

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 12 2021

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO

10
11 MICHELLE ENGBRETSON, individually,
12 on a representative basis, and on behalf of all
others similarly situated;

13 Plaintiff,

14 vs.

15 ACTIVATED EVENTS, LLC, a California
16 Limited Liability Company; STEVE
17 THACHER, an individual; HEATHER
18 THACHER, an individual; and DOES 1
through 20, inclusive;

19 Defendants.

Case No. **CIV SB 2132525**

COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Unlawful Deduction of Gratuities;
- (4) Conversion
- (5) Failure to Provide Meal Periods;
- (6) Failure to Provide Rest Breaks;
- (7) Failure to Reimburse for Business Expenses;
- (8) Failure to Timely Pay Final Wages;
- (9) Failure to Provide Accurate Itemized Wage Statements;
- (10) Unfair and Unlawful Competition;

PAGA CLAIMS

- (11) Failure to Pay Minimum Wages;
- (12) Failure to Pay Overtime Wages;
- (13) Unlawful Deduction of Gratuities;
- (14) Failure to Provide Meal Periods;
- (15) Failure to Provide Rest Breaks;
- (16) Failure to Reimburse for Business Expenses;
- (17) Failure to Timely Pay Wages Each Period;
- (18) Failure to Timely Pay Final Wages; and
- (19) Failure to Provide Accurate Itemized Wage Statements

1 Plaintiff Michelle Engebretson (“Plaintiff”) on behalf of herself, on a representative
2 basis, and on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against her employer(s), Activated Events, LLC (“AE”
5 which includes any affiliated entities), Steve Thacher, Heather Thacher and DOES 1 through 20,
6 inclusive, (the AE, Steve Thacher, Heather Thacher, and DOES 1 through 20, inclusive, shall
7 collectively be referred to as “Defendants”) on behalf of all current and former nonexempt
8 employees employed by Defendants in California (the “Class” or “Represented Employees”), for
9 Labor Code violations.

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

15 3. Plaintiff has been employed by Defendants since April 2021.

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

19 5. Plaintiff and the Represented Employees were not provided all minimum, regular,
20 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
21 worked due to inadequate record keeping. Further, Defendants failed to properly compensate
22 Plaintiff and Represented Employees due to the practice of automatically deducting 30 minutes
23 from each shift, regardless of whether a meal period occurred, and failing to properly
24 compensate Plaintiff and the Represented Employees for time spent traveling unreasonable
25 distances to and from far away work sites.

26 6. At all relevant times, Defendants paid Plaintiffs and the Represented Employees
27 on an hourly basis, but Plaintiff and the Represented Employees also received additional
28 compensation in the form of gratuities paid by the patrons and left for Plaintiff and/or the

1 Represented Employees. Plaintiff alleges on information and belief that Defendants pooled tips
2 and failed to pay out the full amount to Plaintiff and Represented Employees and deducted credit
3 card processing fees and costs from gratuities paid by patrons to Plaintiff and the Represented
4 Employees, despite Plaintiff and the Represented Employees being entitled to the gratuity
5 without any amounts being deducted or taken by Defendants (as the employer).

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

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

20 9. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
21 Employees to incur necessary business-related expenses and costs without reimbursement. For
22 example, Plaintiff was required to incur substantial expenses without reimbursement, including
23 fueling and maintaining a vehicle to travel long distances to out-of-town events, and acquiring
24 and maintaining a smart phone and related monthly data plan to communicate with Defendants
25 via phone, text message, and e-mail.

26 10. Plaintiff also alleges that she and the Represented Employees were not paid all
27 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
28 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants

1 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
2 Employees at the time their employment ended with Defendants, including, but not limited to
3 minimum, regular, and overtime wages, wage premiums, among others.

4 11. Plaintiff further alleges that Defendants failed to provide the Represented
5 Employees with accurate itemized wage statements that fully complied with the requirements of
6 Labor Code § 226(a).

7 12. Plaintiff alleges that Defendants' violations of the wage and hour components of
8 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
9 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
10 its competitors.

