Lab. Code §§226 and 1198.5, respectively. To date, Plaintiff has not received any response to this request.

48. Plaintiff filed a complaint of employment discrimination with the California Dept. of Fair Employment & Housing (“DFEH”), on March 23, 2022. That same day, Plaintiff received from the DFEH a Notice of Case Closure and Right to Sue Notice. Plaintiff personally served the foregoing upon Defendants on or around April 7, 2022.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(Lab. Code §§510 and 1194, and IWC Order No. 4-2001)

Alleged by Plaintiff on Behalf of Herself and All Class Members

49. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set out and incorporated herein.

50. Pursuant to Lab. Code §§510 and Wage Order 4-2001, Plaintiff and Class Members were entitled to receive overtime wages at a rate equal to one and one-half times (1.5x) their regular hourly rate equivalent for any hours worked in excess of eight (8) within the first six (6) days of same workday, one and one-half times (1.5x) their regular hourly rate equivalent for the first eight (8) hours worked on the seventh consecutive workday within the same workweek, two (2x) times their hourly rate equivalent for any hours worked in excess of twelve (12) during the first six (6) days of the same workweek, and two times (2x) their hourly rate equivalent for all hours worked in excess of eight (8) on their seventh consecutive workday within the same workweek.

51. Plaintiff and Class Members regularly worked more than 8 hours per day and more than 40 hours per week. Upon information and belief, many Class Members also worked 7 consecutive days in a single workweek.

52. Defendants have knowledge that Plaintiff and the Class regularly work or worked overtime hours because Defendants themselves set the Employees’ schedules, and

Defendants require that its Employees clock into and out of work whenever they arrive and leave each workday.

53. Defendants' practices of classifying Plaintiff and the Class as independent contractors and compensating them as described hereinabove resulted in Defendants' failure to compensate Plaintiff and Class Members in accordance with California law, for any and all overtime hours that they worked.

54. As a direct result of Defendants' unlawful conduct, Plaintiffs and Class Members have suffered damages to the extent they were not paid the full amount of overtime wages they were owed, in an amount to be determined according to proof at trial.

55. Pursuant to Lab. Code §§1194 Plaintiffs and Class Members are entitled to recover the full amount of unpaid overtime wages, interest thereon, reasonable attorney's fees, and costs of suit, all in an amount to be determined according to proof at trial.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§226.7, 512(a) and Wage Order 4-2001)

Alleged by Plaintiff on Behalf of Herself and All Class Members

56. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set out and incorporated herein.

57. Lab. Code §512(a) provides, in relevant part, as follows:

“(a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a 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 employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

58. Wage Order 4-2001 §11 provides, in relevant part, as follows:

“Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an on-duty meal period and counted as time worked. An on-duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when

by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

59. Lab. Code §226.7(c) provides, in relevant part, as follows:

“(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission..., the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

60. Plaintiff and the Class signed neither an agreement authorizing on-duty meal periods, nor a meal period waiver. Moreover, the nature of their duties *did* reasonably allow for a duty-free 30-minute meal period to be provided by Defendants. However, Defendants believed that, by purposely misclassifying Employees as independent contractors, they could avoid or skirt their statutory obligation to provide Employees meal breaks without consequence or penalty. Refusing to authorize or permit meal periods on the basis that Employees were supposedly independent contractors was Defendants’ way of getting the most work out of its Employees for as little pay as possible.

61. Notwithstanding the above, Plaintiff and Class Members worked numerous shifts exceeding five (5) hours without receiving their statutorily mandated 30-minute meal break, and did not receive premium wages equal to one hour at their standard hourly rate when meal periods were not provided. Plaintiff and Class Members also worked numerous shifts exceeding ten (10) hours without receiving their second statutorily mandated 30-minute meal break and did not receive premium wages equal to one hour at their standard hourly rate when meal periods were not provided.

62. As a direct result of the foregoing, Plaintiff and Class Members have suffered harm in the form of the unpaid premium wages that Defendants have failed to pay for having not provided statutorily-mandated meal breaks. The amount of said harm shall be determined according to proof at trial.

