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 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

JAN 31 2022

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN BERNARDINO

KRISTY ELWELL, individually, on a
 representative basis, and on behalf of all
 others similarly situated;

Plaintiff,

vs.

DIVERSITY WIRELESS PARTNERS LLC,
 a California Limited Liability Company; and
 DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2134554
*[Assigned to Hon. Judge David Cohn, Dept.
 S26 for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

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

PAGA CLAIMS

- (10) Failure to Pay Minimum Wages;
- (11) Failure to Pay Overtime Wages;
- (12) Failure to Provide Meal Periods;
- (13) Failure to Provide Rest Breaks;
- (14) Failure to Pay Vested Vacation;
- (15) Failure to Reimburse Bus. Expenses;
- (16) Failure to Timely Pay Wages;
- (17) Failure to Timely Pay Final Wages; and
- (18) Failure to Provide Accurate Itemized Wage Statements

By Fax

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

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against her former employer(s), Defendants Diversity
5 Wireless Partners LLC and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf
6 of all current and former nonexempt employees employed by Defendants in California (the
7 “Class” or “Represented Employees”), for Labor Code violations stemming from Defendants’
8 failure to pay all wages owed, including minimum, regular, and overtime wages, failure to
9 provide meal periods, failure to provide rest breaks, failure to pay vested vacation, failure to
10 reimburse business expenses, failure to timely pay wages upon separation of employment, and
11 failure to provide accurate itemized wage statements.

12 2. Plaintiff was employed by Defendants from approximately July through October
13 2021.

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

17 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
18 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
19 worked.

20 5. Also, at all relevant times, Plaintiff and the Represented Employees were paid on
21 an hourly basis but were entitled to and received additional nondiscretionary compensation.
22 However, during workweeks where the Represented Employees worked overtime hours and
23 earned additional nondiscretionary compensation, Defendants failed to include that
24 compensation in the calculations for the regular rate of pay and instead paid overtime at only 1.5
25 times the base rate of pay – violating the well-established rule that overtime must always be paid
26 at time and one-half the regular rate of pay.

27 6. Plaintiff and the Represented Employees were also denied 30-minute off-duty
28 meal periods, as mandated by California law. As a result of Defendants’ policies and practices,

1 the Represented Employees were subjected to meal period violations when they were: (1) unable
2 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the
3 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
4 period after the 5th hour of work, and (5) not provided mandated second and third meal periods.

5 7. Defendants also failed to provide Plaintiff and the Represented Employees with
6 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
7 mandated by California law. Defendants did not schedule rest breaks and the Represented
8 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
9 overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the
10 Represented Employees worked longer shifts, Defendants failed to authorize and/or permit
11 mandated third or fourth rest breaks.

12 8. Also, at all relevant times, Defendants utilized a policy and practice through
13 which Plaintiff and the Represented Employees accrued vacation and/or PTO hours (collectively,
14 “vacation hours”). California law, specifically Labor Code § 227.3, requires Defendants to pay
15 all accrued and unused vacation hours upon separation of employment at the final rate of pay.
16 However, Defendants’ policy and practice violated Labor Code § 227.3, as detailed below.

17 9. Moreover, at all relevant times, Defendants required Plaintiff and the Represented
18 Employees to incur necessary business-related expenses and costs without reimbursement. For
19 example, Plaintiff was required to incur substantial expenses without reimbursement during
20 employment, including: (1) gas and mileage expenses while traveling between Defendants’
21 locations while on the clock and under Defendants’ direction and control, and (2) acquiring and
22 maintaining a smart phone and related monthly data plan to communicate with the Company via
23 phone, text message, and e-mail.

24 10. Plaintiff also alleges that she and the Represented Employees were not paid all
25 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
26 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
27 engaged in the practice of failing to timely pay all wages due and owing to Plaintiff and the
28 Represented Employees at the time their employment ended with Defendants, including, but not

1 limited to minimum, regular, and overtime wages, wage premiums, vacation wages, among
2 others.

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

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

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

15 14. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
16 monetary relief against Defendants and each of them, on behalf of herself and the Represented
17 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
18 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
19 210, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and
20 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the right to
21 name additional representatives throughout the State of California.

