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Superior Court of California,
County of San Francisco
03/30/2022
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

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

JAMIE JOHNSON, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

SAN FRANCISCO HEALTH CARE AND
REHAB INC, a California Corporation; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CGC-22-597785

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

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

PAGA CLAIMS

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

JURY TRIAL DEMANDED

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

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

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

12 2. Plaintiff was employed by Defendants from approximately April through
13 September 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. As one such example, Defendants required Plaintiff and the Represented Employees to
20 undergo mandatory temperature checks and screenings prior to clocking in for payroll purposes.
21 However, because this time was spent under Defendants’ control but before being allowed to
22 clock in, it was uncompensated in violation of California law and led to minimum, regular, and
23 overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829
24 (California law “do[es] not allow employers to require employees to routinely work for minutes
25 off the clock without compensation”); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks
26 are compensable when employee is under company’s control and where the tasks served the
27 employer’s interests).

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1 5. Additionally, Defendants frequently failed to pay proper minimum, regular, and
2 overtime wages to Plaintiff and the Represented Employees due to the practice of automatically
3 deducting 30 minutes from each shift, regardless of whether a meal period occurred. To
4 illustrate, Plaintiff often worked 9.5 hours without a meal period, and no meal period was
5 recorded in Defendants' timekeeping system. Yet, on these and similar occasions, Defendants
6 only paid for 9 hours of work despite that no meal period was taken or recorded, and without
7 making any inquiry into whether a compliant meal period occurred. This resulted in a failure to
8 pay minimum/regular wages (since Plaintiff was not paid at all for those 30 minutes), as well as a
9 failure to pay overtime wages (since those 30 minutes were in excess of 8 hours and had to be
10 paid at the proper overtime rate). Thus, Defendants failed to pay proper minimum, regular, and
11 overtime wages every time it applied its auto-deduct practice.

12 6. Also, at all relevant times, Plaintiff and the Represented Employees were paid on
13 an hourly basis but were entitled to and did receive additional nondiscretionary compensation
14 (such as shift differentials) However, during workweeks where the Represented Employees
15 worked overtime hours and earned additional nondiscretionary compensation, Defendants failed
16 to include that compensation in the calculations for the regular rate of pay and instead paid
17 overtime at only 1.5 times the base rate of pay – violating the well-established rule that overtime
18 must always be paid at time and one-half the regular rate of pay.

19 7. Plaintiff and the Represented Employees were also denied 30-minute off-duty
20 meal periods, as mandated by California law. As a result of Defendants' policies and practices,
21 the Represented Employees were subjected to meal period violations when they were: (1) unable
22 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the
23 control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal
24 period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts
25 in excess of 10 hours.

26 8. Defendants also failed to provide Plaintiff and the Represented Employees with
27 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
28 mandated by California law. Defendants did not schedule rest breaks, the Represented

1 Employees were unable to leave the premises for rest breaks, and the Represented Employees
2 were often not authorized and/or permitted to take mandated rest breaks due to being
3 overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the
4 Represented Employees worked longer shifts, Defendants failed to authorize and/or permit
5 mandated third or fourth rest breaks.

6 9. Plaintiff also alleges that she and the Represented Employees were not paid all
7 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
8 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
9 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
10 Employees at the time their employment ended with Defendants, including, but not limited to
11 minimum, regular, and overtime wages, wage premiums, vacation wages, among others.

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

14 11. Plaintiff alleges that Defendants' violations of the wage and hour components of
15 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
16 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
17 its competitors.

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

24 13. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
25 monetary relief against Defendants and each of them, on behalf of herself and the Represented
26 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
27 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
28 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,

1 among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name
2 additional representatives throughout the State of California.

3 **II. JURISDICTION**

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

6 **III. VENUE**

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

12 **IV. PARTIES**

13 **Plaintiff**

14 16. Plaintiff and Class Representative Jamie Johnson was employed by Defendants
15 from approximately April through September 2021 and performed work for Defendants in San
16 Francisco County.

17 **Defendants**

18 17. Plaintiff is informed and believes and thereon alleges that Defendant San
19 Francisco Health Care and Rehab Inc is a California Corporation authorized to and doing
20 business in San Francisco County, California. Plaintiff is also informed and believes that
21 Defendant San Francisco Health Care and Rehab Inc is and/or was the legal employer of Plaintiff
22 and the Represented Employees during the applicable statutory periods.