63. As a further result of Defendants’ conduct and actions as alleged herein, Plaintiff and Class Members have been required to and did retain legal counsel, resulting in the accrual of attorney fees, costs and other legal expenses in an amount to be determined at trial.

Plaintiff and the Class are entitled to an award of reasonable attorney fees and costs of suit in accordance with applicable law pursuant to Lab. Code §226.7 et seq.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Lab. Code §226.7, Wage Order 4-2001 §12)

Alleged by Plaintiff on Behalf of Herself and All Class Members

64. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set out and incorporated herein.

65. Wage Order 4-2001 §12 provides as follows:

“(A) 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. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

66. Pursuant to California Lab. Code §226.7:

"If an employer fails to provide an employee a Meal Period or Rest Break or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the Meal Period or Rest Break or recovery period is not provided."

67. Throughout the course of Plaintiff’s and Class Members’ employment with Defendants, Plaintiff and Class Members were frequently scheduled to work, and worked, shifts that exceeded four (4) hours during which Defendants failed to make available, provide, offer, and/or relieve Plaintiffs and Class Members of all duties for purposes of, a 10-minute Rest Break as required by Wage Order 4-2001 §12 and Lab. Code §226.7.

68. Throughout the course of Plaintiff's and Class Members' employment with Defendants, Plaintiff and Class Members were frequently scheduled to work, and worked, shifts that exceeded eight (8) hours during which Defendants failed to make available, provide, offer, and/or relieve Plaintiffs and Class Members of all duties for purposes of, a *second* 10-minute Rest Break as required by Wage Order 4-2001 §12 and Lab. Code §226.7.

69. Despite not making available to Plaintiff and Class Members a statutorily mandated rest break as explained hereinabove, Defendants failed to compensate Plaintiff and Class Members with the additional one hour of premium pay pursuant to Lab. Code §226.7 and Wage Order 4-2001 §12(B).

70. Defendants believed that, by purposely misclassifying Employees as independent contractors, they could avoid or skirt their statutory obligation to provide Employees rest breaks without consequence or penalty. Refusing to authorize or permit rest periods on the basis that Employees were supposedly independent contractors was Defendants' way of getting the most work out of its Employees for as little pay as possible.

71. As a direct result of the foregoing, Plaintiffs and Class Members have suffered harm in the form of the unpaid premium wages that Defendants have failed to pay for having not provided statutorily-mandated rest breaks. The amount of said harm shall be determined according to proof at trial.

72. As a further result of Defendants' conduct and actions as alleged herein, Plaintiff and Class Members have been required to and did retain legal counsel, resulting in the accrual of attorney fees, costs and other legal expenses in an amount to be determined at trial. Plaintiffs are entitled to an award of reasonable attorney fees and costs of suit in accordance with applicable law pursuant to Lab. Code §226.7 et seq.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Lab. Code §226, Wage Order 4-2001)

Alleged by Plaintiff on Behalf of Herself and All Class Members

73. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set out and

incorporated herein.

74. Lab. Code §226 subdivision (a) requires, in pertinent part, that:

"Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of §515 or any applicable order of the Industrial Welfare Commission,... (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number... (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee ..."

75. Plaintiff and the Class were paid on a weekly basis. Accordingly, they were to receive itemized wage statements that complied with Lab. Code §226(a) every week.

76. Because Defendants failed to compensate Plaintiff and the Class for Overtime Hours worked and meal and rest break premium wages owed, no information related to those wages was ever reflected on any of the itemized wage statements distributed by Defendants. As a result of this missing information, neither Plaintiff nor the Class were ever able to verify the accuracy of the amounts they were truly owed or the basis of the wages they were paid.

77. Pursuant to Lab. Code §226(e)(1), Plaintiff and Class Members have suffered injury as a result of a knowing and intentional failure by Defendant to comply with §226(a) and are therefore entitled to recover the greater of all actual damages, or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per person. In addition, Plaintiff and the Class are entitled to an award of costs and reasonable attorney's fees all in an amount according to proof at trial.

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FIFTH CAUSE OF ACTION

FAILURE TO MAKE SEMI-MONTHLY PAYMENTS

(Lab. Code §204)

Alleged by Plaintiff on Behalf of Herself and All Class Members

78. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

79. Pursuant to Lab. Code §204, "all wages ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays."

80. Pursuant to Lab. Code §204(b)(2), all earned wages must be paid no later than the payday for the next regular payroll period following the payroll period in which the wages were earned.