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

17 14. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
18 monetary relief against Defendants and each of them, on behalf of herself and the Represented
19 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
20 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
21 210, 218.6, 226, 226.3, 226.7, 350, 351, 353, 354, 355, 510, 512, 558, 1194, 1194.2, 1197,
22 1197.1, 1198, 1199, and 2802 among possibly other sections inadvertently omitted. Plaintiff also
23 reserves the right to name additional representatives throughout the State of California.

24 15. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
25 to the Labor and Workforce Development Agency ("LWDA") and by certified mail to
26 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
27 the facts and theories to support the alleged violations. Plaintiff is currently complying with the
28 procedures for bringing suit specified in California Labor Code § 2699.3, and this Complaint will

1 be deemed amended to include the PAGA allegations enumerated below when more than sixty-
2 five (65) days have passed since the Notice was mailed to Defendants and the LWDA chooses
3 not to investigate the allegations herein.

4 **II. JURISDICTION**

5 16. This Court has jurisdiction over the claims for relief of Plaintiff and the
6 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

7 **III. VENUE**

8 17. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
9 Procedure § 395(a), as Defendants transact business in San Bernardino County, the unlawful acts
10 alleged herein have a direct effect on the Represented Employees in San Bernardino County.

11 **IV. PARTIES**

12 **Plaintiff**

13 18. Plaintiff and Class Representative Michelle Engebretson has been employed with
14 Defendants since April 2021.

15 **Defendants**

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

21 20. Plaintiff is informed and believes and thereon alleges that Defendant Steve
22 Thacher, is an individual authorized to and doing business in San Bernardino County, California.
23 Plaintiff is also informed and believes that Defendant Steve Thacher is and/or was the legal
24 employer of Plaintiff and the Represented Employees during the applicable statutory periods.

25 21. Plaintiff is informed and believes and thereon alleges that Defendant Heather
26 Thacher, is an individual authorized to and doing business in San Bernardino County, California.
27 Plaintiff is also informed and believes that Defendant Heather Thacher is and/or was the legal
28 employer of Plaintiff and the Represented Employees during the applicable statutory periods.

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

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

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

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

1 their remaining co-Defendants.

2 26. Plaintiff is further informed and believes that at all relevant times, Defendants
3 have been inadequately capitalized to conduct business, have failed to follow appropriate
4 corporate formalities, and have simply been a shell and instrumentality through which
5 Defendants Steve Thacher, Heather Thacher, and DOES 11 through 20, inclusive, have
6 conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any
7 liability attached to Defendants should be imposed jointly and severally against Defendants
8 DOES 11 through 20. Adherence to the fiction of the separate existence of these corporate
9 entities would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting
10 injustice.

11 **V. CLASS ACTION ALLEGATIONS**

12 27. Plaintiff incorporates the preceding paragraphs of Complaint as if fully alleged
13 herein.

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

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

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

20 **California Class**

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

23 31. Plaintiff also seeks to represent the following subclasses:

24 **Gratuities Subclass**

25 All Represented Employees who received gratuities left by
26 patrons, but had amounts deducted from said gratuities by
27 Defendants, and/or had their tips pooled and not properly
28 redistributed by Defendants during the Relevant Time

Period.

Meal Break Subclass

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

Rest Break Subclass

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

Unreimbursed Expense Subclass

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

Waiting Time Penalties Subclass

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

Wage Statement Penalties Subclass

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

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

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

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

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

4 36. **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 wages to Plaintiff and the Represented Employees for all
9 hours worked;

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

13 iii. Whether Defendants violated the California Labor Code and applicable
14 IWC Wage Order by failing to pay out all gratuities left by patrons for Plaintiff and the
15 Gratuities Subclass.

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

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

26 vi. Whether Defendants violated the California Labor Code and applicable
27 IWC Wage Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for
28 business expenses incurred while discharging their duties or in obedience to the directions of

1 their employer;

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

5 viii. Whether Defendants violated the California Labor Code by failing to
6 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
7 wage statements;

8 ix. Whether Defendants violated California Business & Professions Code §§
9 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
10 breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and
11 failure to timely pay final wages; and

12 x. Whether Plaintiff and Represented Employees are entitled to equitable
13 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

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

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

25 39. **Superiority of Class Action.** Class certification is appropriate because a class
26 action is superior to other available means for the fair and efficient adjudication of this
27 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
28 law and fact common to the Class predominate over any questions affecting only individual

1 members of the Class. Each Represented Employee has been damaged and is entitled to
2 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
3 treatment will allow those similarly situated persons to litigate their claims in the manner that is
4 most efficient and economical for the parties and the judicial system.