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

Defendants when ascertained.

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

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

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

22. Plaintiff is further informed and believes that at all relevant times, Defendants have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Defendants should be imposed

1 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
2 separate existence of these corporate entities would permit abuse of the corporate privilege,
3 thereby sanctioning fraud and promoting injustice.

4 **V. CLASS ACTION ALLEGATIONS**

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

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

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

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

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

15 27. Plaintiff also seeks to represent the following subclasses:

16 **Meal Break Subclass**

17 All Represented Employees who worked a shift in excess of
18 5 hours during the Relevant Time Period.

19 **Rest Break Subclass**

20 All Represented Employees who worked a shift of at least
21 3.5 hours during the Relevant Time Period.

22 **Waiting Time Penalties Subclass**

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

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1 **Wage Statement Penalties Subclass**

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

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

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

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

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

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

18 i. Whether Defendants violated the California Labor Code and applicable
19 IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all
20 hours worked;

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

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

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

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

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

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

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

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

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

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

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

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

12 *Plaintiff and the Represented Employees Against All Defendants*

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

15 37. Plaintiff and the Represented Employees were not exempt from the requirement
16 to be paid at least the applicable California minimum wage throughout the statutory period for
17 each hour worked.

18 38. Plaintiff and the Represented Employees were not provided proper minimum and
19 regular wages due to Defendants’ failure to accurately record and compensate for all hours
20 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
21 required to perform off-the-clock work that Defendants either knew or should have known they
22 were performing.

23 39. As one such example, Defendants required Plaintiff and the Represented
24 Employees to undergo mandatory temperature checks and screenings prior to clocking in for
25 payroll purposes. However, because this time was spent under Defendants’ control but before
26 being allowed to clock in, it was uncompensated in violation of California law and led to
27 minimum and regular wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th
28 829 (California law “do[es] not allow employers to require employees to routinely work for

minutes off the clock without compensation”); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s control and where the tasks served the employer’s interests).

40. Additionally, Defendants frequently failed to pay proper minimum and regular wages to Plaintiff and the Represented Employees due to the practice of automatically deducting 30 minutes from each shift, regardless of whether a meal period occurred. To illustrate, Plaintiff often worked 9.5 hours without a meal period, and no meal period was recorded in Defendants’ timekeeping system. Yet, on these and similar occasions, Defendants only paid for 9 hours of work despite that no meal period was taken or recorded, and without making any inquiry into whether a compliant meal period occurred. This resulted in a failure to pay minimum/regular wages (since Plaintiff was not paid at all for those 30 minutes). As a result, Defendants failed to pay Plaintiff and the Represented Employees for all hours worked, including minimum and regular wages.

41. 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).

42. 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.

43. 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.

44. 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.

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

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

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

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY OVERTIME WAGES**

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

12 *Plaintiff and the Represented Employees Against All Defendants*

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

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

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

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

27 52. As one such example, Defendants required Plaintiff and the Represented
28 Employees to undergo mandatory temperature checks and screenings prior to clocking in for

1 payroll purposes. However, because this time was spent under Defendants’ control but before
2 being allowed to clock in, it was uncompensated in violation of California law and led to
3 overtime violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law
4 “do[es] not allow employers to require employees to routinely work for minutes off the clock
5 without compensation”); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are
6 compensable when employee is under company’s control and where the tasks served the
7 employer’s interests).

8 53. Additionally, Defendants frequently failed to pay proper overtime to Plaintiff and
9 the Represented Employees due to the practice of automatically deducting 30 minutes from each
10 shift, regardless of whether a meal period occurred. To illustrate, Plaintiff often worked 9.5 hours
11 without a meal period, and no meal period was recorded in Defendants’ timekeeping system.
12 Yet, on these and similar occasions, Defendants only paid for 9 hours of work despite that no
13 meal period was taken or recorded, and without making any inquiry into whether a compliant
14 meal period occurred. This resulted in a failure to pay overtime wages (since those 30 minutes
15 were in excess of 8 hours and had to be paid at the proper overtime rate). Thus, Defendants
16 failed to pay proper overtime wages every time it applied its auto-deduct practice.