81. Plaintiff and Class Members have earned regular and premium wages that, to date, have still not been paid by Defendants in violation of Lab. Code §204.

82. At all times relevant hereto, Defendants maintained, and still continue to maintain, a practice of failing to pay their employees, including Plaintiff and Class Members, all earned wages, including, but not limited to, regular and premium wages as set forth above

83. Plaintiff and Class Members are informed and believe and based thereon allege that Defendant engaged in the misconduct alleged above with the intent to secure for themselves a discount on their wages payable and/or deceive or oppress Plaintiff and Class Members. The exact amount of any and all such harm will be determined according proof at trial.

84. In committing the violations of state law alleged herein, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff and Class Members with all earned wages.

85. As a direct and proximate result of the aforementioned conduct, Plaintiff and Class Members have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such compensation, wages, and lost interest on such monies, and have

accrued substantial attorney's fees in seeking to compel Defendants to fully perform their obligations under state law.

86. Plaintiff and Class Members have been deprived of their rightfully earned wages as a direct and proximate result of Defendants failure and refusal to pay the aforementioned amounts. For the reasons stated herein, Plaintiff and Class Members request the unpaid wages, interest, attorney's fees and costs, and all other forms of relief which the Court deems just and proper, in an amount to be determined according to proof at trial.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §201, 202, & 203 et seq)

Alleged by Plaintiff on Behalf of Herself and All Class Members

87. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

88. Lab. Code §201 provides, in relevant part, as follows: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately..."

89. Pursuant to Lab. Code §202(a):

"If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

90. Lab. Code §203(a) provides, in pertinent part, that:

"If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

91. Pursuant to Lab. Code §226.7, an action may be brought for the nonpayment of premium wages which are the result of a missed meal period and/or rest break.

92. Plaintiff and Class Members have either been discharged from, or have quit, their

employment with Defendants, but have not been paid the entire amount of earned overtime premium wages and other premium wages that they are due and owed. Thus, Plaintiff and Class Members have not been paid by the Defendants pursuant to the requirements of Lab. Code §§201, 202, and/or 203.

93. Plaintiff and Class Members are informed and believe and based thereon allege that Defendants willfully failed to pay Plaintiffs and Class Members wages pursuant to the requirements of Lab. Code §§201, 202, 203, and 226.7, and, therefore, Plaintiff and Class Members are entitled the associated unpaid wages and waiting time penalties.

94. In committing the violations of state law as herein alleged, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff and Class Members with all wages earned and/or for all hours worked and/or all meal and rest breaks missed.

95. As a direct and proximate result of the foregoing failure to pay all wages owed and due upon discharge or termination, in accordance with Lab. Code §201, 202, and/or 203, Plaintiff and Class Members have been harmed, and continue to be harmed, in an amount to be determined according to proof of trial.

96. For the reasons stated herein, Plaintiff and Class Members request the unpaid wages, waiting time penalties, interest, attorney's fees and costs, and all other forms of relief which the Court deems just and proper, in an amount to be determined according to proof at trial.

SEVENTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

(Lab. Code §§1174, et seq., and IWC Order 4-2001 §7)

Alleged by Plaintiff on Behalf of Herself and All Class Members

97. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

98. Lab. Code §1174(d) requires employers to "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing

the hours worked daily by and the wages paid to...employees employed at the respective plants or establishments.”

99. IWC Order 4-2001 §7(a)(3) obligates an employer to keep accurate information with respect to each one of its employees’ hours worked and meal periods taken.

100. Plaintiff and Class Members are informed and believe based thereon allege that during all times relevant hereto, Defendants failed to comply with Lab. Code §1174, §1174(d), §1174.5, and Wage Order 4-2001, by failing to maintain certain records which they were required to maintain. Specifically, Defendant failed to maintain records which enabled them to accurately and correctly state, calculate and/or pay the regular and overtime hours worked and, therefore, gross and net wages earned, by Plaintiff and Class Members during each respective pay period.

