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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

JOSHUA SHEETS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

KAYDAN LOGISTICS LLC, a California
limited liability company; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CVRI2200610
*[Assigned to Hon. Judge Sunshine Sykes,
Dept 6, 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 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

1 Plaintiff Joshua Sheets (“Plaintiff”) on behalf of himself, 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 Kaydan
5 Logistics LLC and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all
6 current and former nonexempt employees employed by Defendants in California (the “Class” or
7 “Represented Employees”), for Labor Code violations stemming from Defendants’ failure to pay
8 all wages owed, including minimum, regular, and overtime wages, failure to provide meal
9 periods, failure to provide rest breaks, failure to timely pay wages each period, 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 September through
13 December 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 frequently required Plaintiff to clock out for meal
20 periods but continue performing work for Defendants. This resulted in a failure to pay
21 minimum/regular wages (since Plaintiff was not paid at all for those 30 minutes), as well as a
22 failure to pay overtime wages (since those 30 minutes were in excess of 8 hours and had to be
23 paid at the proper overtime rate). Thus, Defendants failed to pay proper minimum, regular, and
24 overtime wages every time it applied its practice of requiring Plaintiff and the Represented
25 Employees to clock out for 30 minutes during each shift, regardless of whether an off-duty meal
26 period was taken.

27 5. Also, at all relevant times, Plaintiff and the Represented Employees were paid on
28 an hourly basis but were entitled to and did receive additional nondiscretionary compensation.

1 However, during workweeks where the Represented Employees worked overtime hours and
2 earned additional nondiscretionary compensation, Defendants failed to include that
3 compensation in the calculations for the regular rate of pay and instead paid overtime at only 1.5
4 times the base rate of pay – violating the well-established rule that overtime must always be paid
5 at time and one-half the regular rate of pay.

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

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

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

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

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1 10. Plaintiff alleges that Defendants’ violations of the wage and hour components of
2 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
3 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
4 its competitors.

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

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

18 13. Pursuant to Labor Code § 2699.3(a), Plaintiff is in the process of giving written
19 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by
20 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
21 violated, including the facts and theories to support the alleged violations. As such, Plaintiff
22 reserves the right to amend this complaint or bring a separate complaint for the PAGA claims
23 pursuant to Labor Code § 2699.3(a)(2)(C).

24 **II. JURISDICTION**

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

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1 **III. VENUE**

2 15. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
3 Procedure § 395(a). Defendants transact business in Riverside County and the unlawful acts
4 alleged herein have a direct effect on Plaintiff and the Represented Employees in Riverside
5 County. Furthermore, Defendants employed or employ Plaintiff and Represented Employees in
6 Riverside County.

7 **IV. PARTIES**

8 **Plaintiff**

9 16. Plaintiff and Class Representative Joshua Sheets was employed by Defendants
10 from approximately September through December 2021 and performed work for Defendants in
11 Riverside County.

12 **Defendants**

13 17. Plaintiff is informed and believes and thereon alleges that Defendant Kaydan
14 Logistics LLC is a California limited liability company authorized to and doing business in
15 Riverside County, California. Plaintiff is also informed and believes that Defendant Kaydan
16 Logistics LLC is and/or was the legal employer of Plaintiff and the Represented Employees
17 during the applicable statutory periods.

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

25 19. Plaintiff is informed and believes and thereon alleges that he and the Represented
26 Employees worked under the joint direction and control of Defendants and that Defendants, and
27 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
28 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of

1 each Defendant are legally attributable to the other Defendants. On information and belief, a
2 unity of interest and ownership between each Defendant exists such that all Defendants acted as
3 a single employer of Plaintiff and other Represented Employees.

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

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

19 22. Plaintiff is further informed and believes that at all relevant times, Defendants
20 have been inadequately capitalized to conduct business, have failed to follow appropriate
21 corporate formalities, and have simply been a shell and instrumentality through which
22 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
23 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
24 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
25 separate existence of these corporate entities would permit abuse of the corporate privilege,
26 thereby sanctioning fraud and promoting injustice.

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1 **V. CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

13 **Meal Break Subclass**

14 All Represented Employees who worked a shift in excess of
15 5 hours during the Relevant Time Period.

16 **Rest Break Subclass**

17 All Represented Employees who worked a shift of at least
18 3.5 hours during the Relevant Time Period.

19 **Waiting Time Penalties Subclass**

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

24 **Wage Statement Penalties Subclass**

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

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

3 29. Plaintiff, as Class Representative, is a member of the class and subclasses that he
4 seeks to represent.