17 54. Also, at all relevant times, Plaintiff and the Represented Employees were paid on
18 an hourly basis but were entitled to and did receive additional nondiscretionary compensation
19 (such as shift differentials). However, during workweeks where the Represented Employees
20 worked overtime hours and earned additional nondiscretionary compensation, Defendants failed
21 to include that compensation in the calculations for the regular rate of pay and instead paid
22 overtime at only 1.5 times the base rate of pay – violating the well-established rule that overtime
23 must always be paid at time and one-half the regular rate of pay.

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

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

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

58. 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.

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

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

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

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

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

Plaintiff and the Meal Break Subclass Against All Defendants

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

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

/ / /

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

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

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

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

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

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

27 70. On information and belief, Plaintiff and the Meal Break Subclass did not
28 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers

1 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
2 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
3 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
4 to take meal periods in accordance with California law.

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

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

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE REST BREAKS**

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

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

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

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

22 75. 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 76. 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 77. 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 her regular rate of compensation for each day that the rest period is not provided.

4 78. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
5 Break Subclass 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, the
7 Rest Break Subclass was not permitted to leave the premises for a rest break, and the Rest Break
8 Subclass 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 Rest
10 Break Subclass worked lengthy shifts, Defendants failed to authorize and/or permit mandated
11 third or fourth rest breaks.

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

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

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

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

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

12 86. 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 87. 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 88. At all relevant times, Defendants employed a policy and practice whereby
19 Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
20 separation of employment within the time required by Labor Code §§ 201 and 202.

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

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

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

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Wage Statement Penalties Subclass against All Defendants

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

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

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

94. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Wage Statement Penalties Subclass due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect total compensable hours due to the illegal temperature check and auto-deduct policies); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); and failure to accurately state the corresponding number of hours worked at each hourly rate.

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

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

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

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

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

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

3 108. A violation of California Business & Professions Code § 17200, et seq. may be
4 predicated on the violation of any state or federal law. All of the acts described herein as
5 violations of, among other things, the California Labor Code and IWC Wage Orders, are
6 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
7 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
8 practices in violation of California Business and Professions Code §§ 17200, et seq.

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

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

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

27 112. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
28 Represented Employees are entitled to restitution of the wages withheld and retained by

Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Represented Employees; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

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

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

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

115. Pursuant to Labor Code § 2699.3(a), on January 21, 2022, Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

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1 **EIGHTH CAUSE OF ACTION**

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

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

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

7 117. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
8 be paid at least the applicable California minimum wage throughout the statutory period for each
9 hour worked.

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

15 119. As one such example, Defendants required Plaintiff and the Aggrieved
16 Employees to undergo mandatory temperature checks and screenings prior to clocking in for
17 payroll purposes. However, because this time was spent under Defendants' control but before
18 being allowed to clock in, it was uncompensated in violation of California law and led to
19 minimum and regular wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th
20 829 (California law "do[es] not allow employers to require employees to routinely work for
21 minutes off the clock without compensation"); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th
22 1038 (tasks are compensable when employee is under company's control and where the tasks
23 served the employer's interests).

24 120. Additionally, Defendants frequently failed to pay proper minimum and regular
25 wages to Plaintiff and the Aggrieved Employees due to the practice of automatically deducting
26 30 minutes from each shift, regardless of whether a meal period occurred. To illustrate, Plaintiff
27 often worked 9.5 hours without a meal period, and no meal period was recorded in Defendants'
28 timekeeping system. Yet, on these and similar occasions, Defendants only paid for 9 hours of

1 work despite that no meal period was taken or recorded, and without making any inquiry into
2 whether a compliant meal period occurred. This resulted in a failure to pay minimum/regular
3 wages (since Plaintiff was not paid at all for those 30 minutes). As a result, Defendants failed to
4 pay Plaintiff and the Aggrieved Employees for all hours worked, including minimum and regular
5 wages.

6 121. 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).

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

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

15 **NINTH CAUSE OF ACTION**

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

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

18 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

5 128. As one such example, Defendants required Plaintiff and the Aggrieved
6 Employees to undergo mandatory temperature checks and screenings prior to clocking in for
7 payroll purposes. However, because this time was spent under Defendants' control but before
8 being allowed to clock in, it was uncompensated in violation of California law and led to
9 overtime violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law
10 "do[es] not allow employers to require employees to routinely work for minutes off the clock
11 without compensation"); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are
12 compensable when employee is under company's control and where the tasks served the
13 employer's interests).