101. For the reasons alleged herein, Plaintiff and Class Members seek any and all available remedies including but not limited to civil penalties and attorney’s fees and cost, in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION

UNFAIR, UNLAWFUL BUSINESS PRACTICES

(Bus & Prof. Code §§1700, 17200, et. seq.)

Alleged by Plaintiff on Behalf of Herself and All Class Members

102. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

103. Defendants’ conduct, acts, omissions, behavior and/or practices as alleged hereinabove, including but not limited to: intentionally misclassifying its workers as independent contractors; failing to pay regular and overtime wages; refusing to make available to Plaintiff and Class Members statutorily required meal and rest periods; and, failing to timely compensate Plaintiff and Class Members with all wages earned and therefore due and owed, all constitute unlawful and/or unfair business practices in violation of California Bus. & Prof. Code §17200, et. seq.

104. As a result of Defendants’ conduct, Plaintiff and Class Members have suffered

1 economic injury in the form of earned but unpaid overtime wages and premium wages
2 deriving from meal and rest break violations.

3 105. As a result of their unlawful and/or unfair business practices Defendant has realized
4 and continue to realize the unlawful monetary gains and unfair benefits accrued at the
5 expense of Plaintiff's and Class Members' earned wages in an amount according to proof
6 at trial.

7 106. Defendants should be enjoined from continuing to engage in the alleged activity and
8 made to disgorge all unlawful gains and restore to Plaintiff and Class Members all unpaid
9 overtime wages and premium wages for missed meal and rest breaks, plus interest
10 thereon, and such other financial remedies as are available to Plaintiff and Class
11 Members all in an amount according to proof at trial.

12 107. Defendants have been/is continuing to be unjustly enriched through their wrongful
13 conduct as alleged herein.

14 108. Defendants have violated Business & Profession Code §17200's proscription against
15 unfair and unlawful business practices. Plaintiff and the Class Members are therefore
16 entitled to the relief prayed for herein, including, but not limited to, the disgorgement of
17 profits obtained through the conduct described hereinabove.

18 **NINTH CAUSE OF ACTION**

19 **THEFT OF LABOR**

20 ***(California Penal Code §484)***

21 ***Alleged by Plaintiff on Behalf of Herself and All Class Members***

22 109. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth
23 and referenced herein.

24 110. Defendants knew of, or reasonably should have known of, their obligation to properly
25 classify its workers, including Plaintiff and the Class, as employees in accordance with
26 California law.

27 111. Defendants knew of, or reasonably should have known of, their statutory requirement
28 to compensate Plaintiff and Class Members with overtime wages at a rate equal to one

and one-half (1.5x) times their regular rate of pay for any hours worked in excess of eight (8) within the same Workday, and/or double (2x) the rate of pay for hours worked in excess of twelve (12), within the same Workday.

112. With the foregoing knowledge, Defendants purposely and knowingly misclassified Plaintiff and Class Members as independent contractors so as to obtain the benefits of their labor for a substantially reduced price.

113. Defendants knew of, or reasonably should have known of, their statutory requirement to provide Plaintiff and Class Members with a 30-minute meal break for every five (5) hour shift that Plaintiff and Class Members worked. Further, Defendants knew of, or reasonably should have known of, their statutory requirement to provide Plaintiff and Class Members with a second 30-minute meal break for every ten (10) hour shift Plaintiff and Class Members worked.

114. Defendants knew of, or reasonably should have known of, their statutory requirement to provide Plaintiff and Class Members with a 10-minute rest break for every four (4) hour shift Plaintiff and Class Members worked. Further, Defendants knew of, or reasonably should have known of, their statutory requirement to provide Plaintiff and Class Members with a second 10-minute meal break for every eight (8) hour shift Plaintiff and Class Members worked.

115. With the foregoing knowledge, Defendants purposely and knowingly misclassified Plaintiff and Class Members as independent contractors so as to obtain the benefits of their labor without having to comply with California labor laws requiring, inter alia, that employers provide statutorily mandated meal and rest breaks.