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

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

8 *Plaintiff and the Represented Employees Against All Defendants*

9 40. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
10 alleged herein.

11 41. Plaintiff and the Represented Employees were not exempt from the requirement
12 to be paid at least the applicable California minimum wage throughout the statutory period for
13 each hour worked.

14 42. Plaintiff and the Represented Employees were not provided proper minimum and
15 regular wages due to Defendants' failure to accurately record and compensate for all hours
16 worked.

17 43. For example, Defendants failed to accurately record and compensate for all hours
18 worked due to inadequate record keeping. Further, Defendants failed to properly compensate
19 Plaintiff and Represented Employees due to the practice of failing to properly record time
20 worked during unpaid meal periods and failing to properly compensate Plaintiff and the
21 Represented Employees for time spent traveling unreasonable distances to and from far away
22 work sites among other violations.

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

26 45. 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).

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

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

48. At all material times, Defendants DOES 1 through 20 were and/or are the employer of Plaintiff and the Represented Employees 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.

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

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

Plaintiff and the Represented Employees Against All Defendants

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

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

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

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

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

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

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

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

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

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1 60. As a result of Defendants’ wrongful conduct, Plaintiff and the Represented
2 Employees have been damaged in amounts to be proven at trial.

3 61. Plaintiff, on behalf of herself and the Represented Employees, seeks recovery of
4 all unpaid overtime wages, penalties, interest, attorneys’ fees, and costs of suit against
5 Defendants in an amount to be proven at trial.

6 **THIRD CAUSE OF ACTION**

7 **UNLAWFUL DEDUCTION OF GRATUITIES**

8 (Labor Code §§ 200, 221, 350-356)

9 *Plaintiff and the Gratuities Subclass against All Defendants*

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

12 63. Plaintiff and the Gratuities Subclass are and/or were employees of Defendants
13 who did not receive proper protections and benefits of the laws governing gratuities paid by
14 patrons to employees.

15 64. Labor Code § 200 defines wages to include “all amounts for labor performed by
16 employees of every description, whether the amount is fixed or ascertained by the standard of
17 time, task, piece, commission basis, or other method of calculation.” Labor Code § 221 states
18 that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of
19 wages theretofore paid by said employer to said employee.”

20 65. Labor Code § 350(e) states that “‘Gratuity’ includes any tip, gratuity, money, or
21 part thereof that has been paid or given to or left for an employee by a patron of a business over
22 and above the actual amount due the business for services rendered or for goods, food, drink, or
23 articles sold or served to the patron. Any amounts paid directly by a patron to a dancer employed
24 by an employer subject to Industrial Welfare Commission Order No. 5 or 10 shall be deemed a
25 gratuity.”

26 66. Pursuant to Labor Code § 351, Defendants shall not “shall collect, take, or receive
27 any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct
28 any amount from wages due an employee on account of a gratuity, or require an employee to

1 credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the
2 employee from the employer. Every gratuity is hereby declared to be the sole property of the
3 employee or employees to whom it was paid, given, or left for. An employer that permits patrons
4 to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the
5 patron indicated on the credit card slip, without any deductions for any credit card payment
6 processing fees or costs that may be charged to the employer by the credit card company.
7 Payment of gratuities made by patrons using credit cards shall be made to the employees not
8 later than the next regular payday following the date the patron authorized the credit card
9 payment.”

10 67. At all relevant times, Defendants pooled gratuities and failed to pay out the full
11 amount to Plaintiff and the Gratuities Subclass, and/or deducted credit card processing fees from
12 Plaintiff’s and the Gratuities Subclass’ gratuities left for them by patrons, in violation of
13 California law.

14 68. Defendants violated Labor Code §§ 221 and 351, every pay period because
15 Plaintiffs and the Gratuities Subclass were not provided with all gratuities left for them by
16 patrons.

17 69. At all relevant times herein, Defendants deducted credit card processing fees and
18 costs from gratuities received by Plaintiff and the Gratuities Subclass, thereby receiving an
19 economic benefit.