22 15. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
23 to the Labor and Workforce Development Agency ("LWDA") and by certified mail to
24 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
25 the facts and theories to support the alleged violations. Thus, Plaintiff is currently complying
26 with the procedures for bringing suit specified in California Labor Code § 2699.3, and this
27 Complaint will be deemed amended to include the PAGA allegations enumerated below when
28 more than sixty-five (65) days have passed since the Notice was mailed to Defendants and the

1 LWDA chooses not to investigate the allegations herein.

2 **II. JURISDICTION**

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

5 **III. VENUE**

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

11 **IV. PARTIES**

12 **Plaintiff**

13 18. Plaintiff and Class Representative Kristy Elwell was employed by Defendants
14 from approximately July through October 2021 and performed work for Defendants in San
15 Bernardino County.

16 **Defendants**

17 19. Plaintiff is informed and believes and thereon alleges that Defendant Diversity
18 Wireless Partners LLC is a California limited liability company authorized to and doing business
19 in San Bernardino County, California. Plaintiff is also informed and believes that Defendant
20 Diversity Wireless Partners LLC is and/or was the legal employer of Plaintiff and the
21 Represented Employees during the applicable statutory periods.

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

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

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

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

23 24. Plaintiff is further informed and believes that at all relevant times, Defendants
24 have been inadequately capitalized to conduct business, have failed to follow appropriate
25 corporate formalities, and have simply been a shell and instrumentality through which
26 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
27 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
28 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the

1 separate existence of these corporate entities would permit abuse of the corporate privilege,
2 thereby sanctioning fraud and promoting injustice.

3 **V. CLASS ACTION ALLEGATIONS**

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

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

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

10 28. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
11 represent is defined as follows:

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

14 29. Plaintiff also seeks to represent the following subclasses:

15 **Meal Break Subclass**

16 All Represented Employees who worked a shift in excess of
17 5 hours during the Relevant Time Period.

18 **Rest Break Subclass**

19 All Represented Employees who worked a shift of at least
20 3.5 hours during the Relevant Time Period.

21 **Vested Vacation Subclass**

22 All Represented Employees who had accrued but unused
23 vacation upon separation of employment during the period
24 four years before the filing of this action and ending when
25 final judgment is entered.

26 **Unreimbursed Expense Subclass**

27 All Represented Employees who were required to incur expenses to
28 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.

30. 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.

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

32. 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.

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

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

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

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

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

11 v. Whether Defendants violated the California Labor Code by failing to
12 compensate Plaintiff and the Vested Vacation Subclass for all accrued but unused vacation hours
13 upon separation of employment;

14 vi. Whether Defendants violated the Labor Code and applicable IWC Wage
15 Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for business
16 expenses incurred discharging their duties or in obedience to the directions of their employer;

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

20 viii. Whether Defendants violated the Labor Code by failing to provide
21 Plaintiff and the Wage Statement Penalties Subclass with accurate, itemized wage statements;

22 ix. Whether Defendants violated California Business & Professions Code §§
23 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
24 breaks, failure to provide mandated meal periods, failure to pay vested vacation, failure to
25 reimburse business expenses, and failure to timely pay final wages; and

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

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1 35. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
2 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
3 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
4 wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest
5 breaks, failure to timely pay wages upon separation of employment, and failure to provide
6 accurate itemized wage statements.

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

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

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY MINIMUM WAGES**

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

23 *Plaintiff and the Represented Employees Against All Defendants*

24 38. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
25 as if fully alleged herein.

26 39. Plaintiff and the Represented Employees were not exempt from the requirement
27 to be paid at least the applicable California minimum wage throughout the statutory period for
28 each hour worked.

1 40. Plaintiff and the Represented Employees were not provided proper minimum and
2 regular wages due to Defendants' failure to accurately record and compensate for all hours
3 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
4 required to perform off-the-clock work that Defendants either knew or should have known they
5 were performing.

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

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

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

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

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

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

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

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1 week without proper overtime compensation.

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

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

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

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

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

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

66. Moreover, on the occasions when Plaintiff and the Represented Employees were denied compliant meal periods, Defendants failed to pay the "premium" required under Labor Code § 226.7. And, on the occasions when Defendants did pay a premium for such violations, it only paid at the employee's base rate rather than at the employee's "regular rate," as mandated by California law. See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 (the California Supreme Court unanimously held that meal and rest period premiums must be calculated in the same fashion as overtime pay and, therefore, must factor in all forms of nondiscretionary compensation).

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

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

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

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

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REST BREAKS**

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

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

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

1 73. 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 74. 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 75. 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 76. 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 77. 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 being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and
18 the Rest Break Subclass worked lengthy shifts, Defendants failed to authorize and/or permit
19 mandated third or fourth rest breaks.