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

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

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

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

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

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

25 iv. Whether Defendants violated the California Labor Code and applicable
26 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
27 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
28 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.

35. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Represented Employees is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Represented Employee has been damaged and is entitled to

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

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

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

7 *Plaintiff and the Represented Employees Against All Defendants*

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

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

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

18 39. As one such example, Defendants frequently failed to pay proper minimum/
19 regular wages to Plaintiff and the Represented Employees due to the practice of requiring
20 Plaintiff to clock out 30 minutes during each shift but continue performing work for Defendants.
21 This resulted in a failure to pay minimum/regular wages (since Plaintiff was not paid at all for
22 those 30 minutes). Thus, Defendants failed to pay proper minimum/regular wages every time it
23 applied its practice of requiring Plaintiff and the Represented Employees to clock out for 30
24 minutes during each shift, regardless of whether an off-duty meal period was taken.

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

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

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

8 43. 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 44. During 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 45. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
16 Employees have been damaged in amounts to be proven at trial.

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

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY OVERTIME WAGES**

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

24 *Plaintiff and the Represented Employees Against All Defendants*

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

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

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

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

11 51. As one such example, Defendants frequently failed to pay proper overtime wages
12 to Plaintiff and the Represented Employees due to the practice of requiring Plaintiff to clock out
13 30 minutes during each shift but continue performing work for Defendants. This resulted in a
14 failure to pay overtime wages (since those 30 minutes were in excess of 8 hours and had to be
15 paid at the proper overtime rate). Thus, Defendants failed to pay proper overtime wages every
16 time it applied its practice of requiring Plaintiff and the Represented Employees to clock out for
17 30 minutes during each shift, regardless of whether an off-duty meal period was taken.

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

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

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

3 63. 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 64. 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 65. 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 66. 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 67. 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 68. 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 69. 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 70. 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 71. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

20 72. 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 73. 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 74. 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 75. 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 76. 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 and the
7 Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due
8 to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and
9 he Rest Break Subclass worked lengthy shifts, Defendants failed to authorize and/or permit
10 mandated third or fourth rest breaks.

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

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

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

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

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

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

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

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

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

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

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

3 **SIXTH CAUSE OF ACTION**

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

5 (Labor Code § 226)

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

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

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

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

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

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

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

11 95. As a result of Defendants' knowing and intentional failure to comply with Labor
12 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
13 that each was prevented from knowing, understanding and disputing the wage payments paid to
14 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
15 injury in that the failure to show all wages earned on the itemized wage statements resulted in
16 Plaintiff and the 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 96. Plaintiff has also been injured as a result of having to bring this action to attempt
21 to obtain correct wage information following Defendants' refusal to comply with many of the
22 mandates of California's Labor Code and related laws and regulations.

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

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

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

9 107. Plaintiff, individually, and on behalf of the 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.

16 108. 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.

22 109. 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.

27 110. 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)

111. Plaintiff is an “aggrieved employee” under the PAGA as he 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”).

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

113. Pursuant to Labor Code § 2699.3(a), on February 9, 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*

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

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

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

15 117. As one such example, Defendants frequently failed to pay proper minimum/
16 regular wages to Plaintiff and the Aggrieved Employees due to the practice of requiring Plaintiff
17 to clock out 30 minutes during each shift but continue performing work for Defendants. This
18 resulted in a failure to pay minimum/regular wages (since Plaintiff was not paid at all for those
19 30 minutes). Thus, Defendants failed to pay proper minimum/regular wages every time it
20 applied its practice of requiring Plaintiff and the Aggrieved Employees to clock out for 30
21 minutes during each shift, regardless of whether an off-duty meal period was taken.

22 118. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
23 Aggrieved Employees for all hours worked.

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

27 120. Plaintiff is informed and believes and thereon alleges that Defendants
28 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved

1 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

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

5 **NINTH CAUSE OF ACTION**

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

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

8 *Plaintiff and the Aggrieved Employees against All Defendants*

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

11 123. Plaintiff and the Aggrieved Employees were employees of Defendants who did
12 not receive proper protections and benefits of the laws governing payment of overtime wages.