20 70. By their willful deduction of credit card processing fees and costs from the
21 gratuities received by Plaintiff and the Gratuities Subclass, Defendants willfully violated Labor
22 Code §§ 221, 350-356. As a result of the Defendants’ wrongful conduct, Plaintiff and the
23 Represented Employees have been damaged in amounts to be proven at trial.

24 71. Also, as a direct result of Defendants’ violations of Labor Code §§ 350-356,
25 Defendants, and each of them, are liable to Plaintiffs and the Gratuities Subclass for unlawful
26 deduction of gratuities, penalties, attorneys fees, costs, and interest.

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1 **FOURTH CAUSE OF ACTION**

2 **CONVERSION**

3 (California Civil Code §§ 3336,)

4 *Plaintiff and the Gratuities Subclass against All Defendants*

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

7 73. Plaintiff and the Gratuities Subclass allege that Defendant wrongfully exercised
8 control over their personal property including gratuities left for them by patrons that they served
9 in the course of their employment with Defendants.

10 74. The gratuities left for Plaintiff and the Gratuities Subclass are the exclusive
11 property of the Plaintiff and the Gratuities Subclass under Labor Code § 351.

12 75. Defendant knowingly and intentionally interfered with Plaintiff's and the
13 Gratuities Subclass' right to possession of the gratuities by maintaining an illegal mandatory tip
14 pooling policy whereby the employers and agents shared in the pooled tips and or did not
15 properly or fairly distribute the pooled tips.

16 76. Plaintiff and the Gratuities Subclass did not consent to taking of their personal
17 property.

18 77. Plaintiff and the Gratuities Subclass were injured by Defendants' conversion of
19 the gratuities. Plaintiff and the Gratuities Subclass are entitled to immediate possession of all
20 amounts converted by Defendants with interests, as well as any profits that Defendants acquired
21 by their unlawful conversion.

22 78. Defendants actions constituent conversion were oppressive, malicious, and
23 fraudulent, and were concealed by Defendants, and each of them, from the Plaintiff and the
24 Gratuities Subclass as alleged above. Plaintiff and the Gratuities Subclass have been injured by
25 Defendants' oppressive, malicious, intentional and fraudulent actions, entitling Plaintiff and the
26 Gratuities Subclass to punitive and exemplary damages.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

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

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

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

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

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

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

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

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

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

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

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

Plaintiff and the Rest Break Subclass Against All Defendants

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

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

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

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

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

13 95. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
14 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
15 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
16 Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due
17 to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload.
18 Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of
19 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

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

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

27 98. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
28 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.

99. 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.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

Plaintiff and the Unreimbursed Expense Subclass Against All Defendants

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

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

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

103. At all relevant times herein mentioned, as a condition of employment, Defendants required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, fuel and maintenance of a vehicle for long distance trips, and maintaining a smart phone and related monthly data plan to communicate with Defendants via phone, text message, and e-mail.

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

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

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

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

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

22 **EIGHTH CAUSE OF ACTION**

23 **FAILURE TO TIMELY PAY FINAL WAGES**

24 (Labor Code §§ 201 – 203)

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

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

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

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

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

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

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

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

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

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1 **NINTH CAUSE OF ACTION**

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

3 (Labor Code § 226)

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

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

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

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

16 120. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
17 and the Wage Statement Penalties Subclass because Defendants failed to provide a wage
18 statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
19 requirements of Labor Code § 226(a).

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

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

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

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

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

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

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

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

7 **TENTH CAUSE OF ACTION**

8 **UNFAIR AND UNLAWFUL COMPETITION**

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

10 *Plaintiff and the Represented Employees against All Defendants*

11 128. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
12 alleged herein.

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

17 130. Defendants, and each of them, are "persons" as defined under Business &
18 Professions Code § 17021.

19 131. As alleged herein, Defendants engaged in conduct that violated California's wage
20 and hour laws, including failure to pay minimum, regular, and overtime wages, unlawful
21 deduction of gratuities and tip pooling, conversion, failure to provide mandated meal periods and
22 rest breaks, failure to reimburse business expenses, and failure to timely pay final wages, all to
23 decrease their costs and increase their profits.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 143. Therefore, once more than sixty-five (65) days have passed since the notice date,
25 Plaintiff will have fully satisfied the administrative prerequisites to suit under the PAGA and this
26 Complaint will be deemed amended to include the PAGA allegations enumerated below. Once
27 this occurs, Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
28 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by

1 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
2 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does he, seek
3 class certification of the PAGA claims under Code of Civil Procedure § 382.