14 129. Additionally, Defendants frequently failed to pay proper overtime to Plaintiff and
15 the Aggrieved Employees due to the practice of automatically deducting 30 minutes from each
16 shift, regardless of whether a meal period occurred. To illustrate, Plaintiff often worked 9.5 hours
17 without a meal period, and no meal period was recorded in Defendants' timekeeping system.
18 Yet, on these and similar occasions, Defendants only paid for 9 hours of work despite that no
19 meal period was taken or recorded, and without making any inquiry into whether a compliant
20 meal period occurred. This resulted in a failure to pay overtime wages (since those 30 minutes
21 were in excess of 8 hours and had to be paid at the proper overtime rate). Thus, Defendants
22 failed to pay proper overtime wages every time it applied its auto-deduct practice.

23 130. Also, at all relevant times, Plaintiff and the Aggrieved Employees were paid on an
24 hourly basis but were entitled to and did receive additional nondiscretionary compensation (such
25 as shift differentials). However, during workweeks where the Aggrieved Employees worked
26 overtime hours and earned additional nondiscretionary compensation, Defendants failed to
27 include that compensation in the calculations for the regular rate of pay and instead paid
28 overtime at only 1.5 times the base rate of pay – violating the well-established rule that overtime

1 must always be paid at time and one-half the regular rate of pay.

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

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

9 133. 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 **TENTH CAUSE OF ACTION**

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

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

15 *Plaintiff and the Aggrieved Employees against All Defendants*

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

18 135. 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 meal
20 periods.

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

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

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

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

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

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

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

22 142. 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 **ELEVENTH CAUSE OF ACTION**

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

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

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

7 144. 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 rest breaks.

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

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

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

19 148. At all relevant times, Defendants also failed to provide Plaintiff and the
20 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
21 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
22 Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks
23 due to the lack of adequate staffing and coverage and being overwhelmed by their hectic
24 workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked
25 lengthy shifts, Defendants failed to authorize and/or permit a mandated third and fourth rest
26 breaks.

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

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

6 **TWELFTH CAUSE OF ACTION**

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

8 (Labor Code § 204)

9 *Plaintiff and the Aggrieved Employees against All Defendants*

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

12 152. Plaintiff and the Aggrieved Employees are and/or were "nonexempt" employees
13 of Defendants who did not receive proper protections and benefits of the laws regarding the
14 timing of payment of wages each period.

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

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

23 155. At all relevant times herein, Defendants did not provide Plaintiff and the
24 Aggrieved Employees with all wages due and owing each period within the time required by
25 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
26 Employees with all wages due and owing each pay period, including, but not limited to,
27 minimum, regular, and overtime wages, as well as meal and rest period premiums, within the
28 time specified by Labor Code § 204.

1 156. 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 **THIRTEENTH CAUSE OF ACTION**

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

6 (Labor Code §§ 201 – 203 and 256)

7 *Plaintiff and the Aggrieved Employees against All Defendants*

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

10 158. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
11 of Defendants who did not receive proper protections and benefits of the laws governing the
12 timing and payment of final wages.

13 159. Labor Code § 201 requires that the employer immediately pay any wages, without
14 abatement or reduction, to any employee who is discharged.

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

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

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

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

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1 164. 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 **FOURTEENTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR**
6 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

7 (Labor Code § 226)

8 *Plaintiff and the Aggrieved Employees against All Defendants*

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

11 166. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
12 who did not receive proper protections and benefits of the laws governing the provision of
13 accurate itemized wage statements.

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

20 168. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
21 and the Aggrieved Employees due to violations including: failure to accurately state total hours
22 worked (the wage statements failed to accurately reflect total compensable hours due to the
23 illegal temperature check and auto-deduct policies); failure to accurately state gross wages
24 earned; failure to accurately state all deductions; failure to accurately state net wages earned;
25 failure to state the applicable hourly rates (including the accurate overtime rate of pay); and
26 failure to accurately state the corresponding number of hours worked at each hourly rate.

27 169. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
28 to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement

1 to Plaintiff and the Aggrieved Employees that complied with the requirements of Labor Code §
2 226(a).

3 170. As a result of the Defendants' violations of Labor Code § 226(a), Plaintiff seeks
4 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
5 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

6 **VII. PRAYER FOR RELIEF**

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

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

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

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

14 4. That Plaintiff be appointed as Class Representative;

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

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

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

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

23 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
24 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198,
25 and 1199, among other sections inadvertently omitted;

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

6
7 Dated: March 30, 2022

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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