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

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

23 126. As one such example, Defendants frequently failed to pay proper overtime wages
24 to Plaintiff and the Aggrieved Employees due to the practice of requiring Plaintiff to clock out 30
25 minutes during each shift but continue performing work for Defendants. This resulted in a failure
26 to pay overtime wages (since those 30 minutes were in excess of 8 hours and had to be paid at
27 the proper overtime rate). Thus, Defendants failed to pay proper overtime wages every time it
28 applied its practice of requiring Plaintiff and the Aggrieved Employees to clock out for 30

1 minutes during each shift, regardless of whether an off-duty meal period was taken.

2 127. Also, at all relevant times, Plaintiff and the Aggrieved Employees were paid on an
3 hourly basis but were entitled to and did receive additional nondiscretionary compensation.
4 However, during workweeks where the Aggrieved Employees worked overtime hours and
5 earned additional nondiscretionary compensation, Defendants failed to include that
6 compensation in the calculations for the regular rate of pay and instead paid overtime at only 1.5
7 times the base rate of pay – violating the well-established rule that overtime must always be paid
8 at time and one-half the regular rate of pay.

9 128. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
10 Aggrieved Employees for all overtime hours worked.

11 129. 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.

15 130. 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.

18 131. 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 **TENTH 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*

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

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1 133. 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.

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

6 135. 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.

13 136. 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.

16 137. 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.

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

27 139. On information and belief, Plaintiff and the Aggrieved Employees did not
28 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers

1 obtained from Plaintiff and the Aggrieved Employees 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 Aggrieved
4 Employees to take meal periods in accordance with California law.

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

8 **ELEVENTH CAUSE OF ACTION**

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

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

11 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

26 146. At all relevant times, Defendants also failed to provide Plaintiff and the
27 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
28 fraction thereof, as mandated by California law. In fact, Defendants' rest break policy only

provided Plaintiff and the Represented Employees with one 15-minute rest break per day, regardless of length of shift. Additionally, Defendants did not schedule rest breaks and the Represented Employees were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the Represented Employees worked longer shifts, Defendants failed to authorize and/or permit mandated third or fourth rest breaks.

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

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

TWELFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

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

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

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

13 **THIRTEENTH CAUSE OF ACTION**

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

15 (Labor Code §§ 201 – 203 and 256)

16 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

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

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

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

FOURTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Aggrieved Employees against All Defendants

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

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

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

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

2 166. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
3 and the Aggrieved Employees because due to violations including: failure to accurately state
4 total hours worked (the wage statements failed to accurately reflect total compensable hours [due
5 to, among other issues, the illegal auto-deduct policy]); failure to accurately state gross wages
6 earned; failure to accurately state all deductions; failure to accurately state net wages earned;
7 failure to state the applicable hourly rates (including the accurate overtime rate of pay); and
8 failure to accurately state the corresponding number of hours worked at each hourly rate.

9 167. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
10 to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement
11 to Plaintiff and the Aggrieved Employees that complied with the requirements of Labor Code §
12 226(a).

13 168. As a result of the Defendants' violations of Labor Code § 226(a), 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 **VII. PRAYER FOR RELIEF**

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

- 20 1. That the First through Seventh Causes of Action be certified as a class action;
- 21 2. That Plaintiff be appointed as Class Representative;
- 22 3. That counsel for Plaintiff be appointed Class Counsel;
- 23 4. For all applicable statutory penalties recoverable under the First through Seventh
24 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
25 Orders of the Industrial Welfare Commission;
- 26 5. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
27 law, including those pursuant to the Labor Code;

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1 6. For injunctive relief and/or restitution as provided by the Labor Code and
2 Business and Professions Code § 17200, *et seq.*;

3 7. As to the Eighth through Fourteenth Causes of Action, the assessment of all
4 applicable and available remedies under the PAGA;

5 8. For reasonable attorneys' fees and costs as permitted under the PAGA;

6 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
7 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198,
8 1199, and 2802, among other sections inadvertently omitted;

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

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

13 12. For such other relief as the Court deems just and proper.
14

15 Dated: April 20, 2022

LAUBY, MANKIN & LAUBY LLP

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17 BY:



18 Brian J. Mankin, Esq.
19 Kristina Bui Carlson, Esq.
20 Attorneys for Plaintiff
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