4 **ELEVENTH CAUSE OF ACTION**

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

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

7 *Plaintiff and the Aggrieved Employees against All Defendants*

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

10 145. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
11 be paid at least the applicable California minimum wage throughout the statutory period for each
12 hour worked.

13 146. Plaintiff and the Aggrieved Employees were not provided proper minimum and
14 regular wages due to Defendants' failure to accurately record and compensate for all hours
15 worked.

16 147. For example, Defendants failed to accurately record and compensate for all hours
17 worked due to inadequate record keeping. Further, Defendants failed to properly compensate
18 Plaintiff and Aggrieved Employees where Defendants failed to accurately record and
19 compensate for all hours worked due to inadequate record keeping. Further, Defendants failed to
20 properly compensate Plaintiff and Aggrieved Employees due to the practice of failing to properly
21 record time worked during unpaid meal periods and failing to properly compensate Plaintiff and
22 the Represented Employees for time spent traveling unreasonable distances to and from far away
23 work sites among other violations. and failing to properly compensate Plaintiff and the
24 Represented Employees for time spent traveling unreasonable distances to and from far away
25 work sites.

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

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

151. 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.

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

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

11 **THIRTEENTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FOR UNLAWFUL DEDUCTION OF GRATUITIES**

13 (Labor Code §§ 200, 221, 350-356)

14 *Plaintiff and the Aggrieved Employees against All Defendants*

15 159. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
16 alleged herein.

17 160. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
18 who did not receive proper protections and benefits of the laws governing gratuities paid by
19 patrons to employees.

20 161. Labor Code § 200 defines wages to include "all amounts for labor performed by
21 employees of every description, whether the amount is fixed or ascertained by the standard of
22 time, task, piece, commission basis, or other method of calculation." Labor Code § 221 states
23 that "[i]t shall be unlawful for any employer to collect or receive from an employee any part of
24 wages theretofore paid by said employer to said employee."

25 162. Labor Code § 350€ states that "'Gratuity' includes any tip, gratuity, money, or
26 part thereof that has been paid or given to or left for an employee by a patron of a business over
27 and above the actual amount due the business for services rendered or for goods, food, drink, or
28 articles sold or served to the patron. Any amounts paid directly by a patron to a dancer employed

1 by an employer subject to Industrial Welfare Commission Order No. 5 or 10 shall be deemed a
2 gratuity.”

3 163. Pursuant to Labor Code § 351, Defendants shall not “shall collect, take, or receive
4 any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct
5 any amount from wages due an employee on account of a gratuity, or require an employee to
6 credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the
7 employee from the employer. Every gratuity is hereby declared to be the sole property of the
8 employee or employees to whom it was paid, given, or left for. An employer that permits patrons
9 to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the
10 patron indicated on the credit card slip, without any deductions for any credit card payment
11 processing fees or costs that may be charged to the employer by the credit card company.
12 Payment of gratuities made by patrons using credit cards shall be made to the employees not
13 later than the next regular payday following the date the patron authorized the credit card
14 payment.”

15 164. At all relevant times, Defendants pooled gratuities and failed to pay out the full
16 amount to Plaintiff and the Aggrieved Employees, and/or deducted credit card processing fees
17 from Plaintiff’s and the Aggrieved Employees’ gratuities left for them by patrons, in violation of
18 California law.

19 165. Defendants violated Labor Code §§ 221 and 351, every pay period because
20 Plaintiffs and the Aggrieved Employees were not provided with all gratuities left for them by
21 patrons.

22 166. 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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1 **FOURTEENTH CAUSE OF ACTION**

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

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

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

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

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

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

14 **FIFTEENTH CAUSE OF ACTION**

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

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

17 *Plaintiff and the Aggrieved Employees against All Defendants*

18 176. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
19 alleged herein.