20 78. 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 79. 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 80. 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

1 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
2 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the
3 employee's regular rate of compensation for each workday that a paid rest break was not
4 lawfully provided in an amount to be proven at time of trial.

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

8 **FIFTH CAUSE OF ACTION**
9 **FAILURE TO PAY VESTED VACATION**

10 (Labor Code § 227.3)

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

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

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

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

21 85. At all relevant times, Defendants utilized a policy and practice through which
22 Plaintiff and the Vested Vacation Subclass accrued vacation and/or PTO hours (collectively,
23 "vacation hours"). However, Defendants' policy and practice violated Labor Code § 227.3 in at
24 least three respects.

25 86. First, Defendants illegally forced the Vested Vacation Subclass to forfeit vacation
26 pay through a "use-it-or-lose-it" policy that only allowed the Represented Employees to carry
27 over 5 days of vacation to the next calendar year, with any excess forfeited. Additionally, even
28 those 5 days of vacation carryover had to be used by March 31 of the next calendar year or they

1 would be forfeited. This is plainly illegal under California law. See *Boothby v. Atlas Mechanical*
2 (1992) 6 Cal.App.4th 1595, 1601 (any forfeiture of an employee's vested vacation time is
3 prohibited); *Suastez v. Plastic Dress-up Co.* (1982) 31 Cal.3d 774.

4 87. Second, upon separation of employment, Defendants only paid the Vested
5 Vacation Subclass for vested vacation that "accrued during the calendar year of the termination."
6 In other words, Defendants did not pay departing employees for any vested vacation that was
7 accrued during prior calendar years. This, again, violates California law. See *Boothby, supra*;
8 *Suastez, supra*.

9 88. Third, Defendants calculated and paid vested vacation upon separation of
10 employment based on the base rate of pay for the Vested Vacation Subclass. But Labor Code §
11 227.3 requires that vested vacation be cashed out at the final rate of pay. And, since the final rate
12 of pay for Plaintiff and the Vested Vacation Subclass was often higher than the base rate (due to
13 other nondiscretionary compensation), Defendants failed to correctly calculate and pay all vested
14 vacation wages due and owing.

15 89. As a result, Plaintiff and the Vested Vacation Subclass did not receive
16 compensation for all accrued but unused vacation hours as required by Labor Code § 227.3.

17 90. At all relevant times herein, Defendants failed to pay the Vested Vacation
18 Subclass, including Plaintiff, all vested but unused vacation time and/or paid time off upon
19 separation from employment, thereby receiving an economic benefit.

20 91. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
21 them, knowingly refused to perform their obligations to compensate the Vested Vacation
22 Subclass for all vested but unused vacation time and/or paid time off upon separation from
23 employment.

24 92. As a result of Defendants' violations of Labor Code § 227.3, Plaintiff and the
25 Vested Vacation Subclass seek to recover the unpaid vacation hours, as well as penalties,
26 interest, attorneys' fees, and costs as permitted under California law.

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1 to be proved at time of trial.

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

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

15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO TIMELY PAY FINAL WAGES**

17 (Labor Code §§ 201 – 203)

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

19 102. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
20 as if fully alleged herein.

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

24 104. Labor Code § 201 requires that the employer immediately pay any wages, without
25 abatement or reduction, to any employee who is discharged.

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

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

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

7 108. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
8 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
9 employment, including, but not limited to, minimum, regular, overtime, and vacation wages, as
10 well as meal and rest period premiums.

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

17 **EIGHTH CAUSE OF ACTION**

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

19 (Labor Code § 226)

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

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

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

26 112. Labor Code § 226(a) requires an employer to provide its employees with itemized
27 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
28 inclusive dates of the pay period, the employee's name and the last four digits of his or her

1 Social Security number (or employee identification number), the name and address of the legal
2 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.

4 113. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
5 and the Wage Statement Penalties Subclass due to violations including: failure to accurately state
6 total hours worked (the wage statements failed to accurately reflect total compensable hours);
7 failure to accurately state gross wages earned; failure to accurately state all deductions; failure to
8 accurately state net wages earned; failure to state the applicable hourly rates (including the
9 accurate overtime rate of pay); failure to accurately state the corresponding number of hours
10 worked at each hourly rate, and; the failure to accurately state the amount and rate of pay for
11 meal and rest break premiums under Labor Code § 226.7.