116. Defendants also knew, or reasonably should have known, of their duty to both timely and fully compensate their employees with all wages thereby earned, including premium wages for overtime and/or meal and rest break violations, in accordance with the provisions of Lab. Code §§201, 202, 203, and/or 204. With that knowledge, Defendants have knowingly and intentionally failed and refused to compensate Plaintiff and Class Members with all of their earned wages in an attempt to receive the benefits of Class

Members' labor for a substantially reduced price.

117. As a direct and proximate result of Defendants' conduct described above, Plaintiff and Class Members have suffered and continue to suffer substantial losses related to the use and enjoyment of such compensation, overtime wages, lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial.

118. In addition, Plaintiffs and the Class are entitled to recover from Defendants punitive damages based on Defendants' intentional, reckless and/or willful acts aimed at purposefully depriving Plaintiff and Class Members of all wages earned and owed, all breaks to which they were entitled, and all premium wages they were owed as a result of those missed breaks.

TENTH CAUSE OF ACTION

PAGA REPRESENTATIVE ACTION

(Lab. Code §2698, et. seq.)

Alleged by Plaintiff, on behalf of the State of California and all aggrieved employees

119. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

120. Lab. Code §2699(a), also known as PAGA, at subsection (a), provides, in relevant part, as follows:

“Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

121. Lab. Code §2699(c) provides as follows: “For purposes of this part, ‘aggrieved employee’ means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

122. Lab. Code §2699(e) provides as follows:

“For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.”

123. Lab. Code. §2699.3(a), provides, in relevant part, as follows:

“A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

“(1)(A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

“(2)(A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.”

124. On or around November 22, 2021, Plaintiff, on behalf of herself and all of Defendant’s aggrieved employees (including Class Members), sent to the LWDA and Defendants a notice of claims pursuant to Lab. Code §2699.3. As of the date of this filing, the LWDA has not provided a response to that notice.

125. Plaintiff and Class Members are “aggrieved employees” under the definition provided above, in that one or more of the violations listed hereinabove and hereinbelow were committed against each of them. These violations include, but are not limited to:

- a. Failure to Pay Overtime: Defendants’ failure to pay all overtime wages owed constitutes a violation of Lab. Code §510 and Wage Order 4-2001 §3. Plaintiff and Class Members are therefore “aggrieved employees” under both of the foregoing statutes/Wage Order provisions. Lab. Code §558 provides for civil penalties to be assessed for violations of the foregoing statutes/Wage Order provisions. Defendant is therefore subject to the imposition of civil penalties pursuant to Lab. Code §558.

- 1 b. Failure to Provide Meal Breaks: Defendants’ failure to provide meal periods, as
2 explained hereinabove, constitutes a violation of Lab. Code §512 and Wage Order
3 4-2001 §11. Plaintiff and Class Members are therefore “aggrieved employees”
4 under both of the foregoing statutes/Wage Order provisions. Lab. Code §558
5 provides for civil penalties to be assessed for violations of the foregoing
6 statutes/Wage Order provisions. Defendant is therefore subject to the imposition
7 of civil penalties pursuant to Lab. Code §558.
- 8 c. Failure to Provide Rest Breaks: Defendants’ failure to provide rest breaks
9 constitutes a violation of Lab. Code §226.7 and Wage Order 4-2001 §12. Plaintiff
10 and Class Members are therefore “aggrieved employees” under both of the
11 foregoing statutes/Wage Order provisions. Lab Code §2699(f) provides for civil
12 penalties to be assessed for violations of the foregoing statutes/Wage Order
13 provisions. Defendants are therefore subject to the imposition of civil penalties
14 pursuant to Lab. Code §2699(f).
- 15 d. Failure to Indemnify/Reimburse for Business-Related Expenses: Defendants’
16 failure to reimburse Plaintiffs and the Class for expenses incurred in the discharge
17 of their duties constitutes a violation of Lab. Code §2802 and Wage Order §9.
18 Plaintiffs and Class Members are therefore “aggrieved employees” under the
19 foregoing statutes. Lab. Code §2802(d) provides for civil penalties to be assessed
20 for violations of the foregoing statute, which penalties are assessed in accordance
21 with the same procedures for issuing civil penalties under Lab. Code §1197.1.
22 Defendants are therefore subject to the impositions of civil penalties pursuant to
23 Lab. Code §§2802 and 1197.1.
- 24 e. Failure to Provide Accurate Itemized Wage Statements: Defendants’ failure to
25 provide itemized wage statements displaying all of the information required by
26 Lab. Code §226(a)(1-9) constitutes a violation of Lab. Code §226. Plaintiff and
27 Class Members are therefore “aggrieved employees” under the foregoing statute.
28 Lab. Code §226.3 provides for civil penalties to be assessed for violations of the

foregoing statute. Defendant is therefore subject to the imposition of civil penalties pursuant to Lab. Code §226.3.