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

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

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

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

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

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

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

19 **SIXTEENTH CAUSE OF ACTION**

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

21 (Labor Code § 2802)

22 *Plaintiff and the Aggrieved Employees against All Defendants*

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

25 185. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
26 who did not receive proper protections and benefits of the laws governing reimbursement of
27 business expenses.

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

4 187. At all relevant times herein mentioned, as a condition of employment, Defendants
5 required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and
6 costs without reimbursement, including, but not limited to, fuel and maintenance of a vehicle for
7 long distance trips, and maintaining a smart phone and related monthly data plan to communicate
8 with Defendants via phone, text message, and e-mail.

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

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

15 **SEVENTEENTH CAUSE OF ACTION**

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

17 (Labor Code § 204)

18 *Plaintiff and the Aggrieved Employees against All Defendants*

19 190. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
20 alleged herein.

21 191. Plaintiff and the Aggrieved Employees are and/or were "nonexempt" employees
22 of Defendants who did not receive proper protections and benefits of the laws regarding the
23 timing of payment of wages each period.

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

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

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

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

13 **EIGHTEENTH CAUSE OF ACTION**

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

15 (Labor Code §§ 201 – 203, 256)

16 *Plaintiff and the Aggrieved Employees against All Defendants*

17 196. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
18 alleged herein.

19 197. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
20 of Defendants who did not receive proper protections and benefits of the laws governing the
21 timing and payment of final wages.

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

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

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

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

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

203. 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.

NINETEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Aggrieved Employees against All Defendants

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

205. Plaintiff and the Aggrieved Employees 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.

206. 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

1 corresponding number of hours worked at each hourly rate by the employee.

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

5 208. Defendants' wage statements failed to comply with other requirements of Labor
6 Code § 226 due to violations including: failure to accurately state total hours worked (the wage
7 statements failed to accurately reflect the hours worked since Defendants did not compensate for
8 certain tasks); failure to accurately state gross wages earned; failure to accurately state all
9 deductions; failure to accurately state net wages earned; failure to state the applicable hourly
10 rates (including the accurate overtime rate of pay); and failure to accurately state the corresponding
11 number of hours worked at each hourly rate.

12 209. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
13 to Plaintiff and the Aggrieved Employees because Defendants' wage statements failed to comply
14 with the requirements of Labor Code § 226(a).

15 210. As a result of the Defendants' violations of Labor Code §226(a)(9), Plaintiff seeks
16 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
17 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
18 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section
19 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

20 **VII. PRAYER FOR RELIEF**

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

- 24 1. As to the Eleventh through Nineteenth Causes of Action, the assessment of all
25 applicable and available remedies under the PAGA;
- 26 2. For reasonable attorneys' fees and costs as permitted under the PAGA;
- 27 3. That the First through Tenth Causes of Action be certified as a class action;
- 28 4. That Plaintiff be appointed as Class Representative;

- 1 5. That counsel for Plaintiff be appointed Class Counsel;
- 2 6. For all applicable statutory penalties recoverable under the First through Tenth
- 3 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
- 4 Orders of the Industrial Welfare Commission;
- 5 7. For general and compensatory damages, according to proof;
- 6 8. For restitution of all monies due to Plaintiffs and the Gratuities Subclass and
- 7 disgorgement of profits from the unlawful business practices of Defendants;
- 8 9. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
- 9 law, including those pursuant to the Labor Code;
- 10 10. For injunctive relief and/or restitution as provided by the Labor Code and
- 11 Business and Professions Code § 17200, *et seq.*;
- 12 11. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
- 13 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 351, 510, 512, 558, 1194, 1197,
- 14 1198, 1199, and 2802 among other sections inadvertently omitted;
- 15 12. For an award of damages in the amount of unpaid compensation including, but
- 16 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
- 17 thereon;
- 18 13. For pre- and post-judgment interest; and
- 19 14. For such other relief as the Court deems just and proper.

20 **DEMAND FOR JURY TRIAL**

21 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, hereby

22 demands a jury trial as to the First through Ninth Causes of Action pled herein.

23

24 Dated: November 11, 2021

LAUBY, MANKIN & LAUBY LLP

25

26 BY:  

27 Brian J. Mankin, Esq.
28 Misty M. Lauby, Esq.
 Attorneys for Plaintiff