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

16 115. Defendants' failure to provide the required writing deprived Plaintiff and the
17 Wage Statement Penalties Subclass of the ability to know, understand, and question the
18 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
19 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
20 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
21 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
22 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
23 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
24 perform its obligation under state law, all to their respective damages in amounts according to
25 proof at trial.

26 116. As a result of Defendants' knowing and intentional failure to comply with Labor
27 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
28 that each was prevented from knowing, understanding and disputing the wage payments paid to

1 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
2 injury in that the failure to show all wages earned on the itemized wage statements resulted in
3 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
4 withholdings owed by the employer, including, but not limited to, the failure to make all
5 necessary contributions for unemployment benefits, social security benefits, proper payment of
6 taxes and withholdings, and other mandated state and federal benefits.

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

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

16 **NINTH CAUSE OF ACTION**

17 **UNFAIR AND UNLAWFUL COMPETITION**

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

19 *Plaintiff and the Represented Employees against All Defendants*

20 119. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
21 as if fully alleged herein.

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

26 121. Defendants, and each of them, are "persons" as defined under Business &
27 Professions Code § 17021.

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1 122. As alleged herein, Defendants engaged in conduct that violated California's wage
2 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
3 mandated meal periods and rest breaks, failure to reimburse business expenses, and failure to
4 timely pay wages upon separation of employment, all to decrease their costs and increase profits.

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

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

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

15 126. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
16 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
17 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
18 of Civil Procedure § 1021.5.

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

25 128. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
26 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
27 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
28 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,

1 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
2 harm unless Defendants, and each of them, are restrained from continuing to engage in said
3 unfair, unlawful and/or fraudulent business practices.

4 129. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
5 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
6 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
7 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
8 Represented Employees are not obligated to establish individual knowledge of the unfair
9 practices of Defendants in order to recover restitution.

10 130. Plaintiff, individually, and on behalf of the Represented Employees, is further
11 entitled to and do seek a declaration that the above described business practices are unfair,
12 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
13 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
14 the future.

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

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

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

1 133. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
2 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
3 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
4 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
5 does she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

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

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

18 **TENTH CAUSE OF ACTION**

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

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

21 *Plaintiff and the Aggrieved Employees against All Defendants*

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

24 137. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
25 be paid at least the applicable California minimum wage throughout the statutory period for each
26 hour worked.

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1 138. Plaintiff and the Aggrieved Employees were not provided proper minimum and
2 regular wages due to Defendants' failure to accurately record and compensate for all hours
3 worked.

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

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

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

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

16 **ELEVENTH CAUSE OF ACTION**

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

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

19 *Plaintiff and the Aggrieved Employees against All Defendants*

20 143. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
21 as if fully alleged herein.

22 144. Plaintiff and the Aggrieved Employees were employees of Defendants who did
23 not receive proper protections and benefits of the laws governing payment of overtime wages.

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

1 in one workday shall be compensated at twice the regular rate of pay for an employee.

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

6 147. Also, at all relevant times, Plaintiff and the Aggrieved Employees were paid on an
7 hourly basis but were entitled to and did receive additional nondiscretionary compensation.
8 However, during workweeks where the Aggrieved Employees worked overtime hours and
9 earned additional nondiscretionary compensation, Defendants failed to include that
10 compensation in the calculations for the regular rate of pay.

11 148. 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 Aggrieved 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.

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

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

21 **TWELFTH CAUSE OF ACTION**

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

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

24 *Plaintiff and the Aggrieved Employees against All Defendants*

25 151. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
26 as if fully alleged herein.

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

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

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

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

16 156. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
17 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
18 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
19 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal
20 period while under the control of the Company, (3) forced to take a shortened meal period, (4)
21 forced to take a meal period after the 5th hour of work, and (5) not provided mandated second or
22 third meal periods for shifts in excess of 10 and 15 hours, respectively.

23 157. Furthermore, on the occasions that Defendants paid Plaintiff and the Aggrieved
24 Employees a meal premium under Labor Code § 226.7 for a missed/denied meal period,
25 Defendants paid this premium at the base rate of pay instead of at the "regular rate" which
26 incorporates additional nondiscretionary compensation (such as shift differentials and bonuses).

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

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

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

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

12 **THIRTEENTH CAUSE OF ACTION**

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

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

15 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

4 166. 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
10 lengthy shifts, Defendants failed to authorize and/or permit mandated third and fourth rest
11 breaks.