f. Failure to Make Semi-Monthly Payments: Defendants' failure to make semi-monthly payments of wages owed and due constitutes a violation of Lab. Code §204. Plaintiff and Class Members are therefore "aggrieved employees" under the foregoing statute. Lab Code §210 provides for civil penalties to be assessed for violations of the foregoing statute. Defendant is therefore subject to the imposition of civil penalties pursuant to Lab. Code §210(a)(1-2). However, Plaintiff reserves the right to elect her remedies for a violation of the foregoing statutes, pursuant to Lab. Code §210(b-c).

g. Failure to Pay All Wages Owed Upon Discharge: Defendants' failure to pay all wages due and owed upon discharge constitutes a violation of Lab. Code §§202 and 203. Plaintiff and Class Members are therefore "aggrieved employees" under the foregoing statutes. Lab. Code §2699(f) provides for civil penalties to be assessed for violations of the foregoing statutes. Defendant is therefore subject to the imposition of civil penalties pursuant to Lab. Code §2699(f).

h. Failure to Maintain Accurate Records: Defendants' failure to maintain accurate records constitutes a violation of Lab. Code §1174. Plaintiff and Class Members are therefore "aggrieved employees" under the foregoing statute. Lab. Code §1174.5 provides for a civil penalty to be assessed for violations of the foregoing statutes. Defendants are therefore subject to the imposition of penalties pursuant to Lab. Code §1174.5.

126. Based on the foregoing, Plaintiff will pursue claims for civil penalties on behalf of all aggrieved employees under each of the appropriate enabling statutes establishing those penalties, and/or Lab. Code 2699(f). Plaintiff shall also be entitled to recover all reasonable attorney's fees and costs, in addition to any other relief that this Court may deem just, fair and reasonable.

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ELEVENTH CAUSE OF ACTION

DECLARATORY RELIEF

Alleged by Plaintiff on Behalf of Herself and All Class Members

127. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

128. There exists an actual, true and justiciable controversy between Plaintiff and Defendants. Plaintiff claims that both she and all Class Members were the employee(s) of Defendants at all times relevant hereto. The conduct of Defendants in the way they treated and compensated Plaintiff and Class Members, as set forth in great detail above, implies that Defendants did not consider Plaintiff and/or Class Members to be their employees, but rather considered them to be independent contractors.

129. Accordingly, Plaintiff requests that this Court issue an order holding that Plaintiff and all other similarly situated workers retained/hired by Defendants during the relevant time period be considered Defendants' employees for purposes of the claims alleged herein, including, but not limited to, wage and hour claims arising under the Lab. Code and/or IWC Order 4-2001.

TWELFTH CAUSE OF ACTION

RETALIATORY TERMINATION

(Lab. Code §1102.5 et seq)

Alleged by Plaintiff only, against Defendants

130. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

131. In October 2021, Plaintiff disclosed to another employee – Defendant's HR employee – facts that revealed that Plaintiff's supervisors (including one with authority to fire Plaintiff) and many of her coworkers had engaged in unlawful activity within the course and scope of the respective employments.

132. Both Defendants and the supervisor responsible for firing Plaintiff had knowledge that Plaintiff had engaged in the aforementioned protected disclosures.

133. As a result of Plaintiff's disclosure of the aforementioned facts, Defendants sent Plaintiff home early from a regularly scheduled shift, refused to reimburse Plaintiff for expenses incurred in the discharge of her duties and, further, and refused to transfer Plaintiff to the Galveston job, thus terminating her employment.