12 167. 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.

16 168. 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 **FOURTEENTH CAUSE OF ACTION**

20 **PAGA ASSESSMENT FOR FAILURE TO PAY VESTED VACATION**

21 (Labor Code § 227.3)

22 *Plaintiff and the Aggrieved Employees Against All Defendants*

23 169. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

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

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

5 172. At all relevant times, Defendants utilized a policy and practice through which
6 Plaintiff and the Aggrieved Employees accrued vacation and/or PTO hours (collectively,
7 "vacation hours"). However, Defendants' policy and practice violated Labor Code § 227.3 in at
8 least three respects.

9 173. First, Defendants illegally forced the Aggrieved Employees to forfeit vacation pay
10 through a "use-it-or-lose-it" policy that only allowed the Aggrieved Employees to carry over 5
11 days of vacation to the next calendar year, with any excess forfeited. Additionally, even those 5
12 days of vacation carryover had to be used by March 31 of the next calendar year or they would
13 be forfeited. This is plainly illegal under California law. See *Boothby v. Atlas Mechanical* (1992)
14 6 Cal.App.4th 1595, 1601 (any forfeiture of an employee's vested vacation time is prohibited);
15 *Suastez v. Plastic Dress-up Co.* (1982) 31 Cal.3d 774.

16 174. Second, upon separation of employment, Defendants only paid the Aggrieved
17 Employees for vested vacation that "accrued during the calendar year of the termination." In
18 other words, Defendants did not pay departing employees for any vested vacation that was
19 accrued during prior calendar years. This, again, violates California law. See *Boothby, supra*;
20 *Suastez, supra*.

21 175. Third, Defendants calculated and paid vested vacation upon separation of
22 employment based on the base rate of pay for the Aggrieved Employees. But Labor Code §
23 227.3 requires that vested vacation be cashed out at the final rate of pay. And, since the final rate
24 of pay for Plaintiff and the Aggrieved Employees was often higher than the base rate (due to
25 other nondiscretionary compensation), Defendants failed to correctly calculate and pay all vested
26 vacation wages due and owing.

27 176. As a result, Plaintiff and the Aggrieved Employees did not receive compensation
28 for all accrued but unused vacation hours as required by Labor Code § 227.3.

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

4 **FIFTEENTH CAUSE OF ACTION**

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

6 (Labor Code § 2802)

7 *Plaintiff and the Unreimbursed Expense Subclass Against All Defendants*

8 178. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

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

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

16 181. At all relevant times herein mentioned, as a condition of employment, Defendants
17 required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and
18 costs without reimbursement, including, but not limited to: (1) gas and mileage expenses while
19 traveling between Defendants' locations while on the clock and under Defendants' direction and
20 control, and (2) acquiring and maintaining a smart phone and related monthly data plan to
21 communicate with the Company via phone, text message, and e-mail.

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

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

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1 **SIXTEENTH CAUSE OF ACTION**

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

3 (Labor Code § 204)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

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

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1 **SEVENTEENTH CAUSE OF ACTION**

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

3 (Labor Code §§ 201 – 203 and 256)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

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

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

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

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1 **EIGHTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR**

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

4 (Labor Code § 226)

5 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

17 201. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
18 and the Aggrieved Employees because due to violations including: failure to accurately state
19 total hours worked (the wage statements failed to accurately reflect total compensable hours);
20 failure to accurately state gross wages earned; failure to accurately state all deductions; failure to
21 accurately state net wages earned; failure to state the applicable hourly rates (including the
22 accurate overtime rate of pay); failure to accurately state the corresponding number of hours
23 worked at each hourly rate, and; the failure to accurately state the amount and rate of pay for
24 meal and rest break premiums under Labor Code § 226.7.

25 202. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
26 to because Defendants failed to provide a wage statement to Plaintiff and the Aggrieved
27 Employees that complied with the requirements of Labor Code § 226(a).

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

VII. PRAYER FOR RELIEF

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

1. As to the Tenth through Eighteenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys' fees and costs as permitted under the PAGA;
3. That the First through Ninth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Seventh Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;

- 1 11. For pre- and post-judgment interest; and
2 12. For such other relief as the Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

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

6
7 Dated: January 31, 2021

LAUBY, MANKIN & LAUBY LLP

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9 BY:



10 Brian J. Mankin, Esq.
11 Peter J. Carlson, Esq.
12 Attorneys for Plaintiff
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