134. Plaintiff's disclosure of facts revealing her supervisors' and coworkers' violations of law and Plaintiff's participation in the investigation as to same was a contributing factor in Defendants' decision to subject Plaintiff to the aforementioned adverse employment actions.

135. Plaintiff was harmed by Defendants' conduct described hereinabove, and that conduct was a substantial factor in causing Plaintiff's harm. Specifically, Plaintiff has suffered harm in the form of past lost wages, future lost wages, unreimbursed expenses, and interest thereon.

136. In addition, as a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered and continues to suffer emotional distress, mental pain and anguish, all to her damage, in an amount to be determined according to proof at trial.

137. As a further result of Defendants' conduct and actions as alleged herein, Plaintiff was required to and did retain legal counsel, resulting in the accrual of attorney fees, costs and other legal expenses in an amount to be determined at trial. Thus, Plaintiff is entitled to an award of reasonable attorney fees and costs of suit in accordance with applicable law pursuant to Lab. Code §1102.5(j).

138. Defendants' conduct set forth herein constitutes malicious, oppressive, and fraudulent conduct, thus entitling Plaintiff to an award of punitive damages.

THIRTEENTH CAUSE OF ACTION

UNLAWFUL EMPLOYMENT PRACTICES – FIRST COUNT

(Govt. Code §§12940(a), 12945, et. seq.)

Alleged by Plaintiff only, against Defendants

139. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

140. The Fair Employment and Housing Act (“FEHA”), codified in Govt. Code §12940, et seq., makes it unlawful for an employer to discriminate against an employee on the basis of the employee’s disability.

141. Defendants engaged in unlawful employment practices in violation of FEHA by, *inter alia*, subjecting Plaintiff to one or more adverse employment actions – including but not limited to termination – on the basis of her disability (i.e. pregnancy), and failing to engage in a timely and good faith interactive process to determine if Plaintiff could be reasonably accommodated before unilaterally sending her home in the middle of a shift for a clearly pretextual reason.

142. Plaintiff’s status as a pregnant woman was a substantial motivating factor in Defendants’ decision to subject Plaintiff to one or more adverse employment actions in violation of Govt. Code §12940.

143. As a direct and proximate result of the wrongful conduct of Defendants, Plaintiff has suffered and continues to suffer substantial losses in earnings and other employment benefits in an amount to be determined according to proof at trial.

144. As a direct and proximate result of the wrongful conduct of Defendants, Plaintiff has suffered and continues to suffer emotional distress, mental pain and anguish, all to her damage, in an amount to be determined according to proof at trial.

145. Plaintiff has incurred and continues to incur attorney’s fees and legal expenses in an amount to be determined according to proof at trial.

146. Defendants’ conduct set forth herein constitutes malicious, oppressive, and fraudulent conduct, thus entitling Plaintiff to an award of punitive damages.

FOURTEENTH CAUSE OF ACTION

UNLAWFUL EMPLOYMENT PRACTICES – SECOND COUNT

(Govt. Code §12940(a))

Alleged by Plaintiff only, against Defendants

147. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

148. FEHA makes it unlawful for an employer to discriminate against an employee on the basis of the employee's sex. Pregnancy discrimination is a form of sex discrimination in violation of FEHA. *Spaziano v. Lucky Stores, Inc.* (1999) 69 Cal.App.4th 106, 110.

149. Defendants engaged in unlawful employment practices in violation of FEHA by, inter alia, subjecting Plaintiff to one or more adverse employment actions – including but not limited to termination – on the basis of her status as a pregnant woman.

150. Plaintiff's status as a pregnant woman was a substantial motivating factor in Defendants' decision to subject Plaintiff to one or more adverse employment actions in violation of Govt. Code §12940.

151. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered and continues to suffer substantial losses in earnings and other employment benefits in an amount to be determined according to proof at trial.

152. In addition, as a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered and continues to suffer emotional distress, mental pain and anguish, all to her damage, in an amount to be determined according to proof at trial.

153. As a further result of Defendants' conduct and actions as alleged herein, Plaintiff was required to and did retain legal counsel, resulting in the accrual of attorney fees, costs and other legal expenses in an amount to be determined at trial. Thus, Plaintiff is entitled to an award of reasonable attorney fees and costs of suit.

154. Defendants' conduct set forth herein constitutes malicious, oppressive, and fraudulent conduct, thus entitling Plaintiff to an award of punitive damages.

FIFTEENTH CAUSE OF ACTION

FAILURE TO ENGAGE IN INTERACTIVE PROCESS

(Govt. Code §12940(n))

Alleged by Plaintiff only, against Defendants

155. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

156. Govt. Code §12940(n) makes it unlawful for an employer to fail to engage in a timely,

good faith, interactive process to determine accommodations that may be made for an employee with a known or perceived disability.

157. Despite its knowledge that Plaintiff was cleared to work without restrictions pursuant to her October 6, 2021 doctor's note, Defendants sent Plaintiff home mid-shift on October 22, 2021, because, according to the supervisor who sent her home, they did not want Plaintiff lifting heavy objects. Therefore, Defendants failed to engage in a timely, good faith, interactive process with respect to the accommodations that may have been provided in light of Plaintiff's status as a pregnant. Instead, Defendants subjected Plaintiff to an adverse employment action without engaging in any interactive process.

158. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered and continues to suffer substantial losses in earnings and other employment benefits in an amount to be determined according to proof at trial.

159. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered and continues to suffer emotional distress, mental pain and anguish, all to her damage, in an amount to be determined according to proof at trial.

160. Plaintiff has incurred and continues to incur attorney's fees and legal expenses in an amount to be determined according to proof at trial.

161. Defendants' conduct set forth herein constitutes malicious, oppressive, and fraudulent conduct, thus entitling Plaintiff to an award of punitive damages.

SIXTEENTH CAUSE OF ACTION

FAILURE TO PROVIDE PERSONNEL FILE UPON WRITTEN REQUEST

(Lab. Code §§226, 1198.5)

Alleged by Plaintiff only, against Defendants

162. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

163. Lab. Code §226 provides, in relevant part, as follows:

“(c) An employer who receives a written or oral request to inspect or receive a copy of records pursuant to [§226(b)] pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request....

“(f) A failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.

164. Lab. Code §1198.5 provides, in relevant part, as follows:

“(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

“(b)(1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request,

“(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.”

165. Plaintiff sent to Defendants a request for her personnel files pursuant to Lab. Code §§226 and 1198.5, on or around November 23, 2021. As of the date of this filing, Defendants have refused or otherwise failed to respond to Plaintiffs’ request with the documents sought. Plaintiff has therefore suffered harm under the aforementioned statutes.

166. As a result of the foregoing, Plaintiffs are entitled to the penalties set forth in Lab. Code §§226 and 1198.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the Class, hereby prays for:

1. An order certifying that this action may be maintained as a class action for all purposes;
2. A decree that Plaintiff and Class Members be considered employees as requested hereinabove;

3. Actual damages and interest thereon, in an amount to be determined according to proof at trial;
4. Emotional distress damages in an amount to be determined according to proof at trial;
5. Unpaid wages and interest thereon, in an amount to be determined according to proof at trial;
6. Punitive damages in an amount to be determined according to proof at trial;
7. Statutory penalties in an amount to be determined according to proof at trial;
8. Civil penalties in an amount to be determined according to proof at trial;
9. An order enjoining Defendants from engaging in the unlawful and unfair conduct as described hereinabove;
10. Disgorgement of profits resulting from Defendants' unfair and unlawful business practices;
11. Attorney's fees and costs; and
12. Any other legal and equitable relief the Court may deem just and proper

DATED: April 7, 2022

**CALLAHAN, THOMPSON, SHERMAN &
CAUDILL, LLP**

By 

ANNETTE C. CLARK
RYAN J. CARLSON
Attorneys for Plaintiff **CINTHIA
CERVANTES, and all others similarly
situated**

DEMAND FOR TRIAL BY JURY

Plaintiff in the above-captioned lawsuit hereby demands a trial by jury.

DATED: April 7, 2022

**CALLAHAN, THOMPSON, SHERMAN &
CAUDILL, LLP**

By  _____

ANNETTE C. CLARK

RYAN J. CARLSON

Attorneys for Plaintiff **CINTHIA**

**CERVANTES, and all others similarly
situated**

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